

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

RECEIVED

Oct 15 2020

SC Court of Appeals

Steven Craig Molloy and Island Group, Inc.
d/b/a Carolina Cleaning.....Plaintiffs
Of which Steven Craig Molloy is theAppellant
(for the company and its shareholders)

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
Beaufort County Parks and Leisure; Stu Rodman, as Finance Chair
of Beaufort County Council; Dave Thomas, Procurement Director
Beaufort County, SC. And Beaufort County Disabilities and
Special Needs; Beaufort County DSN Board.....Respondents,

October 15, 2020


S. Craig Molloy - Pro se

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APPELLANTS REPLY TO FINAL BRIEF OF RESPONDENTS

TABLE OF CONTENTS

A. STATEMENT OF ISSUES ON APPEAL (1-14).....p.3-8

B. ARGUMENTS (1-15)p.8-11

C. STATEMENT OF THE CASE - FACTUAL BACKGROUND p.11-22

D. STANDARD OF REVIEWp.23-24

E. CONCLUSIONp. 25

F. AUTHORITIES STATUTES CODES RULESP. 26-27

A. STATEMENT OF ISSUES ON APPEAL

1. Did Judge Dukes error in granting summary judgment to Defendants where Plaintiff's Island Group Inc. dba Carolina Cleaning and Craig Molloy and shareholders sustained actual losses and injuries and has asserted claims against Defendants in his own right to recover those losses for the company, it's shareholders and personally.

Suggested Answer: YES

After continued public contradictions, in 2018 and 2019, a meeting between Defendants Attorney, Ingles, Councilmen and new County Administrator and after detail and review of related facts Attorney, Ingles confirming fault and illicit actions by the Defendants in this matter, requested a demand for payment from Appellant (**three separate times**) for losses sustained due to the undeniable evidence and willful intent and accepting fault for Defendants for actions in this matter, the Plaintiff has obliged and is expecting payment of said claim. Appellant requests this honorable Court order prompt payment of said verified claim and demand.

2. Did Judge Dukes error to enter summary judgment where Plaintiff, Craig Molloy complied with Rule 56(f) and presented legal rules of Depositions to Summary Judgement that include Depositions must be considered in Summary Judgement, the lower court did not consider Depositions, because the Defendants refused to show for Depositions, thus they were not taken and the Lower Court errored again by not compelling Depositions.

Suggested Answer: YES

Defendants refused to show for scheduled depositions and were given a full opportunity to explain their documents and actions including but not limited to a few examples below: (**Material Facts**)

- a.) Their 2012 internal emails?
- b.) The documents depicting bid rigging?

- c.) Why are the specifications in BC DSN's bid different than the other bidders on a competitive, open market bid?
- d.) Why the BC DSN Director and Assistant were on the / a selection committee for bids which they participated against other outside contractors?
- e.) Why was the BC DSN bid turned in 3 months late?
- f. Why would / did Procurement allow?
- g.) A chance to explain their documents and conflicting statements?
- h.) Explain the attachments to Thomas 2012 emails labeled "changes for DSN" that showing the bid specs were changed for DSN?
- i.) Explain comments by bidders "BC DSN and Pals to change the specs to lower the price" of their bid?
- j.) Why are the Federal Waivers issued to "The BC Disabilities Board" however controlled by Beaufort County and explain the related 2018 Governor's letter to Defendants stating "out of compliance with statute"?
- k.) Explain the differences in Thomas sworn affidavit where the BC DSN consumer are employees / paid by the County and BC CFO Hollands, sworn affidavit where the BC DSN consumers are vendors (not employees) one can't be both.
- l.) Later Thomas says the consumers are both vendors and contractors and paid as employees by the County.
- m.) The BC DSN Director Love swears the consumers are County employees.
- n.). Perhaps Thomas could explain many of his (and others) statements that this program was a way for the County to save money, where it is now known the County illicitly gained access to the under minimum wage waivers as a cost saving for themselves.

This is **EXPLOITATION OF DISABLED CONSUMERS** where the County pays less than minimum wage in order to save money on rigged contracts to themselves.

3. Did Judge Dukes error entering summary judgment based on the time-barred statute.

Suggested answer: YES

Appellant could not have possibly known a legal or tort claim was possible until receipt of the 2012 emails and Thomas's (agent for protests) involvement and others inter office 2012 emails that detail their illicit plans, until Molloy received in 9/2015 and only then did he become aware

that a claim existed, including a South Carolina Tort Claims Act claim was available to him, and has been filed with demand as requested by Defendants.

Because of Thomas' duty as agent the defendants continue to spin and mis-guide and reuse to address the facts related to Thomas' total involvement in the violations. **(Emphasis Added)**

4. Did Judge Dukes erred to enter summary judgment based on the Defendants "perceived" rights in the contract.

Suggested Answer: YES

Special attention must be given the 2010 Contract award between Appellant and County (page 1, letter D is clear and reads:

"this agreement including the terms, conditions, specifications and provisions listed here makes up the entire agreement between contractor and County and "No other agreement, oral or otherwise, regarding the subject matter of this agreement shall exist or bind either party hereto". (ROA supp. page 108, letter D, p.149)

The Defendants undeniably violated the 2010 contract and the specific subject matter by "oral" and "written" outside the agreement with others, secretly and behind the Appellant (contract holder) back, led by the County Procurement Director, who by his position has to know better, And had a **duty, and breached the duty, and acted anyway, in turn causing significant and direct losses to Appellant. (Emphasis Added)**

Throughout their pleadings and arguments, the Defendants have been quick to point to other miscellaneous unrelated items, however never address the facts related to the 2012 inter office emails, not once.

5. Did Judge Dukes erred entering Summary Judgment where Plaintiff, Craig Molloy properly asserted his rights in the protest process as required by the County Procurement Code and the RFP and contract documents?

Suggested Answer: YES

Plaintiff asserted his right to protest in writing and in person meetings as required to Thomas (and others), However, unknown to Appellant at the time Procurement Director, Thomas was intimately involved and complicit and kept his role secret, as a “key player” in the bid rigging scheme, while at the same time received protests from Appellant and met with Appellant several times to discuss the protest, where Thomas stalled made excuses, while knowing as the Procurement Director, Thomas is the person one is to file protests, Thomas ignored used deceit and refused to be deposed and continues to make false claims to these facts, because Thomas known he is guilty and one the leaders of the frauds detailed in his own documents in this matter, which he refuses to answer.
(ROA supp., p. 156, p. 137, p, 149)

6. Did Judge Dukes error entering summary judgment where Plaintiff, Craig Molloy presented significant evidence that the Defendants acted outside of the scope of their job duties.

Suggested Answer: YES

It is a violation of procurement and competitive bidding for a Procurement Director, “Thomas” (or anyone) to conspire with and change RFP specifications in a RFP process for only one bidder for contracted services. This includes a County Department or third party, and Intergovernmental agreements. Anti-competitive practices are strictly forbidden in all and every statute the Defendants put forward and related to procurement, RFP’s, competitive bidding process for services, including Intergovernmental agreements and external third party contracting.

(ROA – p. p4 procurement code, SC statutes 11;35 4410,4430, 4450)

7. Did Judge Dukes error entering summary judgment where Plaintiff Craig Molloy presented evidence the Defendants acted unconscionably or in bad faith (Mr. Molloy's Issue IV)?

Suggested Answer: YES

Thomas conspires with BC DSN and others to award contracts to BC DSN. in 2012 and 2014 contracts, documents show BC DSN’s specs for the bids are different than the specs for the other bidders (Molloy’s and other bidders) differ from other and changed by Thomas, these are violation of procurement, ethics and unconscionable for Thomas, the Procurement Director.

(ROA supp p.149, p. 137)

8. Did Judge Dukes error in entering summary judgment based on Plaintiff Craig Molloy not establishing BC DSN was a separate entity from Beaufort County, but rather is a department of the County (Mr. Molloy's Issue V)?

Suggested Answer: YES

If BC DSN is separate from the County, then the County rigged bids for a “**third party**”, (clear violations exist) and, If BC DSN is a “**department**” and the County considered the agreements “Intergovernmental agreements”, (clear violations also exist) related to the Anti-competitive practices are forbidden in all intergovernmental agreements also.

The County wouldn't have gone through the entire procurement process, however, they did, and violations occurred and defendants conspired to commit fraud by anti-competitive practices which is strictly forbidden in every and all RFP process, contracting and procurement, including intergovernmental agreements and third parties.

If BC DSN is a County Department however the Governor letter confirms his office oversees and must control BC DSN by statute also violated by the County. (ROA p. 32 & 33)

The Federal waivers are assigned to “The Disabilities Board” not Beaufort County, The BC DSN Board per the rules for accepting waivers and the federal funding must go to the DSN Board for distribution, however the Counties illicit takeover of BC DSN places the County in the position to receive the money meant for the BC DSN Board (in turn to the consumers) however goes into the County bank accounts. (**ROA p. 33**)

The Defendants conversations in their 2012 emails depict willful Anti-competitive practices, contract interference with a fraudulent intent.

(ROA – p. p4 procurement code, SC statutes 11;35 4410,4430, 4450)

9. Did Judge Dukes err in his summary judgment as to Plaintiff Craig Molloy's contract-based claims against the individual Defendants?

Suggested Answer: YES

In their 2012 emails, Thomas conspires with BC DSN Director (and others) to award contracts to BC DSN (**ROA p.137**) shows BC DSN proposal where the RFP specifications differ from the other bidders and changed by Thomas, Wagner and discussed (and later carried out) between them in their previous emails and are, unconscionable actions for a Procurement Director and BC DSN Director. (**ROA p. 137**)

10. Did Judge Dukes err in his summary judgment as to Plaintiff Craig Molloy's tort-based claims against the individual Defendants?

Suggested Answer: YES

Upon discovery of the Violations in 9/2015, Appellant met with then, Administrator, Kubic, who not only confirmed the County involvement and violations, also stated “that’s why we have insurance” confirming their insurance company responsibility and would pay losses. In addition, new Council Members, Administration and Counsel (previously uninvolved with this matter) have met with thus Appellant presented and reviewed and detailed violations where Council members,

Administration, and Counsel acknowledge the violations, thus requesting a demand for losses from Appellant, which Appellant obliged and expecting payment of his verified claims.

(Emphasis Added)

[Note: The Insurance company adjusters and County risk manger and Attorneys violate many all rules and laws of claims assessment for damages by neglecting to return calls, emails refuse to provide their investigation discovery, refuse required investigation of adjustment of claims, yet the County Administration and Attorneys have acknowledged fault and requested demands. The SC Insurance commission (including the Director and top adjusters have reviewed the claims and acknowledged valid and payment is due.]

11. Did Judge Dukes err to enter summary judgment as to Plaintiff Craig Molloy's breach of contract accompanied by a fraudulent act claim (Count 1)?

Suggested Answer: YES

(ROA p.149 , Thomas’ 2012 emails are fraudulent)

12. Did Judge Dukes err to enter summary judgment as to Plaintiff Craig Molloy's interference with prospective contract claim (Count 2)?

Suggested Answer: YES

(ROA p. 149 Thomas 2012 emails show he and others interfered with Appellants 2010 contract)

13. Did Judge Dukes err to enter summary judgment as to Plaintiff Craig Molloy's unjust enrichment claim (Count 6)?

Suggested Answer: YES

Per the Governor's office and the SCAG, the Defendants violated the statutory authority of the Governor's office of the BC DSN program, Board and funding thereof, and then the Defendants under the contracting scheme awarded themselves contracts to increase the funding to themselves, clear violations. **(ROA p.32, p.33, p. 40, p.113)**

14. Did Plaintiff Craig Molloy preserve all issues for appellate review regarding his taxpayer standing claim (Count 9)?

Suggested Answer: YES

B. ARGUMENTS

1. This Court should rescind the Summary Judgement decision granted by Judge Dukes in total or part or award Judgement to the Plaintiff for the Defendants obvious violations and continued deceit, including to the Courts and refusal to participate in fact finding.
2. Plaintiff Island group Inc. dba Carolina Cleaning and Steven Craig Molloy and the shareholders have sustained losses and injuries (personal and business) and Under the U. S Constitution - 5 th Amendment mandate, of "just compensation"
Molloy has asserted his rights to recover losses and injuries through claims against Defendants for his and his and his company rights. **(Emphasis Added)**
(see: Mongongahela Navigation co. Vs. United States, 1893) and (1949 - Kimball laundry co. Vs. United States)
3. Plaintiff Mr. Molloy Was Deprived of a Full and Fair Opportunity to Conduct Discovery (Mr. Molloy's Issue 1) **(See above Roa reference)**
4. Plaintiff Mr. Molloy has produced significant Evidence Supporting all Claims **(ROA – exhibits presented by the Appellant)**

5. The Trial Court Incorrectly Held That the Tort Claims Are Time-Barred and Molloy had provided proof (Mr. Molloy's Issue II)

(ROA p. 157 – timeline)

Also see: Joubert v. South Carolina Dept. of Soc. Services, 341 S.C. 176, 190, 53)

6. The Express Language of Carolina Cleaning's 2010 Agreement Precludes Any Claims Regarding the Termination of That Agreement

(ROA p. 108, p. 1- letter D)

The 2010 contract forbids any other document (written or oral) to alter or replace the express contract that the Defendants signed with the Appellant in 2010.

It is undisputed that the Defendants violated the 2010 contract **(ROA p.108, p-1-letter D)**.

The Defendants allowed and created other documents and contracts (written) and (oral) to use against the Appellant, and violating the 2010 contract.

7. The Trial Judge erred in granted Summary Judgment to the Defendants, the Plaintiffs followed all remedy procedures, however, unknown to the Appellants at the time Procurement Director, Thomas (and others) were intimately involved with the deceit, shown in their inter office emails that Appellant was not privy to, or aware until 9/2015, shown in the timeline, **(ROA p. 157; Timeline)** only then were the Defendants violations of the Beaufort County and State Procurement Codes, Contract and RFP Documents known to the Appellant. **(ROA p. 149, p.40, p. 157 -timeline)**

8. Because of the Defendants continued deceit and refusal to participate and explain their internal documents, **(ROA, 149)** Molloy raised several additional issues the Defendants call “Red-Herrings”, however the key initial claims remain and are more clear while and since the Defendants continue to refuse to answer to their own documents, these are the True Issues and not confusing. (Mr. Molloy's Issues III, IV and V.)

(ROA p. 149, p.108, p.114,p p.140, p.156, p157, p126)

9. The evidence is clear and shows the Defendants acted outside the Scope of their Job Duties, and it is no-where in a Procurement Director's "Thomas" duties to arrange for and conspire with any entity or company or department to win bids and RFP's for contracted services. (Mr. Molloy's Issue III)
(ROA p.149, p 94 – procurement code)

10. The evidence is clear and shows the Defendants Acted Unconscionably or in Bad Faith. (Mr. Molloy's Issue IV) **(ROA p.149, p. 94)**

11. The Trial Judge erred in granting the Defendants Summary Judgment And The Judge did NOT consider the other evidence of Thomas and the others collusion for BC DSN to win the RFPs and contracts BC DSN, thus the Judge Just took the word of the Defendants and did not consider the other evidence and the Defendants duties to the Plaintiffs 2010 contract award nor did Judge Consider the other supporting evidence, thus this matter was wrongly Judged against before it began. **(ROA p.3, p. 162-134, p.149, p.156)**

12. When the facts are reviewed it is clear there are NO grounds that support the Summary Judgment for the Defendants upon contract or other. Some of the Defendants acted unconscionably to violate page one of the contract.
(ROA p.149) 108 - p. 1 - letter D)
The 2010 contract between Defendants and Appellant/ Molloy's company, forbids any other document **written or oral** to alter or replace the express contract matter or substance. It is undisputed that the Defendants violated the contract (ROA 108, p.1 letter D) willfully, on several instances allowed, acted, created other documents, both written and oral for the specific use against the Appellant violating their 2010 contract duties and obligations to / with Appellant.

13. Plaintiff Mr. Molloy's Claims Against the Individual Defendants Fail to the Extent They Are Premised Upon Tort.
(ROA p. 149, p. 157 – timeline; Also see: Joubert v. South Carolina Dept. of Soc. Services, 341 S.C. 176, 190, 53)

The Appellant could have never known of the Defendants deceit until he received the 2012 emails in 9/2015, this complaint was filed in 8/2016, well within the 2 year statute, the Defendants argument fails, further the Defendants negligence is gross and despicable for persons in their positions.

14. Plaintiff Mr. Molloy's Breach of Contract Accompanied by a Fraudulent Act

Claim (Count 1) succeeds as a not only a matter of law but also as a matter of fact.

See the Procurement Director, Thomas 2012 email conversations and related exhibits and later actions show Thomas, in fact, changed specs for the BC DSN program and various other violations.

(ROA p. 149, p.32, p.33, p.43, p.94)

Definition of Fraud – “wrongful or criminal deception intended to result in financial or personal gain” “intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right” “an act of deceiving or misrepresenting”

15. Plaintiff Mr. Molloy's Interference with Prospective Contract Claim (Count 2) is presented as a matter of fact, as the Defendants collaborated to dismantle a previously awarded to his company, this could have remained unaffected but for the Defendants deceit. **(ROA p.149)**

C. **STATEMENT OF THE CASE - Factual Background**

This lawsuit involves two contracts for Janitorial services, one in 2010, awarded to the Appellants company and another, in 2012 awarded to an entity called BC DSN “not a Janitorial company”. The BC DSN entity was created to care for disabled persons, not to clean buildings or bid on contracts. BC DSN applied for and received Federal minimum wage waivers, the waivers are issued to “The Beaufort County Disabilities Board” **not issued to the County**. The BC DSN Board is the operator of the program and the facilitator of funds, not the County. However, contrary to statutory requirements in 2011 Beaufort County secretly gained control of BC DSN and the Board, per the SC Governor (ROA p. 32) through illicit means, which in turn gave the County control of the BC DSN programming and funds received, funds including Federal Medicaid intended for BC DSN. The funds are deposited into the County bank accounts, Not BC DSN Board accounts, in fact, BC DSN owns no bank accounts, thus creating serious conflicts and removes the intended separation for oversight and the exact reason why a separation must

exist by statute, to avoid the potential for conflict. However, conflicts by the Defendants exist at a every level throughout this matter where they refuse to answer or explain and consistently avoid.

The 2010 contract award to the Appellant (Carolina Cleaning) by Beaufort County was eventually dismantled, where Appellant questioned, protested, and met with Procurement Director, Thomas and others to discuss, however it was unknown at the time, that Thomas' 2012 email exchanges were not known or received until 9/2015 show, (suit filed in 8/2016) the copious conversations in the 2012 emails show Procurement Director, Thomas working behind the Appellants back (at the same time of protest) where Thomas acknowledges the various procurement violations of anti-competitive practices, and interference with contractual relations and fraud with regard to the Appellants 2010 contract and

others. Thomas converses about interference with contractual relations with a fraudulent intent, to dismantle the Appellants 2010 contract, which financially damaged the Appellants company beyond repair. The Defendants subsequent dismantling and removal of the 2010 contract where the Defendants, by their positions knew better and showed NO regard to the requirements of the "good faith, fair and equitable dealing" in all contracts including those they signed with the Appellant.

Later, in 9/2015 and after the damage was done, and upon review of internal 2012 County emails and documents and aligned with other factual evidence it became obvious the Defendants pre-planned and discussed their illicit contracting and contract interference schemes, where Defendants, Thomas, Kubic, are the ones in the positions and responsible for protests, and could have corrected this long ago, however evidence shows, they were complicit and involved in the deceit.

Thomas' 2012 emails, he acknowledges the procurement violations and at the same time, circumvented (ignoring) the protests. Thomas appears as the "ring-leader" , and in his own emails show he acknowledges the violations and warns others to "be careful".

The Defendants actions are unconscionable and irreparably harmed the Appellant, his 25 year SC company, its shareholders and his family and has filed claims and seeks restitution in full to cover all losses sustained.

(ROA p. 157, timeline, p.156 various protest letters and meeting requests and notes)

Evidence in the 2012 emails show the Defendants used fraud and deceit by conspiring to award a separate contract in 2012, in secret to the BC-DSN program and Board, then the Defendants violated statutory requirements to take control of the BC-DSN program and Board through illicit means and without authority. **(ROA p.32, p.33, p. 149 2012 emails)**

Every Defendant refused to show for pre-scheduled depositions and refused opportunities to explain their own documents and actions, including refusal to explain their conflicting their own and each other sworn statements and their Attorneys' arguments in the 3/23/2018 lower court hearings on their behalf.

(ROA transcript p.162-314)

Defendants violated the SC Governor's statutory authorities overseeing the BC DSN Boards and programs (echoed by SCAG's office) both confirming Beaufort County's violations to take over the BC DSN program and Board for their own gain and profit. Many large checks from the State Treasurer office exist and are made payable to: **"the Dept. of Disabilities" not Beaufort County**, these checks are deposited into Beaufort County accounts, not a BC DSN owned account or one to the Department of Disabilities.

[Ex. Checks # 1407626 on 1/13/2014 for

\$ 165,585.71 and another # 140100863 on 1/1/2013 for \$ 154,022.69]

These checks total into millions Millions of dollars per year meant for BC DN consumers however, deposited into Beaufort County Bank accounts (not the assignee on the checks), this confirming millions of dollars intended for BC DSN or a Department of Disabilities for services for disabled consumers actually go into Beaufort County's general fund.

Knowing Beaufort County's regular fondness for self-induced conflicts this is especially concerning and now also knowing the County secretly removed oversight to BC DSN Board where the County employees have refused to answer or explain anything related to this, is of great concern to the Taxpayers where certain further and closer independent investigations should take place, this Court can and should make this happen.

The Defendants have never addressed the 2012 emails in any brief and stay far away from the material and real issues stemming from the 2012 emails that relate directly to their secret bid rigging, price fixing, interfering with contractual relations, illicit take-over of BC DSN in 2011 scheme.

And continue to operate the same way today after the Governors 2018 letter of alerting them of violations, they've changed the documents, however continue to operate the program as an internal operation and without any financial oversight.

The Defendants contradict their Sworn Affidavits when compared to the SC Legislative Oversight Committee Reports from "Chairman" Weston Newton, (also first cousin to Judge Dukes,) Judge Dukes who refused to recuse himself twice, after learning of his cousins involvement). Newton 2018 Legislative report conflicts the 2011 County ordinance change that he signed.

Nonetheless and to top the abundance of conflicts by the Defendants the same Legislative Oversight Committee Chairman, Newton, first cousin to the lower court Judge, was, in 2011, Chairman of Beaufort County Council and one of the signees of the 2011 Ordinance removing the Governor's oversight of Funding, that per the Governor's office, is a violation. **(ROA p. 33, p. 122, p. 85, p598)**

The Lower Court Judge erred in not recusing himself from this matter, after it became known his first cousin was part of this matter, Plaintiff requested twice Judge Dukes to recuse, once with no answer. Additionally, the lower court judge erred in not compelling Depositions of the Defendants. **(ROA p. 22, p. 48)**

The Defendants 2012 inter office emails show material facts still exist in this lawsuit to the Defendants participation in bid rigging and price fixing to award contracts in 2012 (and subsequent years) to the BC-DSN program and Board, and the dismantling of the previously awarded contracts in 2010 to the Appellants company. Material facts can be learned from the Depositions of the Defendants.

Appellant requests this Court pay special attention to the **Defendants briefs do not mention, or address even once**, the 2012 emails of Procurement Director, Thomas and the others showing the blatant and obvious "smoking gun" violations of procurement with fraudulent intent and actions related to rigging bids, price fixing, and acknowledging their anti-competitive practices including warnings to each other. Thus, the Defendants intentionally avoid, do not address anywhere the 2012 inter office emails in any of their briefs and provide distractions from the true reason for this matter.

The Defendants misguided, lied to and committed fraud on the Lower Court who, in turn, erred in awarding summary judgement to the Defendants. The 2012 “inter-office emails” shows the Defendants prior conversations price fixing and rigging bids and conspiring to award 2012 contracts to the BC DSN program and Board, while in the same emails Defendants conspire and have “planning meetings” to dismantle 2010 contract previously awarded to Appellant’s company in 2010. The Lower Court had the wool pulled over by the Defendants and the lower court just took their word for it on the time barred statute, thus awarding summary judgment (in error) and ending this without considering all facts and before it could ever begin.

The Appellants was not privy to the County inter – office emails, and **did not receive them until September, 2015, (ROA p.157 – timeline)** this suit was filed in **August 2016 and well within the two-year statute of limitations**, thus Judge Dukes should not have granted Summary Judgment to the Defendants as it was impossible for the Appellant to have known, thus, should not be time barred.

The 2012 internal emails, Defendants, Thomas specifically (unconscionably) discusses their intentions to **“thwart a protest from the Appellant**, and other warnings to the others, and Thomas acknowledging their intent and pre-planning the scheme including **“warnings to each other to be careful”** , while the Procurement Director knew he had changed the specifications of the RFP only for BC DSN.

Thomas’ conversations in the 2012 emails took place at the same time the Appellant had already protested and was meeting with Thomas, Kubic and others attempting to understand and gain what was happening to / with his 2010 contract.

(ROA supp. p.3; p. 149 emails; p.30-43 rfp specs. changed by Thomas for DSN; p.44 SJ)

A legal remedy could not have been known by the Plaintiff the day he was let go in 6/2014, as the Defendants suggest, that is impossible, the legal remedy could never have been known or discovered until additional facts became known which did not occur until 9/2015. The deceit and fraud by the Defendants and attempt to block and conceal is unconscionable and only later became known. In fact after the Appellant received the 2012 emails and continued to question, no information continued to flow or was provided and FOIA was began to be refused, including on one instance the FOIA director calling the Appellant directly and apologizing for lying to him to refusing additional FOIA by the direction of County Attorney, Tom Keaveny.

[Note; Appellant points this Courts pay special attention to the fact both County FOIA director (Keough) and Asst. Director Lisbon and County and CFO Holland have since resigned their County positions for their personal and ethical conflicts with the way the County Attorneys and Council handle and direct FOIA and other legal conflicts, including continued (unauthorized and unwarranted screening of FOIA and other bullying and added pressures. Holland has filed suit aand another FOIA suit was won by outside party, suggesting a pattern of known bad / illicit behavior by same.]

The 2012 emails show, the Defendants **pre-planned** and intended to interfere with the Appellants 2010 contract, this shows “fraudulent intent” thus, this matter should be **rescinded to the Lower court or judgement awarded to the Plaintiff or this Court order payments of claims requested recently by the Defendants Counsel.** (ROA P.157 - timeline)

After it became apparent to the Plaintiff a claim was available in late 2015, the Plaintiff met with County Administrator, Gary Kubic to advise him of the facts and findings and the scheme by the County employees, during this meeting, after hearing facts, Kubic offered Molloy help by way of additional work or contracts (not detailed or accepted at the time) and also offered to make calls to other companies to offer Molloy / his company help to obtain contracts for work, for conversation, Molloy told Kubic “he would listen and discuss”, Kubic never followed up. In this late 2015 meeting Molloy detailed to Kubic facts and findings of County violations And detailed losses his company and family sustained at the hands of the County Employees, now, Defendants. Kubics’ confirmed in this meeting he understood and acknowledged the County was at fault and the County was liable for Molloy’s losses Kubic’s direct response was “that’s why we have insurance” confirming their liabilities and implying the County was in fact going to pay for, the Molloy’s losses, thus the County has received demands for losses.

[Late in 2019, well into this matter and in a meeting with County Attorney Inglese, A Councilman Hervochoon, and the new, County Administrator, Molloy presented the facts related to this and after learning of the facts, Attorney Inglese requested Molloy send a claim for damages “three times” in this meeting, where Ingles, acknowledged the undeniable violations of County employees where a duty was owed and violated and losses occurred. Thus, Molloy “Appellant” obliged and sent

demand for damages and is expecting payment Defendants who had a duty, violated their duty and losses occurred. This matter should not continue to waste the Courts' and Appellants time and money and the Appellant prays this Court order Defendants pay the claim where fault is acknowledged.

By continuing to distract this Court and with unrelated spin and theories, such as "the Appellant is an upset contractor for not being awarded a new 2014 contract" is **categorically untrue, and a distraction for the Courts**. This matter has nothing to do with a 2014 RFP contract that Appellant did NOT win and is a diversion, one of the Defendants own "Red Hearings" to distract the Court.]

Former Council and County affiliates have confirmed to Molloy, the Defendants tactics to drag out this matter and use time and money, a typical obvious well known, legal tactic, especially when your clients are guilty.

Appellant believes this matter could be ended very quickly if this Court orders Depositions of the Defendants. The Defendants refused to show because their conversations in the 2012 emails along with the various other conflicts in their sworn statements and documents highlight numerous and damaging violations that are blatant and obvious. Plenty of undeniable fact exist and show the guilt by the Defendants, the Appellant prays this Court, puts an end to their wasting all of our time and money and orders the demand be paid as requested and provided or award judgment to Appellant or rescind to the lower court with an order of depositions for additional fact finding.

After the 2012 award to DSN, Beaufort County removed facilities from the Plaintiff's 2010 separate contract and gave the work to their new BC DSN program violating the Provisions and express intent of the 2010 contract. **(ROA p. 108 letter D)**

The Appellant never agreed to a cancellation "over time" of his contract, as Defendants suggest, nor did appellant sign any contract changes (not delivered to Appellant timely) because Procurement Director Thomas, Kubic and others were working to arrange the BC DSN program behind his back, other outright lies and deceit by the Defendants.

The Defendants 2012 inter office emails show their plan of bid rigging, price fixing and contract interference with fraud by Procurement Director, Thomas' arranging one bidder "the BC DSN Program and Board" to win.

Also obvious and shown are Thomas' warnings to others copied to "**thwart a protest**" by the **Appellant** including the County Facilities Director's "**warning to all_copied**" in the 2012 emails to

be **“careful”**, confirming their pre-planning and illicit bid rigging scheme to arrange BC DSN to win bids in 2012 (and 2014 – library).

BC DSN was also **“a bidder”** while Procurement Director acknowledging and allowing BC DSN To also **“change the specifications to lower the price”**, to further assist BC DSN to win the 2012 (and 2014 – library) bids and contracts. **(ROA p.108, p.132, p.149)**

The 2012 inter County emails between Defendants, Beaufort County Procurement Director, Thomas and the BC DSN Director, Wagner a “bidder on the 2012 rfp” shows the undeniable proof and pre-planning elements, fraudulent intent, interference with contractual relations. **(ROA p.134, p.149)**

The Respondents briefs are intentionally misleading and factually untrue. The BC DSN program provides care and services to consumers, and only if the consumers choose to participate in the job training, however, the BC DSN program is not in the professional janitorial business and have no experience in the industry and met Not a single qualification to bid on any RFP's, procurement or contracts for such services. Additionally, **No statute, code, ordinance provided by the Respondents allows bid awards to entity, company, including intergovernmental agreements, using anticompetitive practices.** Anti-competitive practices is strictly forbidden in all statutes governing procurement, bidding, contract processes including “intergovernmental agreements” which are “agreements” and not “contracts” And not competitively bid, the statutes are clear and this is very different from what the Defendants and BC DSN claim and participated in, in 2012. **(emphasis added).** **(ROA p. 94, p.113, p. 140)**

The Defendants speak half-truths to attempt to mislead the courts, Federal law permits the consumers to be paid using the minimum wage certificates under specific requirements, that include **“one must be an independent, professional organization in the business of providing services for the intended use of the waivers”**. **(ROA p. 114)**

The Defendants aka. Beaufort County are not an independent professional or officially in the business of providing service to disabled consumers, so they had no authority to take over BC DSN Board, the entity that received the Waivers, Second the other South Carolina Counties have separate correctly arranged

DSN Boards and are independent organizations (per the Governor's statutory requirements) if not for Beaufort County illicitly taking control of BC DSN and the Board in 2011, and violating the related statutes per the Governor's 2018 letter to the County Attorney, Keaveny (ROA p. 32) states "the County is in violations of the statutes" by taking control of the BC DSN Board and has no authority to do so, also the Governor demands the County to replace the authority which happened almost a year later.

Note: defendants changed the ordinance paper, however the continues to operate the same old way, maintaining control of programs and funding (DSN continues without a bank account) owns no bank account) and the Actual DSN Board has no say in programming or funding, spends.

Governments and County Departments are not to receive the Federal sub minimum wage certificates and are not qualified, one obvious reason for this, it would in fact muddy the waters (as the County has done here) and no check and balance would exist, as was the case from 2011-2019 with BC DSN.

Further, the certificate in question is signed and issued to the BC DSN Board, not Beaufort County or Council, and is and must remain separate, for these purposes is not a department of Beaufort County as evidenced by the letter from the Governor.

(ROA p.32, p.33, p.113, p. 114)

Many of the Respondents statements are intended to mislead the Courts, some are outright lies, there is NO statute the Defendants have quoted that allows anti-competitive practices, or that allows a Procurement Director (or anyone) to change the specifications for a (one) bidder on any open market bid, RFP in a competitive procurement process for services, where other professionals are bidding.

(ROA div 4, below procurement statutes - 1135-60; 4410,40)

The Respondents mislead the Courts by claiming the 2012 RFP was an "intergovernmental agreement", if so, why did Defendants proceed with the entire bid process and request others to compete, have an award, vote, pre bid meetings, however later claim it's something else, an intergovernmental agreement, Where anti-competitive practices are not allowed.

However, the 2012 (and the 2014 library rfp) RFP process as let as an open market RFP with all of the dressings to procure services and in the end a contract was awarded, it appeared as a full procurement bidding process, only the Defendants had chosen the winner before the bid was ever let, a procurement violation.

(ROA div 4 – and anti-competitive practices 11;35-60; 4410-40)

Additionally, if the 2012 bid were an “intergovernmental agreement” no bid process was necessary. As a side note, no outside contractors would be needed or asked to bid. And no outside contractors would have participated. The 2012 bid was developed to “look and smell” like an official bid, only later when the bid rigging was discovered was it clear it was not. The 2012 bid was not an “intergovernmental agreement” and is not listed with the other County’s other intergovernmental agreements such as those with (Hilton Head and Bluffton) this is because it was a contract for professional services with BC DSN picked as the winner long before it was let. **(ROA p. 134, p.137, p141, p.144, p. 94)**

The Respondents claims are not true and intended to mislead the courts. The BC DSN consumers are paid as contract workers or independent contractors, like an independent small business, where no taxes are taken from their pay, however, Unlike all other small contractors, the BC DSN consumers are not insured, have no experience in the contract specifics, met no requirements of the RFP, and the Respondents (specifically Procurement Director Thomas who’s 2012 emails show he rigged by changing the specifications of the RFP only for BC DSN, in order for them to win and the 2012 emails show, Thomas acknowledging contract violations of the Appellants already awarded 2010 contract. **(ROA p.32, p.33; ROA supp p.85, p.112, p.126,)**

The Plaintiff, Craig Molloy representing all Shareholders of the S-Corporation, Island Group Inc. / dba Carolina Cleaning request to protect their right to add any additional information that may serve the Court to show the Summary Judgement awarded in error.

The Plaintiff prays the Appeals Court recognize the facts of this case and the Defendants actions to detract from facts, waste time, waste money for the Court and all involved and see the injustice in this and prays this Court rescinds the Summary Judgement, order depositions of the Defendants or Award Judgement to Plaintiff or demand payment of the claim which the Defendants have requested four times. The Defendants conflicts are abundant throughout this matter; In sworn affidavits, Thomas claims the

BC DSN consumers are “paid as employees by the County” (**ROA supp. p.115, line 1**) same as BC DSN Director., Love’s, while the County Finance Director, Alicia Holland sworn statement states, BC DSN consumers are paid as “contractors or vendors”, one can’t be both.

(ROA - pg. 599 line 13)

BC DSN Director Love and Thomas state all procurement statutes were followed, however no procurement exists that allows for anyone, including a Director of Procurement to conspire with one bidder to change specifications for only that bidder or conspire with same bidder to remove parts of separate contracts from another to give to the original “favorite bidder” of the Procurement Director.

BC DSN Director, Love refers to BC DSN as the “firm” aka. BC DSN, Love employer which he is the Director, Love attempts to play the “firm” as another entity when actually it is BC DSN., where He is the Director. (**ROA supp pg. 88 & 89**)

County Administrator, Kubic signs contracts on behalf of the County while BC DSN Directors Wagner and Love sign on behalf of BC DSN, then later Kubic signs on behalf of BC DSN to receive Federal moneys for said contract (into the County bank account, not DSN’s) with Federal DOT, for transportation for the consumers, working under this contract, while all other bidders include their expenses in total, except for the BC DSN who is afforded transportation and supply expenses paid by the County under this contract. How can Kubic sign contracts for both entities?

In 2015, upon learning a claim was available Appellant contacted and met with County Administrator, Kubic, where he alerted Kubic a claim was forthcoming and detailed some of the findings, Kubic acknowledged the county’s fault, in this meeting County and made a offers to Molloy to assist him to obtain additional contracts with outside firms (or the County) , Molloy did not accept and the time and no details were discussed other than the blatant County violations, which Kubic acknowledged. Kubic also said “that’s why we have insurance” acknowledging the County’s fault and that the County’s insurance would in fact pay for Island Group Inc. / Carolina Cleaning’s / Molloy’s losses. Thus, the County has received a verified demand and claim, as requested by the Defendants, again And Appellant expects payment of said claim.

Appellant prays and requests this court “Order Defendants to pay the Verified Claim for damages” where County Executives have acknowledged and admitted fault, more than once, and requested demand for payment, more than once, and the Appellant has obliged.

[An unfortunate event that the Appellant must direct this Courts particular attention to occurred around the same time of this matter and was initially listed as an action and dropped and separated by Judge Dukes is a claim of assault on the Appellant’s minor child (9), apparently at the hands of a County employee, and a Defendant in this matter. Evidence shows other Defendants and some County employees not named assisted in what appears to be a cover up of the assault. The assault was reported to the BCSO, not the County and NO letter of grievance was filed with the County, only an official report of assault directly to the BCSO. Concrete evidence exists and shows County employees who should have known of this in the first place, became aware and involved in what appears as a cover up. Appellant requests and wants to make certain, this Court assure the assault claim and all evidence and documents is a protected as separate matter and will not to be excused in any way. To prevent an action would severely prejudice Molloy and his family and would be a severe gross injustice and leave a person who assaults children unchallenged and unquestioned.

The Appellant requests prays this court preserve all / any claims and evidence related to the assault matter as separate, protected and unobstructed to be brought separate.

(ROA p. 236 line 10-14 of transcript, p.162-134, transcript, p. 80 Baird’s aff.)]

STANDARD OF REVIEW

This Court should rescind Judge Dukes wrongful grant of Summary Judgement in this matter.

Plaintiff S. Craig Molloy and his business and the shareholders have Sustained corporate and Individual Injury and have Asserted Claims and other employees / executives who have become familiar with the matter and detail of the violations have requested demand of the Appellant, which Appellant has obliged and expects payment. Thus the Appellant prays this Court order and expedite payment of said claims for verified damages as recognized by the (outside this matter) employees / executive of the County.

The Defendants (wrongfully) claim in their FINAL BRIEF:

[Plaintiff Mr. Molloy Was Not Deprived of a Full and Fair Opportunity to Conduct Discovery (Mr. Molloy's Issue 1) Mr. Molloy first argues that Judge Dukes erred in entering summary judgment because he was "deprived of a full and fair opportunity to conduct discovery." (See Init. Appellant's Br 15-20) For the reasons that follow, Judge Dukes correctly entered summary judgment and did not deprive Mr. Molloy of the ability to conduct necessary discovery." The above list details several items to be gleaned from Depositions, where Depositions are material to Summary Judgement and NOT compelled in this matter.

All Defendants refused to show for pre-scheduled depositions, why? Depositions must be considered In a Summary Judgement and there were none in this? Appellant, Molloy was deprived of Depositions and Judge Dukes failed to answer or compel.

Perhaps the Defendants knew the 2012 emails discuss violations, thus, they could not show for they would be additionally harmful and risky and dangerous and Thomas for example, is one, who could not possibly offer a truthful answer or explanations without further risk and damage, as a 20 year Procurement Director his part of the violations are particularly unconscionable and there is no reasonable explanation he could possible provide.

The Defendants (wrongfully) claim in their FINAL BRIEF:

["Mr. Molloy has not explained precisely what information he expects to uncover in discovery that would defeat the straightforward grounds for summary judgment asserted by Defendants. To the contrary, Judge Dukes' cogent analysis would remain the same, irrespective of anything Plaintiff might uncover with further investigation or discovery."]

Precise items to be learned by Depositions; Procurement Dir. Thomas can explain / answer questions about his 2012 email conversations with other Defendants and their following actions. There are material facts to learn regarding the 2012 email conversations between Defendants and BC DSN and the others. Examples previously stated above.

The Defendants (wrongfully) claim in their FINAL BRIEF:

*["Plaintiff Mr. Molloy Cannot Produce a **Scintilla** of Evidence Supporting Any Claims Even assuming, *arguendo*, that Mr. Molloy could conceivably be a real party in interest in this case for injuries allegedly sustained by a corporation he owned, it is clear that the trial court properly entered summary judgment in favor of Defendants on the merits of this case. Notwithstanding any arguments Mr. Molloy makes in his Brief, it is apparent that — for several quite simple reasons — Defendants were entitled to summary judgment in this matter because: (a) Mr. Molloy's tort claims are time-barred; (b) Defendant Beaufort County was entitled*

to terminate the 2010 Contract; and (c) Mr. Molloy and Carolina Cleaning failed to avail themselves of the protest process, which precludes any claims regarding the proposal process”]

The Defendants refuse to address and avoid every opportunity to explain Procurement Dir. Thomas and the others 2012 email conversations that are central and considerably more than a scintilla of evidence supporting foul play. **(ROA, p. 149)**

The Defendants (wrongfully) claim in their Final Brief various distracting nuances unrelated to and misguiding onlookers and reviewers on this matter to other items of less merit, such as the blatant Anti-competitive, interference with contracts, fraud where the Defendants have yet to address or provide reason or explanation for their actions evidence in their own documents.

E. CONCLUSION

For the reasons set forth by the Appellant this Court should rescind this matter in Total or Part back to the Lower Court with order of Depositions of the Defendants, OR Award Judgement to the Appellant OR Order the Defendants promptly pay the Appellants claim for damages as the Defendants have already requested for the losses Appellant sustained from the Defendants willful deceptive practices against him, his company.

October ¹⁵____, 2020



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F. AUTHORITIES, CASES, STATUTES, RULES

SC Code - 22-3-540; 22-3-10; and 22-3-20 -

SC Code Ann. - 15-78-110 -

SCRCP Rule 26 (b) (1) -

BC Ordinances - 46-92 -

BC Ordinance – 2-552 ; Div 4

SC procurement codes:

11:35 – 60; 4410(4) (6); 4230(4) ; 4410(6) | 5240(3)

11:35 – 1510 – exemptions from sealed bidding

11:35 – 2240 – anti competitive practices

11:35 – 1820 ; 1520(11) – qualifications of bidders

11:35 – 2127 – organizational conflicts of interest, also code of ethics, personal conflicts of interest - title 8 Ch. 13 -

11:35 – 3005(3); 3245 – contractor relationship

11:35 – 2420 illegal competitive practices, reporting of -

11:35 – 540(3) 830 procurement procedures manual -

11:35- 4230(1)4340 appeal & protest procedure – & further admin. review

11:35 – 4410(6) procurement review panel, appeal to court of appeals – Ex-parte' comm prohibit

11:35 – 1530(a); 1820 confidentiality, pre qualifications of bidders,

11:35 - 4410(6); 4230(6) request for hearing

11:35 - 2095(g) procedures governing procurement –

11:35-710(b) state fiscal accountability authority –

11:35 – 2420 violations of law, duty to report –

11:35 – 1520 (3); Co-op purchasing

2410(a) 2730; 4230(1); 4610 (1)

4810; 4900- Co-op purchasing agreement

11:35 – 1520, 1560 evaluations

11:35 – 4830,40,50;4810, 4900 intergovernmental relations & Anti-competitive practice not allowed

SC Code 42-1-130 definition of employee

SC code 40-11-20 definition of contractor

SC code 11-35 - definition of vendor

SC code 11-35-30 – obligation of good faith

SC code 16-13-230 – breach of trust with fraudulent intent

-South Carolina Budget and Control Board Procurement Regulations 19-445.2045 Receipt and

Safeguarding of Bids; A. Procedures Prior to Bid Opening. 19-445.2050. Bid Opening A. -

Procedures; B. Postponement of Bid Opening; C. Disclosure of Bid Information; Regulation 19-445.2010(E)

-Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983)

-Beaufort County procurement code (Div 4)

Rules

- South Carolina Rules of Civil Procedure, Rule 56 (c).....
- South Carolina Rules of Civil Procedure, Rule 9 (b).....

Other

- 1893, *Mongongahela Navigation co. Vs. United States*
- 1949 - *Kimball laundry co. Vs. United States*
- Joubert v. South Carolina Dept of Soc. Servs.*, 341 S.C. 176, 190, 534, S.E.2d 1,8 (Ct pp. 2000)-
- Hamilton v. Fulgam*, 385 S.C. 632, 637, 686 S.E. 2d 683 685 (2009)
- Coon v Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005)

-Regarding the Statute, time barred: Actions brought under the SCTCA are subject to the discovery rule. *Joubert v. South Carolina Dept. of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1,8 (Ct. App.2000).
“According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.” *Id.* The statute does not necessarily run from the date of the negligent act, but from when the injury resulting from the negligent act is discovered or may be discovered by the exercise of "reasonable diligence.” *Id.*, 341 S.C. at 190-91, 534 S.E.2d at 8.

Definition of Fraud – “wrongful or criminal deception intended to result in financial or personal gain”
“intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right” “an act of deceiving or misrepresenting”