

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Richard A. Harpootlian,

Plaintiff,

C/A No. 2019-CP-40-05675

v.

South Carolina Department of Commerce;
Secretary Robert Hitt in his official capacity;
Coordinating Council for Economic
Development; and Director Daniel Young in
his official capacity,

Defendants,

ORDER

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Jul 23 2021

SC Court of Appeals

This matter is back before the Court on Defendants’ October 19, 2020 motion to alter or amend the October 9, 2020 order granting in part and denying in part the parties’ cross motions for summary judgment. This order addresses one of the issues raised in the Summary Judgment Order, specifically, the proper application of the “working papers” exemption codified at South Carolina Code § 30-4-40(a)(9).

On April 28, 2021, the Court held its second of two hearings to discuss the working papers exemption and the *in camera* submissions made by Defendants South Carolina Department of Commerce (Commerce) and Coordinating Council for Economic Development (Council).¹ The parties and the Court all agree that the scope of the working papers exemption is “broad” and that it is designed to protect information shared by a private company or developed by Commerce during negotiations and prior to that company committing to invest and create jobs in South Carolina. *See, e.g.*, Order MSJ, 18 (quoting Defs’ MSJ mem., 16). The exemption excludes from

¹ Secretary Hitt and Director Young are no longer defendants in the case.

the South Carolina Freedom of Information Act's (FOIA's) disclosure obligations "[m]emoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body *to attract* business or industry to invest within South Carolina[.]" S.C. Code Ann. § 30-4-40(a)(9) (emphasis added). The exemption continues to explain that certain public records are not exempt:

however, an incentive agreement made with an industry or business: (1) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

(a) the offer to attract an industry or business to invest or locate in the offeror's jurisdiction is accepted by the industry or business to whom the offer was made; and

(b) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

Id. Read together, these provisions indicate that timing matters with respect to whether the working papers exemption applies to the voluminous *in camera* document production made by Defendants.

During the April 28 hearing, a possible resolution of the working papers issue emerged. Defendants' counsel made representations concerning the date that the incentive deals for Giti Tire Company (Giti) and Viva Recycling of South Carolina (Viva) were publicly announced; Plaintiff Richard A. Harpootlian's counsel agreed to accept those representations and indicated that Defendants' willingness to produce all public records *after* those dates—subject to any remaining disputes concerning other FOIA exemptions—would resolve the parties' dispute over the working paper exemption. Thereafter, Defendants confirmed that the Giti deal was made public on June 16, 2014 and the Viva deal was made public on June 29, 2011. Defendants also made a production of public records concerning the Giti and Viva deals that the parties now agree are not protected from disclosure by the working papers exemption.

Accordingly, because the parties have now resolved their dispute concerning the working papers exemption, the Court hereby **AMENDS** its Summary Judgment Order and **VACATES** section III.C of the Order, which overruled Defendants' working papers objections and granted Plaintiff's motion for summary judgment on that issue. There now being no apparent dispute concerning the working papers exemption, the Court finds the issue **MOOT**.

Still pending before the Court is Defendants' motion to reconsider the remainder of the Summary Judgment Order. A separate order will follow addressing those issues.

AND IT IS SO ORDERED.

The Honorable Robert E. Hood
Circuit Court Judge, Fifth Judicial Circuit

_____, 2021
Columbia, South Carolina.

WE SO STIPULATE AND AGREE:

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Richland Common Pleas

Case Caption: Richard A Harpootlian vs South Carolina Department Of Commerce ,
defendant, et al
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So Ordered

s/ R.E. Hood #2164