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SC Court of Appeals

FINAL BRIEF OF APPELLANT
THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

APPEAL BRIEF FROM Craig Molloy and Island Group, Inc.
d/b/a Carolina Cleaning
Court of Common Pleas

Appellate Case No. 2018-002170

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

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

Plaintiffs

Of which Steven Craig Molloy is the

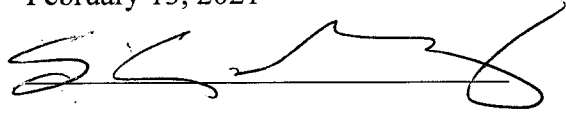
Appellant

V.

Beaufort County Government,
Gary Kubic, Individually, and as Beaufort County Administrator;
Josh Gruber, Individually and as former Beaufort County In-House Attorney;
Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
Shannon Loper, Individually and as employee of the Beaufort County Parks and
Leisure; Stu Rodman, as Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director Beaufort County, SC.
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents

February 13, 2021



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Appellant

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FINAL BRIEF OF APPELLANT

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South Carolina Rules of Civil Procedure, Rule 56 (c)

Statement of Issues on Appeal

1. Did the Lower Court err in granting Summary Judgment when Appellants were deprived of a full and fair opportunity to conduct discovery? Yes.

2. Did the lower court err in granting Summary Judgment saying the 2-year Statute of Limitations is time-barred when Appellant had no knowledge of Bid-Rigging, Price Fixing, and a Breach of Contract Accompanied with a Fraudulent Act until reception of Freedom of Information, and the unconscionable, fraudulent actions taken by Respondents to violate Procurement by the Procurement Director and other Respondents? Yes.

3. Did the lower court err in granting Summary Judgment when Appellant had reason to believe that the Respondents acted outside the scope of their job duties in violation of South Carolina Procurement Code as a Genuine Issue of Material Fact? Yes.

4. Did the lower court err in granting Summary Judgment when Appellants provided to the lower court Preponderance of the Evidence demonstrating by and through inter office emails the lack of Good Faith, and the unconscionable fraudulent actions taken by Respondents in Unfair Trade Practices? Yes.

5. By going all in with the time barred defense, the defendants went about to confuse, spin and in hopes to avoid having to tell the whole truth thus, committing fraud, lie to the Lower Court, thus giving Defendants the benefit to attempt to avoid the other causes; “contract interference” and “anti-competitive practices with a fraudulent intent” to which they have never addressed.
Did the defendants deceive, use fraud, and lie to the lower Court? Yes.

FINAL BRIEF OF APPELLANT

Statement of the Case

This case is about violation of South Carolina Consolidated Procurement Code and Breach of a 2010 Contract with a Fraudulent Act, where Respondents Bid-Rigged, and Price Fixed and evidence exists and has been presented showing Unfair Trade Practices, behind closed doors for the sole benefit of Beaufort County by bid-rigging the BCDSN Board to be awarded a separate, 2012 RFP, and subsequent RFP's and janitorial contracts. Appellants further contend the threshold of Preponderance of the Evidence was met and ignored (or not noticed) by the lower court, and the Statute of Limitations is NOT (could not be) "time-barred" in accordance with SC Torts Claim Act, that Prima Facie evidence is present, that Genuine Issues of Material Facts were present, and that Respondents [Defendants] in their internal emails and written affidavits give rise to Genuine Issues of Material Fact through their countless contradictions, and a Case and Controversy in their willful and deceptive actions and cover up. That the Lower Court erred in granting Summary Judgment on November 27, 2018, when Appellants [Plaintiffs] were not given fair and full opportunity to conduct discovery, where the Procurement Director, and other Respondents openly admitted in inter-office emails that they changed the 2012 RFP to the benefit of Beaufort County DSN and the Beaufort County DSN Board.

Steven Craig Molloy commenced this action, in his right, on August 22, 2016, on behalf of Island Group Inc. d/b/a Carolina Cleaning and its' shareholders. The Defendants [Respindents] are named above and are accused of violations herein.

Appellants allege, and provide exhibits to show Beaufort County and numerous employees, the Beaufort County DSN Board, and the Beaufort County DSN program and the named Defendants are the direct cause of irreparable harm to the Appellants 25 - year janitorial business, where 18 years was spent servicing Beaufort County with repeat awarded (binding) contracts for professional janitorial services, Appellant believed that based on the past professionalism between the two parties that "Good Faith" and "fair dealings" would continue with the awarded latest 2010, 5-year term Contractual Agreement.

Appellants contend that Respondents [Defendants] written affidavits, in fact conflict each other, **(emphasis added) (ROA p114 L 11 & L 20 Supp ROA p.304 L 24)** and give rise to Genuine Issues of Material Fact and a Case and Controversy in their willful and deceptive cover up by their word and actions to remove 33% of the 2010 awarded \$70,000.00 dollar per month contract. And the Defendants willful and deceptive act of bid-rigging, price fixing, lack of good faith, and unfair trade practices used in the 2012 (separately) awarded contract to Beaufort County, DSN.

The complaint alleged that the named Respondents over a 4-year period from 2010 - 2014 intentionally, unconscionably, willful, deceptive committed fraudulent acts which rendered Steven Craig Molloy's company Island Group Inc. d/b/a Carolina Cleaning inoperable. Carolina Cleaning was a 25-year Janitorial Business with 18-years of providing janitorial services to Beaufort County. In 2010, the latest contract was awarded to Carolina Cleaning for another 5-year contract term (2010-2015) with Beaufort County to provide janitorial services for most of the county buildings. The Defendants did not have to disrupt the Appellants 2010 separate

awarded contract, the exhibits show Beaufort County willfully chose to disrupt Appellants 2010 contract, and later, blocked Appellants from retrieving information that show violations.

The complaint alleged that Beaufort County, price fixed and bid-rigged a 2012 public “open market” Request for Proposals (RFP) which gave the Beaufort County DSN Board an unfair advantage over other bidders to include Island Group Inc. dba. Carolina Cleaning, and that the named Respondents and others within BC, in their official capacity and unofficial capacity actively worked in a willing, deceptive, unfair, fraudulent, and unconscionable manner to award the 2012 RFP to Beaufort County DSN Board, and Beaufort County DSN. **(ROA p108 – 1st pg of 2010 contract, D)**

The parties agreed to mediation, which ended in impasse: *See 12/11/17 Record of Pleadings*

(1) At the time of the Procurement Code Violations regarding the 2012 RFP, Beaufort County, Beaufort County DSN Board, and Beaufort County DSN program was and still is a governmental entity subject to the South Carolina Tort Claims Act; South Carolina Consolidated Procurement Code; and Budget and Control Board Procurement Regulations. **(ROA p 32 – Governors letter)**

(2) the Procurement Director Dave Thomas per his 2012 & 2013 emails; in fact allowed Beaufort County DSN employees attend Pre- bid Request for Proposal meetings where “confidential proprietary” information of Carolina Cleaning was discussed to include samples of supplies used by Carolina Cleaning knowing in fact that the Beaufort County DSN Board [Governmental

entity] would be a competing bidder and submitting a Request for Proposal for the 2012 “open market” Request. **(ROA p. 149 – Thomas 2012 & 2013 emails)**

(3) That Procurement Director, Dave Thomas in inter-office emails in fact, specifically stated that he changed the 2012 RFP to benefit Beaufort County DSN Board and the Beaufort County DSN in order to save Beaufort County’s declining budget. Statement by Respondents confirm that Beaufort County did not have the funds to pay Carolina Cleaning.

(4) That Gary Kubic, Beaufort County Administrator, and Bryan Hill, Former Beaufort County Deputy Administrator, Josh Gruber, Beaufort County, In-House Attorney and Dave Thomas, Procurement Director are all members of the Beaufort County Government at the time of the alleged violations. In a 9/2015 meeting with Appellant, before this suit, Kubic acknowledging violations stating to Appellant “that is what why we have insurance”

The lawsuit was commenced on August 22, 2016, 1-year after the alleged act of bid-rigging, price fixing, unfair trade practices, and Procurement Code violations was discovered by Craig Molloy through FOIA received through September 2015.

(ROA – p 157 – timeline of foia)

On July 21, 2017, Beaufort County and other named Defendants moved for Summary Judgment on four (4) grounds:

(1) That the action was time-barred by the 2-year Statute of Limitation and claimed the action was brought beyond the limits set forth in such statute; and

(2) Claims failed on Procurement Code process

(3) Claims failed on Remedies under Beaufort County Procurement Code and;

(4) Claims against Respondents as a governmental entity are not liable for a tort claim under S.C. Torts Claim Act. ROA See Motion for Summary Judgment filed 7/21/17

On February 25, 2018, Plaintiffs filed a Notice of Motion and Motion to Compel Answers to Discovery and Depositions, Motion to Amend.

On March 22, 2018, Defendants filed a Memorandum in Opposition to the Motion to Compel Answers to Discovery and Depositions, Motion to Amend on March 23, 2018 the Motion for Summary Judgment was heard by the Hon. Marvin H. Dukes, III on November 27, 2018, Judge Dukes granted Summary Judgment to Beaufort County and Co-Defendants.

(ROA supp – p 48) The order was Emailed on November 29, 2018 and received by Plaintiffs' counsel on November 29, 2018.

On March 23, 2018, during the scheduled hearing on the Motions the Appellants assert that the court failed to address Genuine Issues of Material Fact, failed to rule on the Plaintiffs Motion to Compel Discovery and Depositions and granted Summary Judgment to the Defendants. Counsel further asserted that the court failed to address the two-year statute of limitations of the South Carolina Tort Claims Act, *S.C. Code Ann. § 15-78-110* as to when the Appellant could have or should have known about the unconscionable fraudulent actions of Bid-Rigging, Price Fixing, Unfair Trade Practices, and Respondents willfully, and deceptively colluding in inter-office

emails to price fix and bid-rig to the benefit of Beaufort County DSN Board and Beaufort County DSN. (ROA p. 149 – Thomas 2012 & 2013 emails)

Standard of Review

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), however, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Appellant alleges that the lower court erred in granting Summary Judgment a drastic remedy which should have been cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Disputed factual issues and Motions that that were never addressed during the March 23, 2018 hearing.

Appellant alleges that on appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court. The appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447

(1976). Why did the lower court refuse to rule on the Appellant [Plaintiffs] Motion to Compel Discovery and Depositions of Respondents as required as a matter of law for the granting of Summary Judgment?

Issue I

Did the Lower Court err in granting Summary Judgment when Appellants were deprived of a full and fair opportunity to conduct discovery and address the inter-office emails of Procurement Director Dave Thomas, Mitzi Wagner, Alicia Holland, Shannon Loper, and other County employees regarding their part in changing the 2012 RFP specifications, shown in Thomas emails to lower specifications for BC DSN (emphasis added) giving DSN a clear advantage.

These changes were only for BC DSN and **NOT** provided for the other participating bidders, (a clear Procurement Violation) the 2012 RFP was an “open market” RFP to include Appellant Steven Craig Molloy, Island Group Inc. d/b/a Carolina Cleaning and other professional companies

- a. As a Genuine Issue of Material Fact, why didn't Beaufort County Procurement require the Beaufort County DSN Board to adhere to the same “minimum required specifications” for the 2012 Request for Proposal as all other bidders including the Appellant?

As a Genuine Issue of Material Fact, why did the Beaufort County Purchasing Director, Dave Thomas, in fact, allow the Beaufort County DSN Board to change the “2012 RFP “minimum required specifications? **ROA p. 149 – Thomas 2012 & 2013 emails)**

- b. As a Genuine Issue of Material Fact, Respondents claim, that they did not have to submit a proposal in 2012, then why did they? Respondents [Beaufort County DSN Board] submitted an “open market” bid for the R2012 RFP and were awarded a contract as a Vendor ? Not as a Department of the County.
- c. As a Genuine Issue of Material Fact, why was Shannon Loper, in fact, telling the Purchasing Director, Dave Thomas to send a 30-day written notice [per inter-office emails] December 5, 2012 because she refused to have any further communication with the Appellant, which as a matter of law, acting outside the scope of her job duties?
(ROA p. 149 – Thomas 2012 & 2013 emails)
- d. As a Genuine Issue of Material Fact, why would the lower court ignore the FOIA request information and the Court requested timelines that demonstrate the Appellant could not have known of the willful, deception, and the fraudulent actions of the Respondents until reception of the FOIA requests (in September, 2015) and then grant Summary Judgment?

As a Genuine Issue of Material Fact, Respondents claim that they were in compliance with all South Carolina State Law, then why wasn't the Appellant CC'd on the 2012 and 2013 inter-office County emails showing defendants discussing favoring BC DSN for the 2012 RFP and showing anti-competitive practices and contract interferrance with the separate 2010 contract already awarded to the Appellants company. These emails only between Respondents including

BC Procurement Director Thomas where he references South Carolina Procurement violations?

(ROA p. 149 – Thomas 2012 & 2013 emails)

- e. As a Genuine Issue of Material Fact, why did Judge Marvin Dukes not require Depositions in what he describes as a “complex case” evidenced and described by Judge Dukes from the Transcript and where legal questions and subject matter are obvious, unanswered, incomplete and are matters of fact in the record in the March 23, 2018 hearing and per the transcript? **(ROA - p. 162, L 22 ; 3/23/2018 transcript)**
- f. As a Genuine Issue of Material Fact, why did the lower court ignore Prime Facie evidence from internal BC emails that in fact show Respondents discussing bid-rigging and fixing pricing for a bid by an unqualified contractor, by South Carolina Laws definition and the requirements in and open market RFP that the contractor in fact must have a South Carolina license to do business.
- g. As a Genuine Issue of Material Fact, in accordance with South Carolina State law, why did Beaufort County allow the unqualified, with no business license, Beaufort County DSN Board to submit a bid in 2012 in an “open market” RFP a bid for janitorial work in violation of South Carolina Consolidated Procurement, and Beaufort County RFP 2012 specifications for other 2012 RFP bidders?

Under Rule 56 (c) Summary Judgment is only proper when “there is no Genuine Issue of Material Fact ; *Baughman v. American Tel. Tel. Co., 306 S.C. 101, 114-15; 410 S.E. 2d.537, 545 (1991)*”. Determining whether Summary Judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the

non-moving party, *Id. 115, 410 S.E. 2d 545*. Summary Judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery *Id. 112, 410 S.E. 2d 543*. Appellants assert that granting Summary Judgment was premature and that it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975)*; see also *Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986)* ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983)*.

Respondents claim their Affidavits are ample discovery, this is not true and Defendants affidavits have material issues of fact and countless conflicting statements yet to be cleared. In fact, four (4) Respondents have failed to provide Affidavits, BC Councilmen Stu Rodman, BC Administrator Gary Kubic, BC Attorney Josh Gruber and BC Deputy Administrator Bryan Hill. All other Affidavits of Respondents have material misrepresentations of the facts, conflicting statements, which must be explained and challenged in order for due process and true fact finding to occur. And NO Defendants showed (all refused) for convenient pre-scheduled depositions.

Issue II

Did the lower court err in granting Summary Judgment regarding the 2-year Statute of Limitations is time-barred when Appellant had no knowledge or could have known about the

Bid-Rigging, price fixing, Unfair Trade Practices and the “unconscionable” Breach of Contract Accompanied with a Fraudulent Act until receipt of Freedom of Information, and the unconscionable, fraudulent actions by Respondents to violate South Carolina Consolidated Procurement by Bid-Rigging and Price Fixing by the Procurement Director and other Respondents revealed in their inter-office email communications?

The S.C. Code Ann. § 15-78-110 provides the following statute of limitations regarding lawsuits against governmental entities: Except as provided for in S.C. Code Ann. § 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. Respondents claim that the Statute of Limitations is time-barred. Appellant asserts that the original action was filed within the 2-year statute, based on the received FOIA email documents from Joy Nelson of Beaufort County.

(ROA – p. 157, foia timeline)

[From: Nelson, Joy <jnelson@bcgov.net>

Date: Wed, Sep 24, 2014 at 3:41 PM

Good Afternoon Mr. Molloy, Please see the attachments in response to your Freedom of Information Act request dated **September 10, 2014 asking for all communications regarding RFP 3910-120-221**. An extensive search has been made with each individual named in the request. The first attachment above is labeled emails. This is all email communication found in regard to RFP 3910-120-221. The other attachments are files/memos included in those emails.]

In response to the claims by Respondents, Appellant asserts that this confirmation email demonstrates that the Appellant would or could not have known of the willful, deceptive, and the fraudulent actions of the Respondents to undo the 2010 awarded contract and the lengths to which Respondents would go to keep the Appellant and other bidders from being awarded the 2012 RFP. **(ROA – p. 157, foia timeline)**

Respondents claim that the Statute of Limitations is time-barred, fails. The unconscionable, willful, deceptive fraudulent actions, and bid-rigging was not revealed until the acquisition of the FOIA documents, not as they claim at the June 2014 termination. This case was never about the termination of the contract, this case is and always has been about their actions and the manner listed above of which the Respondents rendered Carolina Cleaning ineffective and unsustainable.

S.C. Code Ann. § 15-78-110 is the exclusive remedy for statute of limitations relating to claims against governmental entities. As a matter of law, an action commenced within two years of when the “loss” could have been discovered would not be barred by the Tort Claims Act. “Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence. The remedy provided by the Tort Claims Act is “the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents.” S.C. Code Ann. § 15-78-20. Where the legislature has covered the manner and timing for commencing a lawsuit, no other provision should be considered unless expressly allowed by the statute itself. In Searcy v. S.C. Dep't of Educ., 303 S.C. 544, 402 S.E.2d 486 (Ct. App. 1991)

Under the discovery rule, a "Breach of Contract" action accrues of the date the injured party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence, State v. McClinton, 369 S.C. 167, 173, 631 S.E. 2d 895, 898 (2006); Santee Portland Cement Co. v. Daniel Int'l Corp. 299 S.C. 269, 271, 384 S.E. 2d 693, 694 (1989) discovery rule applies in contract actions.

When it comes to lawsuits against the governmental entities, the legislature has insisted on strict adherence to its language. To "clarify any ambiguity" that "the government is only liable for torts as expressly prescribed and authorized in the 'South Carolina Tort Claims Act'," the General Assembly adopted S.C. Code Ann. § 15-78-200. Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act", is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. **(ROA See Verified Amended Complaint, filed 06/05/18; ROA p. 149 – Thomas and others 2012 & 2013 emails)**

Issue III

Did the lower court err in granting Summary Judgment when Respondents acted outside the scope of their job duties while performing their jobs and in violation of South Carolina Procurement Code as a Genuine Issue of Material Fact?

Under the South Carolina Tort Claims Act, 15-78-30

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities,

departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(1) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties. a governmental entity is liable solely for the acts of its employees.

The FOIA request received by Appellant revealed the unconscionable, Breach of Contract Accompanied with a Fraudulent Act, the Bid-Rigging, Price Fixing, and Unfair Trade Practice by Respondents which gives rise to actions for which Appellant can sue and get redress. South Carolina Tort Claims Act, 15-78-30 (f) *"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury.*

The inter-office emails in fact and exhibits demonstrate the Respondents willfully and deceptively colluded and acted outside the scope of their job duties through inter-office emails and actions to bid-rig, and price fix the 2012 RFP to the benefit of Beaufort County DSN and the Beaufort County DSN Board to the detriment of the Appellant, Steven Craig Molloy, Island Group Inc. d/b/a as Carolina Cleaning when Beaufort County awarded the 2012 RFP to Beaufort County DSN Board utilizing "confidential proprietary" information found in the Beaufort County DSN Boards 2012 RFP and gained in the pre-proposal meetings, where defendants were allowed to attend the interviews with the Appellant, Appellant unaware that Defendants (Wagner

and Loper) were in fact, also bidders on the 2012 RFP, Thomas and the others kept this fact secret.

Appellants assert that Respondents, Shannon Loper, and Alicia Holland and others employed by Beaufort County acted outside the scope of their job duties.

Appellants further contend that a political subdivision and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances. S.C. Code Ann. §§ 15-78-40, no exemption can be claimed by Respondents who acted outside the scope of their official duties, which constitutes actual fraud, actual malice, intent to do harm, or a crime involving moral turpitude. Respondents claim that Beaufort County employees have immunity, S.C. Code §§ 15-78-62 (2) however, when actual fraud occurs, and intent to do harm occurs, no exemption can be claimed by the Respondents S.C. Code Ann. §§ 15-78-60 (17) (ROA p. 94 – SC procurement code)

Appellants assert that Procurement Director Dave Thomas intentionally, committed a Breach of Contract Accompanied with a Fraudulent Act when he in fact allowed Beaufort County DSN employees and Department Heads to sit in on Pre-Bid meetings, called for a planning meeting to change the specifications for Beaufort County DSN Board, on and how he changed the required specifications of the said 2012 RFP, the 2012 RFP that had not yet been awarded, which lends further weight that Respondents were willful and deceptive in their actions, and that the Purchasing Director, Dave Thomas intentionally allowed Beaufort County DSN Board to submit their 2012 RFP three (3) months after the required deadline. (ROA p. 133)

- a. As a Genuine Issue of Material Fact, why did the lower court ignore the Beaufort County internal emails which include statements in fact by Beaufort County Facilities Dir. Mark Roseneau acknowledging the procurement violations and “warns all parties” to “Take note that the specifications are different for BC-DSN” and “changed by Parks and Leisure (BC - Pals) “working with BC-DSN” to drop the price” of the 2012 RFP after the March 22, 2012 deadline for the 2012 RFP?

- b. As a Genuine Issue of Material Fact, why did the Procurement Director Dave Thomas in fact, acknowledge previous violations of deducting 10 % from Appellant and alerting Respondents to avoid a “protest” by Appellant of which Thomas had already received Appellants’ protest and had met with Appellants several times to discuss the protest where no solution was reached or agreed upon?

Appellants assert that Respondents had a duty under the *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.* To protect the Sealed Competitive Bid. **(ROA p. 33 – procurement code)**

Appellants allege that the Procurement Director, Dave Thomas had a duty to protect the 2012 RFP bid by keeping the “confidential proprietary” information safeguarded during the bidding process and insuring that all 2012 RFP bids were submitted by the March 22, 2012 deadline. Purchasing Director, Dave Thomas, and other named Respondents in fact, changed the

specifications in the 2012 RFP to bid rig and price fix for the Beaufort County DSN Board. S.C. Code Ann. 11-35-410 (C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made. After June 30, 1992, the department shall recognize only county boards of disabilities and special needs that plan, administer, or provide services to persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries within a county or combination of counties which are created or established pursuant to this section, including those whose members are appointed by the South Carolina Governor. Legislative Oversight Committee: Healthcare and Regulatory Subcommittee Meeting dated: September 18, 2017 a discussion pertaining to the study performed on the South Carolina DSN on Tuesday, 10/10/2017. South Carolina Department of Disabilities and Special Needs Board of Governance dated October 3, 2017 clearly states, that the BCDSN Board is appointed by the South Carolina Governor. Beaufort County DSN Board at the time of this meeting in October of 2017 was not under the appointment of the Governor of South Carolina and was not in compliance from 2011 to 2018. Which lends to the credibility of Beaufort County claiming they were in total and complete compliance of South Carolina State Law. **ROA p. 32 – Governors letter, p. 33 p. 34)**

As a Genuine Issue of Material Fact, why did Beaufort County Council change the BCDSN Board appointments of the South Carolina Governor to being appointed by the Beaufort County Council specifically the Beaufort County Council Chairman Mr. Weston Newton (related to the presiding judge in the lower court) the Beaufort County Administrator Gary Kubic and County Attorneys.

As a Genuine Issue of Material Fact, goes to their credibility, who quietly change the *Beaufort County ordinance §46-92 in 2011* unbeknownst to the South Carolina Governor, and thus was “out of compliance” and “illegally operating between 2011 – 2018 and continued to operate out of compliance of law after receiving a letter from the South Carolina Governors Office, Tommy Windsor to change the ordinance back and it 5 months to change and correct. As of 2020, evidence exist to show Defendants are still in violation of operating the DSN programs.

(ROA p. 33 p. 34)

Appellants assert that the Beaufort County DSN Board was / is not a “private company”, and that Beaufort County DSN Board was and should not have been allowed to submit a Request for Proposal in an “open market” RFP, when they did not have to comply with the same South Carolina Consolidated Procurement laws as all other bidders (in every RFP process) and that Beaufort County, the Beaufort County DSN Board, and the appointed and regular employees of the Beaufort County DSN program colluded and conspired, willfully, deceptively, fraudulently, and unconscionably, violated rules of procurement, and unfair trade practices.

(ROA – p. 149 – 2012 & 2013 Thomas emails)

Appellants further allege that in fact, the Purchasing Director, Dave Thomas unsealed the 2012 RFP approximately around March 22, 2012 and changed the original specifications of the 2012 RFP for the benefit of Beaufort County DSN Board as seen in inter-office emails, and the 2012 RFP of the Beaufort County DSN Board where, it states that specifications were “omitted for

DSN”, and in fact, the Purchasing Director, Dave Thomas allowed the Beaufort County DSN Board to submit the 2012 RFP three months after the March 22, 2012 deadline.

(ROA – p. 133)

Issue IV

Did the lower court err in granting Summary Judgment when Appellants demonstrated for the lower court undisputed Preponderance of the Evidence demonstrating by and through inter office emails the “unconscionable” fraudulent actions taken by Respondents to violate the “Good Faith” required in fair dealings and the violation of the Unfair Trade Practices?

(ROA p. 54 amended complaint)

Appellants assert that Respondents had an obligation under S.C. Code §§ 11-35-20 (a) (b) (c) (d)

(e) (f) (g) (h) Purpose and policies. The underlying purposes and policies of this code are:

(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;

(b) to foster effective broad-based competition for public procurement within the free enterprise system;

(c) to develop procurement capability responsive to appropriate user needs;

(d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;

(e) to require the adoption of competitive procurement laws and practices by units of state and local governments;

(f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and

(h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers. to treat the Appellant fairly and in "good faith" by their actions.

Under S.C. Code §§ 11-35-30 Respondents contend that they were in no way obligated to act in "Good Faith". Appellants assert that Respondents did not act in "Good Faith" under S.C. Code §§ 11-35-30, *Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good Faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealings.* **(ROA supp – p.457 - Verified Amended Complaint; p11, section 30, section 31; P 12 – 13, section 32, section 33, section 34, p.13 - 14, section 35 and section 36, cont. to Page 14)**

Unfair Trade Practices and Anti-Competitive Practices

Appellants assert that Respondents willfully committed Unfair Trade Practices in their dealings with the Appellant regarding the 2010 awarded contract, and the 2012 RFP, and the subsequent removal of buildings awarded through the 2010 Contract. The term "willful" as used in S. C. Code Ann. § 39-5-110 which creates a statutory standard of willfulness different from the common law standard and, for purposes of Section 39-5-110, conduct is willful if the defendant should have known it violates Section 39-5-20, the standard being not one of actual knowledge, but of constructive knowledge, so if, in the ordinary exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Unfair Trade Practices Act, then such conduct is "willful" within the meaning of the statute. State ex rel. Medlock v. Nest Egg Soc. Today, Inc. (S.C.App. 1986) 290 S.C. 124, 348 S.E.2d 381.

Appellants further claim that under S.C. Code Ann § 39-5-20(a) and (b), Appellant [plaintiff] need not prove the elements of common law deceit in order to establish a violation of the South Carolina Unfair Trade Practices Act, since, under the statute, there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity, effect, or tendency to deceive. State ex rel. McLeod v. C & L Corp., Inc. (S.C.App. 1984) 280 S.C. 519, 313 S.E.2d 334.

Appellants assert that Respondents violated the Unfair Trade Practice under S.C. Code Ann. § 39-5-20(a) which provides to the Appellants that fair methods of competition are adhered to.

Appellants allege that Respondents were unfair in the trade practice due in part to Procurement

Director, Dave Thomas in his and others and Respondents willfully conspired to remove buildings awarded to Appellant in the 2010 contract as such one of several examples, the Bluffton Gym found in the FOIA request listed below and the fraudulent and unconscionable manner for which they removed the four (4) buildings which makes up the Bluffton Gym.

Under the FOIA request seen listed [*From: Nelson, Joy <jnelson@bcgov.net>*

Date: Wed, Sep 24, 2014 at 3:41 PM

Subject: Beaufort County Freedom of Information Act request

To: craig molloy <admin@carolinacleaningcompany.com>

(ROA – p. 157 foia timeline)

As a Genuine Issue of Material Fact, This specific email thread between Respondents dated, beginning December 5, 2012 to December 12, 2012 demonstrates the deception and willfulness by Respondents to violate S.C. Code Ann § 39-5-20 (a) and (b) showing removal of the Bluffton Gym from Carolina Cleaning's 2010 awarded contract and "giving" the building to Beaufort County DSN under their awarded 2012 contract without the 30-day written notice. Statement of fact, Shannon Loper, a Parks and Leisure Center employee, gave directives to the Purchasing Director, Dave Thomas to send out a 30-day Written Notice that Carolina Cleaning would no longer be cleaning the Bluffton Gym, and to "terminate" acting outside the scope of her duties as an employee.

As a Genuine Issue of Material Fact, and a matter of fact, in the September 28, 2012 email thread from Mitzi Wagner where she stated that the Beaufort County DSN consumers were

already cleaning the Bluffton Gym, and had billed Beaufort County for the janitorial services,

Note: *[this was three (3) months prior to the December 5th emails]* the very same Bluffton Gym that was contracted to Carolina Cleaning in 2010.

(ROA p. 149 Thomas 2012 & 2013 internal emails; ROA p. 108 1 st page letter D)

As a Genuine Issue of Material Fact, the September 28, 2012 email thread revealed that the Bluffton Gym awarded to the Appellant in the 2010 Contractual Agreement had been removed in September and Appellant did not know that the building had been removed, and could not have known the manner of which Respondents removed said building.

As a Genuine Issue of Material Fact, and Statement of Fact in the September 28, 2012 email from Mitzy Wagner to Shannon Loper, where M. Wagner stated that they have added the Bluffton Gym to their contract, [The 2012 RFP in dispute that was awarded to Beaufort County DSN Board] when the said building [Bluffton Gym] was still under the Appellant 2010 contractual agreement.

Appellant alleges that Respondents knowingly were deceptive, fraudulent, and unconscionable in their actions and practices to remove “several” awarded Beaufort County buildings from the 2010 awarded contract to Carolina Cleaning and thus violated S.C. Code Ann. § 39-5-20(a) *states that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.* **(ROA p. 149 Thomas 2012 & 2013 internal emails; ROA p. 108 1 st page letter D)**

As a Genuine Issue of Material Fact, and Statement in Fact by Respondents, the actions through word and action took place and precedence behind his back, because the Appellant in this case began asking questions about the program for which Bill Love wanted Carolina Cleaning to hire Disabled Consumers and pay them less than minimum wage, so that Beaufort County could salvage their declining budget. Statement in fact, made by Respondents in submitted emails **(ROA p. 149)** confirming Beaufort County, BC DSN did not have the money to pay Carolina Cleaning, however they, in fact had more money to pay BC DSN.

As a Genuine Issue of Material Fact, and Statement of Fact, as seen in several submitted “protest letters” by Appellant, Respondents granted and requested meetings with Appellant and led him to belief that the differences would be corrected, all the while behind his back conspiring and colluding and willfully, deceptive, fraudulent, and unconscionable manner shown in the 0212 & 2013 Thomas emails **(ROA p. 149)** and actions to the contrary, this rendered Appellants 2010 contract ineffective and unsustainable to maintain leading to Appellants losses. Appellants allege in the August 2012 Beaufort County Finance Committee Meeting Memorialized M. Wagner, and S. Loper [Respondents] who sat in on the bid selection committee selected their own entry as the winning bid, even after, S. Loper was invited by Purchasing Director, Dave Thomas to sit in on the 2012 Pre Request for Proposal “confidential” meetings with Steven Craig Molloy d/b/a Carolina Cleaning, contrary to Dave Thomas statement [that the “DSN was never given any advantage with regard to bidding or contracting].

(ROA p. 112 – L 38 - Thomas sworn affidavit)

Respondents claim that Appellants claims failed on remedies under Beaufort County Procurement Code. Respondents assert that they complied with all South Carolina State Laws, per the signed 2010 Contract (5-year, with 1-year Renewals) between Carolina Cleaning and Beaufort County. **(ROA Supp p. 112 – L 38 - Thomas sworn affidavit)**

Appellants allege that Respondents were not in compliance with S.C. State Law regarding the appointment authority of the Beaufort County DSN Board, while under contract with Carolina Cleaning. **(ROA Supp p. 112 – L 38 - Thomas sworn affidavit)**

Appellants further allege that Respondents did in fact change the Beaufort County ordinance § 46-92 states that the Board shall be at least (7) seven members but not more than (11) eleven and shall be appointed by Beaufort County Council in direct violation of S.C. Code Ann. §§ 44-20-375, which superseded the S.C. Governors Appointment Authority of the Beaufort County DSN Board, from 2011 to November 2018. Respondents argued that they complied in all aspects of South Carolina Law and was governed accordingly. **(ROA Supp p. 112 – L 38 - Thomas sworn affidavit)**

Genuine Issues of Material Fact exist that Respondents claims fail of complying of South Carolina Law. Request for Proposals are to be submitted according to the Procurement Laws of the State of South Carolina Consolidated Procurement Code, which the Defendants violated.

(ROA p. 94)

Appellant further alleges that Respondents were not in compliance of South Carolina Consolidated Procurement, [See Listed under Statutes], and the Budget and Control Board Procurement Regulations.

Argument

Under South Carolina Rules of Civil Procedure, Rule 9 (b); In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. In other words, the argument is simple, The lower court erred in granting Summary Judgment to Respondents when the lower court failed to address the Respondents “unconscionable” Breach of Contract Accompanied with a Fraudulent Act, the Violation of Budget and Control Board Procurement Regulations, South Carolina Consolidated Procurement, Bid-Rigging, Price Fixing, Unfair Trade Practices and Respondents lack of acting in “Good Faith” which has led to the filing of this action. As stated in Issues 1 – 4, Appellants did not have fair and adequate discovery under SCRCF Rule 56 (c), and that the lower court erred in granting Summary Judgment when the lower court failed on the Motion to Compel Discovery and Depositions, and the lower court erred in granting Summary Judgment on the issue of Genuine Issues of Material Fact, Preponderance of the Evidence and Prima Facie Evidence. Appellant asserts that Beaufort County, Beaufort County DSN Board, and Beaufort County DSN willfully, deceptively, unconscionably committed fraudulent acts, and conspired and colluded to remove 2010 awarded Beaufort County buildings and give them to the DSN janitorial cleaning contract without giving proper notice and giving the Appellant the opportunity to meet or beat the price point per the [Appellant 2010 awarded contract]

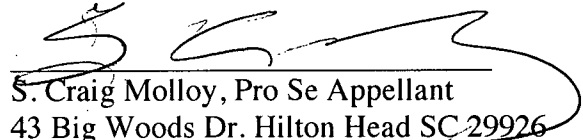
(ROA pg. 108 – Contract cover page # 1 letter D - 2010 Contract)

Appellant asserts and exhibits show to include Statement of Facts by Respondent, Purchasing Director, Dave Thomas intentionally omitted required specifications of the 2012 RFP which gave Beaufort County DSN the unfair advantage over Carolina Cleaning and other bidders. These changes were done after the March 22, 2012 required deadline for submitted RFP's. Appellant asserts that inter-office emails clearly demonstrate the willfulness, deceptive, unconscionable, fraudulent, and anti-competitive practices and the lengths to which Beaufort County, Beaufort County DSN Board, and the Beaufort County DSN and numerous County employees went to systematically and financially ruin Steven Craig Molloy, Island Group d/b/a Carolina Cleaning janitorial cleaning business as evidenced in the Verified Amended Complaint, Exhibits, and inter-office emails all of which are the Record of Appeal.

Conclusion

The summary judgment should be reversed, in total or part leaving the anti-competitive practices and contract interference with fraudulent intent because for those actions fall under separate rules and laws, and at minimum, should be remanded to the Lower Court or Appellant prays this court award judgement to the Appellant for the damages sustained due to the Defendants numerous Fraudulent, illicit deceitful actions that have become common for them throughout this matter, including towards this Court and the Lower Court, and the Appellants, and that have caused irreparable loss to Appellant, his business and family

Respectfully submitted,



S. Craig Molloy, Pro Se Appellant
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February 13, 2021

FORM 16
CERTIFICATE OF COUNSEL IN FINAL BRIEF

RECEIVED

FEB 18 2021

SC Court of Appeals

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

APPEAL FROM Craig Molloy and Island Group Inc dba Carolina Cleaning, in
Beaufort County, SC

Marvin Dukes, Judge, Master in Equity

Appellate case 2018-002170

Lower Case 2016-CP-07-01825

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

Plaintiffs

Of which Steven Craig Molloy is the

Appellant

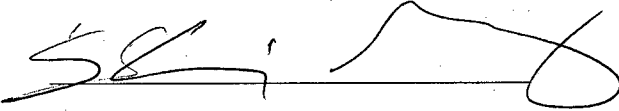
V.

Beaufort County Government,
Gary Kubic, Individually, and as Beaufort County Administrator;
Josh Gruber, Individually and as former Beaufort County In-House Attorney;
Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
Shannon Loper, Individually and as employee of the Beaufort County Parks and
Leisure; Stu Rodman, as Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director Beaufort County, SC.
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

A handwritten signature in black ink, appearing to read 'SCMolloy', written over a horizontal line.

February 13, 2021

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