EXHIBIT 4

G. Thomas Cooper, Jr.
1 Sycamore Place
Camden, South Carolina 29020

Certified Circuit Court
Arbitrator and Mediator

803-432-5455

March 14, 2013

Mr. Robert W. Gantt
Chairman, Board of Trustees
Richland Lexington School District 5
1020 Dutch Fork Road
Irmo, South Carolina 29063

Re: Kim Murphy

Dear Mr. Gantt:

Enclosed is my Report to the Board as a result of the hearing conducted by me on February 15, 2013. It has my pleasure to assist the Board in this matter. Please transmit copies of the Report to the necessary parties.

Enclosed also is my statement for services rendered.

Very truly yours,

Signature Redacted

G. Thomas Cooper, Jr.
Hearing Officer

Judge, 5th Judicial Circuit- Retired/Active

BOARD OF TRUSTEES OF SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES	))))	**IN RE: KIM MURPHY RESIDENCY**

Findings and Recommendations of
G. Thomas Cooper, Jr.
Hearing Officer Presiding

This matter comes before me as a result of a request by the Lexington Richland County Board of School Trustees, District Five (District Five), to inquire into and conduct a hearing to determine the location of the legal residence of Mrs. Kim Murphy. Mrs. Murphy presently sits as member of the Board of Trustees from Richland County. The disputed issue is whether Mrs. Murphy actually resides in Richland or Lexington County. The enabling statutes have strict residency requirements for sitting on the combined Board of Trustees for each of these contiguous counties. A hearing was conducted by me at 10:00 a.m. on Friday February 15, 2013 at the District Five Board Room, 1020 Dutch Fork Road, Irmo, South Carolina.

Appearing at the hearing, which was properly noticed to the parties, the public and the press, were Robert W. Gannt, Chairman of the Board of Trustees, and the Board's counsel, Mr. Kenneth L. Childs and Mr. John M. Reagle of Childs & Halligan. Neither Mrs. Murphy nor her counsel made an appearance.

The Board has the statutory authority to remove a Board member from the Board. Pursuant to S.C. Act No. 601 of 1994 (Lexington) and Act No. 141 of 1969 (Richland), the Board exercises all of the powers and has all of the duties and obligations of both a Board of Trustees under S.C. Code § 59-19-10, et seq. and of a County Board of Education under S.C. Code § 59-15-10 et seq.

Included among the Board's other powers and obligations is the power to remove a Board

member for cause upon notice and an opportunity to be heard by the Board. S.C. Code Ann. § 59-19-60; 2005 WL 1609288, *3 (S.C.A.G. June 27, 2005) ("the board of trustees of Lexington-Richland District Five would now most probably possess the authority to remove a board member pursuant to the procedures specified in § 59-19-60."); 2008 WL 1960281 (S.C.A.G. Apr. 2, 2008). This code section provides: "School district trustees shall be subject to removal from office for cause by the county board of education . . ." Any such removal order, however, must specify the grounds for removal, the manner of notice, and the manner of hearing accorded the removed member. Further, a Board member removed from office has the right to appeal her removal to the Court of Common Pleas.

In addition to this statutory authority, the South Carolina Constitution, Article III, § 27 provides that "officers shall be removed for incapacity, misconduct, or neglect of duty, in such a manner as may be provided by law, when no mode of trial or removal is provided in this Constitution". No mode of trial or removal is specified in the South Carolina Constitution relative to school board members. Consequently, the General Assembly's authorization of school boards to remove trustees from office is wholly appropriate, lawful, and consistent with the Constitution, as long as "cause' for removal is limited to those grounds specified in the Constitution, i.e., incapacity, misconduct, or neglect of duty. *See*, *State v. Seigler*, 94 S.E. 2d 231 (S.C. 1956); 2005 WL 1609288 (S.C.A.G. June 27, 2005).

As the Attorney General's Office has repeated several times in opinions, the term "cause" in such statutes has a legal meaning, *i.e.*,

> for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. ... The cause must relate to and affect qualifications appropriate to the office ... and must be restricted to something of a substantial nature directly affecting the rights and

interests of the public.

2005 WL 1609288, *3 (S.C.A.G. June 27, 2005) (*quoting* 63C Am.Jur.2d § 183 (1997)), 2008 WL 2614992 (S.C.A.G. June 13, 2008), 2007 WL 655619 (S.C.A.G. Feb. 16, 2007) *and* 2006 WL 2382449 (S.C.A.G. July 19, 2006).

Here, the Board contends Mrs. Murphy's lack of residency in Richland County would constitute incapacity to hold a seat on the Board for which residency in Richland County is mandated by statute, Act 326 of 2002. Consequently, legal cause for removal exists if she is not a resident of Richland County.

Mrs. Murphy's residence is 154 Old Laurel Lane, which is east-southeast of Chapin, SC, and west of Interstate 26. With Geographic Information System (GIS) tools a residence at that location can be located which corresponds to land transaction and assessor records referencing Lot 4 of "Final Subdivision Plat of Laurel Springs" dated April 4, 1997 (Exhibit 13), ("1997 Plat"). On the 1997 Plat there is an "Approx. County Line," which line also appears to have been incorporated into Richland County's own tax mapping computer database. Richland County has levied property taxes on the parcel containing Mrs. Murphy's residence, and Richland County has granted "elector" status to Mrs. Murphy. *See*, S.C. Const. Art. VII, § 9.

However, Lexington County, the United States Geological Service, and the U.S. Census Bureau all have *other* county boundary lines in the area that are meant to denote the boundary between the counties near Mrs. Murphy's residence (Exhibit 10).

In South Carolina, the General Assembly alone has the power to set or change a county boundary. S.C. Const. Art. VII, §§ 7, 12. S.C. Const. Art. VIII, § 2. However, counties also depend on self-generated or self-maintained maps or surveys for various county purposes. But,

> In the absence of statutory authority, a county may survey its boundaries for the temporary guidance of its officers, *but a survey*

> *so made is not binding on the adjoining county nor on the public generally.*

20 C.J.S. Counties § 29 (emphasis added). Location of a disputed boundary line is a question of fact. *Williams v. Moore*, 733 S.E.2d 224, 230 (S.C. App. 2012). Neither Richland County nor Lexington County can establish or move a county boundary – the boundaries must be set by the General Assembly. Errors in an unauthorized map (there does not appear to have been a *survey* done by either county) cannot change a legislated boundary line.

The boundary of Lexington County is established by S.C. Code § 4-3-370 and that of Richland County by S.C. Code § 4-3-460. Both of these sections reference "a point in Slice Creek known as Rocky Ford" which is shown on "the plat of said property, completed on November 25, 1921, by W.A. Counts and J.C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State." *Id.* This plat, a true copy of which was submitted into evidence (Exhibit 8) is "[a]n ancient survey, [which] if made by competent authority, recorded or accepted as a public document, and produced from property custody is admissible in evidence without further verification to prove the location of a boundary line." 12 Am. Jur. Boundaries § 109. Not only is the survey proof of the boundary line itself, it has been adopted by the General Assembly itself as such. *C.f.*, *Marsha v. Richland County*, 62 S.E. 4, 6 (S.C. 1908). Interestingly, the 1997 Plat (Exhibit 13) itself shows Rocky Ford, but the "Approx. County Line" on the 1997 Plat does not run through Rocky Ford. Obviously, a map or survey that does not show the county line in this vicinity passing through a feature called Rocky Ford, particularly when there *is* a feature called Rocky Ford on the same plat, should not be considered competent proof of the *actual* county line. One or the other is out of place on the 1997 Plat.

Testifying before me were two witnesses, Mr. Bobby M. Bowers, Director of the Division of Research and Statistics of the South Carolina Budget and Control Board, and Sidney

C. Miller, former Chief of South Carolina Geodetic Survey. Mr. Miller also works on a part time basis for Mr. Bowers' agency and is a licensed professional surveyor.

South Carolina statues give the Geodetic Survey the responsibility and authority to coordinate mapping activities within the State to insure consistent, accurate, and reliable county and state maps for a myriad of purposes. (See S.C. Code Ann. §27-2-85, §27-2-9 and §27-2-10).

Both Mr. Bowers and Mr. Miller testified that there is "absolutely" no doubt that Mrs. Murphy's residence at 14 Old Laurel Lane is located in Lexington County. They arrive at these separate conclusions from three different sources. (1) The U.S. Census Block database, (2) official voting precinct maps maintained by the Division of Research and Statistics and (3) the South Carolina Code of laws which recites the statutory boundries for Richland and Lexington Counties. All three sources place Mrs. Murphy's residence in Lexington County. There is no survey matching the statutory description of the boundaries of Richland or Lexington Counties. Of the three sources relied upon by the witnesses, my decision relies most heavily on the statutory description of the boundaries of Lexington and Richland Counties. The fact that the South Carolina code sections 4-3-370 & 4-3-460 refer to a common geographic feature "a point in Slice Creek known as Rocky Ford" is conclusive to me (Exhibit 8 and 9). The fact that Mr. Miller was able to find Rocky Ford on the ground, exactly where it is described to be in the statute, (Exhibit 14) makes my decision even more conclusive.

In my opinion there is clear and convincing evidence that Mrs. Murphy's residence at 15 Old Laurel Lane, Chapin is in Lexington County. There has been no evidence submitted to me to the contrary.

The voter registration *cum* "elector" status of Mrs. Murphy is irrelevant, because the office of Trustee of the Board carries with it the express statutory requirement that, in addition to

being an elector, the Trustee must be *resident* "[n]otwithstanding another provision of law." S.C. Act 326 of 2002, § 9. The Act requires that "three trustees must reside in Richland County and four must reside in Lexington County." The phrase "must reside" is in the *present tense*.

"[A]s to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements." *McLure v. McElroy*, 44 S.E.2d 101, 108 (S.C. 1947). Here the General Assembly created an express and continuing "must reside" requirement, which it was free to do with this statutory office.

Mrs. Murphy's status as an "elector" registered by the officials of Richland County is therefore irrelevant, as is Richland County's *ad valorem* taxation of the property on which the residence is situated. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this hearing or the Board's determination of "cause" for removal due to failing to meet the continuing "must reside" requirement.

The map or whatever other method that Richland County uses to allow elector registration and to impose *ad valorem* tax are both examples of the principle noted above, that "[i]n the absence of statutory authority, a county may survey its boundaries for the temporary guidance of its officers, but a survey so made is not binding on the adjoining county nor on the public generally." 20 C.J.S. Counties § 29. The Attorney General has observed that "the fact that an individual is registered to vote in a particular county strongly indicates *(but is not dispositive of the fact)* that he is a resident of that county." 2008 WL 903972 (S.C.A.G. Mar. 31, 2008) (emphasis added).

Not only does Mrs. Murphy's residence in Lexington County deprive her of the qualification for the office, but the disqualification of a Trustee under a mandatory statutory residency requirement specially imposed by the General Assembly is "something of a substantial

nature directly affecting the rights and interests of the public." 2005 WL 1609288, *3 (S.C.A.G. June 27, 2005). In adopting S.C. Act 326 of 2002, § 9, the General Assembly transferred one of seven Board seats from Lexington to Richland counties – in fact this was the only portion of the Act that passed Justice Department "preclearance" under the Voting Rights Act. The purpose of the move was to accommodate the changing balance of population in the two portions of the District to comply with Constitutional one-man-one-vote requirements for local representation, whereby, "[i]f voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population." *Avery v. Midland County, Tex.*, 390 U.S. 474, 480-81 (1968). The very purpose of the Act was to assure Richland County the constitutionally required level of representation on the Board.

In addition to the concern that Mrs. Murphy apparently did not qualify to represent Richland County at the time of her election, there is now the *present* and *ongoing* concern that she is not answerable to the Richland County electors once it is established that she is not qualified by residency to be one of their three trustees. "Area representation is a familiar form of local representative government. ... The purpose is to give each and every part of the city or town representation. 'Such legislative plan is modeled in accordance with the national and state systems. It is designed to render the council a popular branch and keep it more directly in touch with the people.'" *Gaud v. Walker*, 53 S.E.2d 316, 327 (S.C. 1949) (quoting, McQuillen, Municipal Corporation, 2d Ed., Volume 2, § 598).

The Board has fiscal autonomy, *i.e.*, the power to set its own operating millage within the general law's limitations. Besides being a governmental power requiring compliance with one-

man-one-vote rules, the South Carolina Supreme Court has also noted that the "taxing power is one of the highest prerogatives of the General Assembly. Members of this body are chosen by the people to exercise the power in a conscientious and deliberate manner. If this power is abused, the people could, at least, prevent a recurrence of the wrong at the polls." *Crow v. McAlpine,* 285 S.E.2d 355, 358 (1981). Similarly, the exercise of the Board's taxing and other governmental powers and duties, *see, e.g.,* S.C. Code Ann. § 59-19-90 (*inter alia* to provide suitable schoolhouses, employ and discharge teachers, control educational interest of the school district, and transfer and assign pupils), must also be done in a conscientious and deliberate manner, and those who exercise it must be subject to the public's ability to have some supervisory control over their representatives through elections to the office of Trustee.

Should Mrs. Murphy remain a member of the Board of Trustees, numerous potential negative legal problems could arise for District Five. Bonding authorities may not be willing to issue bonds based on Mrs. Murphy's vote. Suspensions or dismissal of district personnel, or students may be questionable based on Mrs. Murphy's vote. Can her presence be counted for existence of a quorum? Could Mrs. Murphy represent the district at a public forum or at statewide meetings? Could she be elected Chairperson of the Board given the irrefutable evidence that she does not meet the "must reside" provision of the statute? These and any other issues should give District Five Board of Trustees grave concerns. In my opinion the only appropriate course of action is to recognize the existence of "cause" under S.C. Code § 59-19-60, thus granting the Board the power to proceed with the removal process as outlined in the statute.

March 14, 2013

Respectfully submitted,

Signature Redacted

G. Thomas Cooper, Jr.
Hearing Officer

State of South Carolina
The Circuit Court of the Second Judicial Circuit

DOYET A. EARLY, III
JUDGE

2959 MAIN HIGHWAY
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BAMBERG, SOUTH CAROLINA 29003
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Mr. Jim Truitt
Richland County Clerks of Court
PO Box 2766
Columbia, SC 29202-2766

Re: Kim Murphy v. Richland Lexington School District 5 Board of Trustees, et al.
C/A: 2014-CP-40-04666
April 8, 2016

Mr. Truitt,

Enclosed is the Order Granting the Motion for Summary Judgment in the above referenced case for filing. Please file and circulate to all parties. If I can be of further assistance, please let me know.

Sincerely,

Signature Redacted

Marti Dennis

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-004666

Kim Murphy

PLAINTIFF(S)

Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers and Robert Gantt

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

RICHLAND COUNTY FILED
2015 APR 13 AM 9:52
JEANETTE W. McBRIDE C.C.P. & G.S.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Court GRANTS each of the Defendant's Motions for Summary Judgment. Plaintiff's Complaint is dismissed in its entirety with prejudice.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of April 2016 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer #1470
Ashley C. Story #100578
Chelsea R. Rikard #102355
ATTORNEY(S) FOR THE PLAINTIFF(S)

David L. Morrison #4101
Patrick J. Frawley #2118
Michael H. Montgomery #4034
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Signature Redacted

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Refer to attached Order for the Court's complete decision.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	) CIVIL ACTION NO: 2014-CP-40-004666
Kim Murphy,	)
Plaintiff,	)
vs.	) **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt,	)
Defendants.	)

This matter is before the Court on Defendant Bobby Merle Bowers' Motion to Dismiss and Motion for Summary Judgment, Defendant Robert Gantt's Motion for Summary Judgment and Defendant Richland Lexington School District 5's Motion for Summary Judgment, pursuant to Rule 12 and Rule 56 of the South Carolina Rules of Civil Procedure. On February 29, 2016, this Court heard lengthy arguments on the above motions. For the reasons stated below, based upon the arguments of counsel, the lengthy written memoranda submitted by the parties, the deposition and other evidence submitted to the Court and the record in the case, this Court finds that each of the Defendants' Motions for Summary Judgment should be granted and, because evidence was submitted and reviewed, Bower's Motion to Dismiss is not ruled on but merged into his Motion for Summary Judgment.

I. BACKGROUND

Plaintiff Kim Murphy, a former Member of the Board of School District 5 of Lexington and Richland Counties (the "Board" or "School Board"), brings this suit against Defendants. In her Complaint, Mrs. Murphy alleges that Robert Gantt and Bobby Merle Bowers engaged in a

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civil conspiracy designed to cause her to resign or be removed from her position on the School Board. She also alleges that Mr. Gantt and the Board of Trustees of School District 5 defamed her, by publishing that she was a resident of Lexington County, rather than Richland County from where she was elected. She further argues in her brief and during the motion hearing that Mr. Gantt and the Board acted in such a way as to create an innuendo or inference that she was engaging in misconduct or an illegal act or that she had been aware that she did not live in Richland County, but had acted deceptively to seek and obtain a Richland County seat on the School Board. Mrs. Murphy sought this seat on the School Board on two occasions.

During late 2012, the South Carolina Office of Research and Statistics (the "Office") discovered in a routine examination that Mrs. Murphy lived in Lexington County rather than Richland County, which was the seat to which she had been elected. Mr. Bowers was the Director of the Office at that time. The Office notified Mr. Gantt of this concern. Mr. Gantt consulted counsel for the School District. Under the guidance of the School District's attorneys, a request was made with the Office for a formal determination of Mrs. Murphy's residency. The Office formally determined that Mrs. Murphy lived in Lexington County. Mr. Gantt again sought the advice of counsel for the District, who created a process designed to fully afford Mrs. Murphy due process on the issue. This resulted in two separate proceedings where Mrs. Murphy and her attorneys had the opportunity to appear and present whatever evidence she had supporting the fact that she resided in Richland County and challenging and refuting the methods and finding of the Office. The first proceeding was a hearing before the Hon. Thomas Cooper, serving as a special referee. Judge Cooper heard the issues and issued a report and recommendation to the Board. His findings were that Mrs. Murphy lived in Lexington County and was legally ineligible to serve on the Board as an elected representative of Richland County.

DAE #2

After his report and recommendation, a second hearing took place before the Board. Again, Mrs. Murphy was provided an opportunity to present evidence in opposition to the findings of the Office and its methods of making those findings. At the conclusion of this process, the Board found that Mrs. Murphy lived in Lexington County and was, therefore, ineligible to serve on the School Board as a Richland County representative. She was removed from the School Board as her residence disqualified her from holding a Richland County seat. She appealed the Board's decision to the Circuit Court, which affirmed the decision of the School Board. She later sought reconsideration from the Circuit Court which upheld its earlier decision. Her counsel informed the Court that they have filed a notice of appeal of the Circuit Court's findings.

After the Circuit Court upheld the School Board's decision, Mrs. Murphy filed this suit which alleges, *inter alia*, causes of action against Bobby Bowers and Robert Gantt for civil conspiracy and causes of action against Robert Gantt and the School Board for defamation. Mrs. Murphy alleges that Mr. Gantt and Mr. Bowers, who she admits were both acting in their official capacities, somehow engaged in a conspiracy to harm her by having her removed from the School Board. Mrs. Murphy also alleges that Mr. Gantt and the School Board defamed her by questioning her qualifications to serve on the School Board based upon the fact that she did not reside in the county from which she was elected.

Defendant Bowers moved to dismiss the case for failure to state a claim. All three defendants moved for summary judgment on multiple grounds alleging, *inter alia*, that there were no material questions of fact in dispute from which Mrs. Murphy could have a valid cause of action against any of them.

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II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "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." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). The purpose of summary judgment is to "expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the non-moving party bears the burden of proof, as in this case, this initial responsibility "may be discharged by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case." *Celotex Corporation v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986). The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.

Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original). The opposing party must "go beyond the

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pleadings and by. . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552, 91 L.Ed.2d at 273.

Accordingly, once Defendant shows the absence of proof on an essential fact of Plaintiff's case, Plaintiff has the burden of presenting evidence of that fact to the Court. If Plaintiff fails to present any competent, admissible evidence that will prove that fact, Defendant is entitled to summary judgment.

III. DISCUSSION

A. Mr. Bowers' Motions to Dismiss and for Summary Judgment

The Plaintiff's claim against Defendant Bobby Bowers is her second cause of action sounding in civil conspiracy. *See* Complaint, pp. 6-8, ¶¶26-31.

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). Civil conspiracy consists of three elements: 1) a combination of two or more persons, 2) for the purpose of injuring the Plaintiff, 3) which causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). *Cf., Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875

(Ct. App. 2009) (If a Plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed). It is essential that a plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938). "[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); *accord. Cowburn v Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005).

Defendant Bowers initially argues that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against him upon which relief can be granted, relying upon SCRCP Rule 12(b)(6) and *S.C. Code Ann.* §15-78-70 of the South Carolina Tort Claims Act, asserting that Bowers should not be named individually as a Defendant unless the Plaintiff alleged that Bowers acted outside his official duties, with actual fraud, actual malice, intent to harm, or a crime of moral turpitude, which are the five exceptions set forth in §15-78-70. However, Bowers conceded at oral argument that the requisite elements for civil conspiracy include an intent to harm; and since the sole cause of action against Bowers includes an allegation meeting one of the five exceptions, Defendant's argument for 12(b)(6) dismissal fails.

Bowers further argues that, for summary judgment purposes, there is no genuine issue of material fact. At all times relevant to the matters alleged in the Complaint, Bowers acted within the course and scope of his official duties as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, in good faith and without conduct constituting actual fraud, actual malice, intent to harm, or a crime of moral turpitude. Bowers had no specific intent

DAEC

or purpose to injure the Plaintiff, and the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Bowers.

Having considered the material submitted by Plaintiff in opposition to Bowers' Motion for Summary Judgment, I find and conclude that there is no genuine issue of material fact but that Bowers had no prior relationship or alliance with Defendant Robert Gantt for purposes of conspiring against Plaintiff, and that there is no evidence of prior conflict or animus between Bowers and Plaintiff that could reasonably be interpreted as leading to an intent to harm Plaintiff. I further find and conclude that there is no evidence that Plaintiff has suffered special damages which she attributes to a civil conspiracy, which is a requisite element of the cause of action. Finally, I further find and conclude from the un-contradicted deposition testimony of Will Roberts and Alan-Jon Zupan, both of whom worked for Bowers' agency and actually did the work resulting in the finding that Plaintiff resided in Lexington County, which finding was only published by Bowers as the Director of the agency, that Roberts and Zupan did their work correctly, with no one instructing them to do anything in the process improperly or with a particular end result in mind.

I, therefore, find and conclude that Defendant Bobby Bowers' Motion for Summary Judgment should be granted, and Plaintiff's claim against him dismissed with prejudice.

B. <u>Mr. Gantt's Motion for Summary Judgment</u>

Plaintiff's claims against Defendant Robert Gantt are included in her first cause of action for defamation, *see* Complaint, pp. 5-6, ¶¶19-25, and her second cause of action alleging civil conspiracy involving Robert Gantt and Bobby Bowers, *see* Complaint, pp. 6-8, ¶¶26-31.

DAEM

i. **Plaintiff's Claim for Civil Conspiracy against Robert Gantt**

Mr. Gantt moves for summary judgment on multiple grounds, including that Plaintiff is unable to adduce evidence sufficient to create a genuine issue of material fact such that a trier of fact might conclude that he was engaged in a civil conspiracy with Mr. Bowers as a matter of law and that the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Gantt. Gantt further argues that each of his activities in this case was undertaken solely in his capacity as the School Board Chairman and that he cannot be liable as a result of the fact that he was acting in his official capacity. He points out that Plaintiff has been unable to identify any action on his part that was done outside his role as School Board Chairman.

The elements of civil conspiracy and discussion, *supra*, in relation to Bowers' motion are equally applicable as it relates to Mr. Gantt. Moreover, it is significant that neither Mrs. Murphy, nor any other witness, has offered any evidence whatsoever that Mr. Gantt and Mr. Bowers engaged in any conduct except for the proper exercise of their legitimate public positions in the handling of the determination of the location of her residence. Moreover, their own uncontradicted testimonies clearly indicate that they had no relationship, no mutual desire or even any reason to act jointly to cause her harm.

Having considered the material submitted by Plaintiff in opposition to Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy claims against him, I find and conclude that there is no genuine issue of material fact that Gantt had a prior relationship or alliance with Defendant Bobby Merle Bowers for purposes of conspiring against Plaintiff. I also find that Plaintiff cannot proffer any evidence of any combination between Mr. Gantt and Mr. Bowers for the purpose of injuring her. She has

failed to produce any evidence that there was communication between them other than a single telephone conversation, a meeting where they were present with counsel for the School District and members of Mr. Bowers' staff, and the official letter asking for a determination and the determination letter. There is nothing in these interactions from which a fact finder, as a matter of law, could even circumstantially conclude that they engaged in an alliance or combination for the purpose of causing injury to Plaintiff. Likewise, there is no evidence that Bowers and Gantt acted in any way with an animus or intent to harm Plaintiff or that Plaintiff has suffered special damages which she attributes to a civil conspiracy, all being the requisite elements of the cause of action.

Thus, she is unable to offer anything that creates even a circumstantial inference necessary to survive summary judgment as to any element of her cause of action for civil conspiracy against Mr. Gantt. I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy cause of action should be granted, and Plaintiff's claim against him dismissed with prejudice.

ii. Plaintiff's Claim for Defamation against Robert Gantt

Mr. Gantt moves for summary judgment on multiple grounds, including that there is no material question of fact from which a trier of fact could conclude as a matter of law that Gantt made a false statement about Plaintiff with the knowledge of its falsity or with reckless disregard for its truth. He further asserts that his statements were made in his capacity as School Board Chairman and that, as such, they were subject to a qualified privilege.

DAE

1. **Plaintiff is unable to establish that Robert Gantt had actual, Constitutional Malice in regard to any statement that he made as a matter of law.**

The parties agree that Plaintiff is a public official. A public official is one who has a governmental role and whose "position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it." *Rosenblatt v. Baer*, 383 U.S. 75, 86, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). Such interest must go "beyond the general public interest in the qualifications and performance of all government employees." *Id.* "An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case." *Gertz v. Robert Welch, Inc.*, 418 U.S. 322, 344, 94 S.Ct. 2997, 3009, 41 L.Ed.2d 789, 808 (1974). For a public official, "society's interest . . . is not strictly limited to the formal discharge of official duties," but "extends to 'anything which might touch on an official's fitness for office.'" *Id.*. at 344-45 (quoting *Garrison v. Louisiana*, 379 U.S. 64, 77, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964). Here, whether or not Plaintiff is legally qualified to serve the citizens of Richland County if she lives in Lexington County fundamentally touches on her fitness for office. It is a matter of significant concern and statements about her residence and the qualifications emanating therefrom enjoy the highest level of constitutional protection.

Because she is a public official, Plaintiff has the burden to "prove by clear and convincing evidence" the Defendant made the statement with actual malice, which means "with the knowledge of its falsity or with reckless disregard for its truth." *Elder v. Gaffney Ledger*, 341 S.C. 108, 114, 533 S.E.2d 899, 902 (S.C. 2000) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964). The courts have held not only that: A "reckless disregard: for the truth . . . requires more than a departure from reasonably prudent

conduct. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262, 267 (1968). There must be evidence the defendant had a "high degree of awareness . . . of probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 85 S.Ct. 209, 216, 13 L.Ed.2d 125, 133 (1964).

Our State Supreme Court has further held that "Whether the evidence is sufficient to support a finding of actual malice is a question of law." *Elder*, *supra* at 341 S.C. at 113, 533 S.E.2d at 901-902.

So, unlike a traditional libel or slander case where the defendant has the burden of proving the truth of the matter asserted, here, the Plaintiff has the burden of proving not only that the statements about which she complains were false, but that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. She must meet this burden of proof not by a mere preponderance of the evidence, but, rather, by clear and convincing evidence.

A person makes a defamatory statement if the statement tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him. *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) (quoting *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857, 860 (S.C. 2002)). The tort of defamation, therefore, permits a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (2006). A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3)

the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Id.*, 629 S.E.2d at 664.

Mrs. Murphy is unable, as a matter of law, to sustain her burden of proof as it relates to Mr. Gantt. She cannot point to a false statement, an unprivileged utterance or any words that Mr. Gantt made that might tend to lower her in the estimation of the community. Furthermore, it is evident that any statements made by Mr. Gantt regarding Mrs. Murphy's residency were made with reliance on the findings of the Office within the State of South Carolina charged with making such determinations. With that reliance, it is impossible as a matter of law for Plaintiff to meet a burden of demonstrating that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. The efficacy of Mr. Gantt's conclusions has been bolstered by the fact that the Circuit Court for this Judicial Circuit has found that Mrs. Murphy resides in Lexington County. To survive this Motion for Summary Judgment, Plaintiff must point to evidence in the record from which the Court might infer that she is able to establish this set of facts. A review of the materials submitted by Plaintiff and the arguments of her counsel reveals that she is unable to meet this burden. Plaintiff cannot, as a matter of law, establish constitutional malice in this case. Mr. Gantt is entitled to summary judgment on her claim on that basis alone.

2. Plaintiff is unable to establish that Robert Gantt made any statement from which a finder of fact could determine that she might recover for defamation per se.

Plaintiff argues that words in statements made by Gantt to the effect that "he hoped she would do the right thing and resign" are somehow defamation *per se* also fail as a matter of law. Slander, which is involved here, "is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of

a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319, 322-23 (S.C. App. 2001). Mrs. Murphy's contentions in this realm somehow center around her desire to equate a statement reflecting that she is not qualified to serve on the School Board based upon her residency, with some criticism of the idea that she is, therefore, unfit in her business or profession. However, when asked specifically, "Has any board member (which includes Gantt) ever accused you of being unfit in your profession, in conjunction with this – this residency issue," she responded: "I can't recall at this time." She is, likewise, unable to point to any other statement that even hints, to a reasonable person, that she has been the victim of words that might constitute *per se* defamation.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to her claim of *per se* defamation reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would provide evidence that she has a basis to recover against him for defamation *per se*. Mr. Gantt is, likewise, entitled to summary judgment on her claim on that basis alone.

3. Robert Gantt's statements as board chair are privileged.

A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994); *Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 181 S.E.2d 325 (1971). Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. *Conwell v. Spur Oil Co.*, 240 S.C. 170,

125 S.E.2d 270 (1962). The communications about which Plaintiff complains all occurred during a Board meeting and in Mr. Gantt's acting as Chair to conduct the Board's business. His correspondence about this matter and his statements to the public were prepared by the District's lawyers. He made them believing not only in their factual accuracy, but also having been assured that they were apropos to complete the business of the Board.

Moreover, Plaintiff is unable to demonstrate any statement made which goes beyond what a reasonable school board chair, in a similar situation, acting under the advice of counsel should publish. There is no evidence of defamation or unnecessary defamation of Plaintiff to overcome the qualified privilege attached to these communications. There is no evidence that Mr. Gantt "wandered beyond the scope of the occasion." *See, e.g. Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981).

Mrs. Murphy has been unable to point to any statement made by Mr. Gantt outside of the purview of a School Board meeting or his duties as Chairman of the School Board. There is no fact, allegation or evidence that Mr. Gantt published any statement except in his capacity as Chair of the School Board. In essence, any statement that he published is, therefore, a statement of the Board and his statements were made in light not only of the necessary fact that as Chair he had a duty to communicate with the Board, but also in light of the fact that the Board must conduct its business in public.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to Mr. Gantt's assertion of a qualified privilege reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would ordinarily be actionable, much less when considered in light of his qualified privilege. Mr. Gantt is entitled to summary judgment on her claim on that basis, as well.

I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's defamation claim should be granted, and Plaintiff's claim against him dismissed with prejudice.

Having found that Robert Gantt is entitled to Summary Judgment on each of Plaitniff's claims against him, all of Plaintiff's claims against him should be dismissed with prejudice.

C. **School Board's Motion for Summary Judgment**

Plaintiff's sole claim against the Richland Lexington School District 5 Board of Trustees is for defamation, see Complaint, pp. 5-6, ¶¶19-25.

The Board moves for summary judgment on grounds similar to Defendant Gantt. The Board contends that the Plaintiff has failed to prove the utterance or publication of a defamatory statement or innuendo, has failed to offer evidence of the falsity of any statement made and has failed to offer evidence of defamation *per se.* The Board's motion as to those matters is granted for the reasons stated above.

The Board also moves for summary judgment on the additional ground that it is immune from suit in an action alleging actual malice. The Board contends that it cannot be sued for defamation by Plaintiff because as a public figure, Plaintiff must prove actual malice, and the Board is immune from suit in an action asserting actual malice. The Court agrees and grants summary judgment to the Board.

As discussed above, Plaintiff Murphy must allege and prove constitutional actual malice in order to bring a defamation action. Whether the evidence supports a finding of actual malice is a question of law for the court. *Elder, supra* at 533 S.E.2d 901-902.

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Actions against governmental entities such as the Board are governed by the South Carolina Tort Claims Act. Under the SCTCA, a governmental entity is immune from suit for actions involving actual malice:

> The governmental entity is not liable for a loss resulting from:
>
> (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, ***actual malice***, intent to harm, or a crime involving moral turpitude;
>
> *South Carolina Code Ann.* § 15-78-60(17) (emphasis added).

A governmental entity is immune from suit for defamation by a public figure when actual malice is an element of the cause of action. Therefore, I grant the Board's motion for summary judgment on this additional ground as well.

The Board also contends that in the event that the Plaintiff intended to claim defamation for the Board's act of removing her from her seat, the Board is entitled to quasi judicial immunity. The Board argues that the Plaintiff cannot appeal the Board's decision and then also sue the Board for making that decision. The TCA also provides that:

> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
>
> *South Carolina Code Ann.* § 15-78-60(1) (emphasis added).

It is well settled that School Boards act in a quasi-judicial capacity when holding hearings. *Laws v. Richland County School Dist. No.1*, 270 S.C. 492, 243 S.E.2d 192 (1978); *Calhoun v. Marlboro County School Dist.*, 2004 WL 6334910. Here, the Board referred the matter to a Special Referee for an evidentiary hearing and he issued a report and recommendation. The Board then held a hearing and made and exercised discretion in making a

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determination based upon that report and recommendation and other evidence offered before the Board. Plaintiff Murphy was invited to participate at both proceedings.

Following the Board's decision, Plaintiff Murphy availed herself of the appellate remedy. She appealed the finding to the circuit court, which affirmed her removal. She has since appealed the circuit court order to the appellate courts. I find that the Board was acting in a quasi-judicial capacity, exercising reason and discretion in the adaptation of a means to an end and therefore the Board is entitled to quasi- judicial immunity for the act of determining that the Plaintiff was a resident of Lexington County and removing her from her seat on the Board. Therefore, summary judgment is granted to the Board with regard to its action of removing the Plaintiff from the Board.

D. CONCLUSION

For the foregoing reasons, the Court grants each of the Defendants' Motions for Summary Judgment. Accordingly, Plaintiff's Complaint is dismissed in its entirety with prejudice.

IT IS SO ORDERED.

Signature Redacted

Doyet A. Early, III, Judge
Court of Common Pleas
for the Fifth Judicial Circuit

Bamberg, South Carolina

~~March~~ April 8, 2016