

# Municipal Law Notes

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**Torts; Libel; City Manager;**  
**Public Official Immunity;**  
**Presumption of Good Faith;**  
**Motion to Dismiss; Personal Jurisdiction**

Green v. Howell, \_\_\_ N.C. App. \_\_\_ (No. COA20-204, Cleveland— 11/3/20)

- ***Holding-*** In action against City Manager in individual capacity, Court of Appeals holds that plaintiff failed to allege facts necessary to support conclusion that defendant acted outside the scope of duties or acted maliciously or corruptly. Plaintiff failed to allege sufficient facts to overcome heavy burden of rebutting presumption that defendant discharged his duties as a public official in good faith, and public official immunity barred action. Accordingly, plaintiff failed to make out a *prima facie* case that jurisdiction existed, and trial court erred by denying Rule 12(b)(2) motion to dismiss.
- ***Key Excerpt-*** Defendant, the City Manager of the City of Shelby, appealed from an order denying his motion to dismiss the complaint, alleging libel *per se*, filed against him in his individual capacity. He contended that he was entitled to public official immunity because he was acting as a city manager in the

performance of his official duties, and the allegations of malice or corruption were insufficient to bar immunity. The Court of Appeals unanimously reversed.

In addressing the issue of appellate jurisdiction, the Court stated, “Public official immunity is ‘a derivative form of sovereign immunity.’ Epps v. Duke Univ., Inc., 122 N.C. App. 198, 203, 468 S.E.2d 846, 850 (1996).... We allow Defendant’s appeal from the trial court’s order denying his Rule 12(b)(2) and 12(b)(6) motions to dismiss based on public official immunity. ‘As has been held consistently by this Court, denial of a Rule 12(b)(2) motion premised on sovereign immunity constitutes an adverse ruling on personal jurisdiction and is therefore immediately appealable under section 1-277(b).’” (Citation omitted).

As to the standard of review, the Court observed, “[U]pon a defendant’s motion to dismiss for lack of personal jurisdiction [under Rule 12(b)(2)], the plaintiff bears the burden of making out a *prima facie* case that jurisdiction exists.’ Bauer v. Douglas Aquatics, Inc., 207 N.C. App. 65, 68, 698 S.E.2d 757, 761 (2010) (citation omitted). [W]hen a defendant supplements

[his] motion with affidavits or other supporting evidence, the unverified allegations of a plaintiff's complaint can no longer be taken as true or controlling[.]' *Id.*... If the plaintiff offers no evidence in response, this Court considers (1) any allegations in the complaint that are not controverted by the defendant's evidence and (2) all facts in the defendant's evidence, which are uncontroverted because of the plaintiff's failure to offer evidence in response.... Plaintiff rested on the unverified allegations in his complaint. As a result, this Court considers the allegations in Plaintiff's complaint and all facts in Defendant's evidence (together, 'the Pleadings'). Additionally, because the trial court's three findings of fact do not relate to the scope of Defendant's duties or whether he acted with malice or corruption, we presume the trial court made factual findings sufficient to support its ruling. It is this Court's task to review the Pleadings to determine whether they contain evidence that would support the trial court's legal conclusions, and to review the trial court's legal conclusions *de novo*." (Citations omitted.)

In commencing its analysis, the Court examined the scope of duties, noting that a manager's duties are statutorily defined and citing three provisions of G.S. 160A-148 verbatim. The Court stated, "[T]he Pleadings show that Defendant acted within the scope of his statutory authority and duties. Defendant met with Plaintiff on behalf of Shelby to discuss Defendant's proposals for a sports complex and communicated with the mayor and the City Council regarding the proposals. Defendant sought guidance from the City Council and provided his own recommendation regarding the proposals. Defendant, in his capacity as the city manager, communicated by email to the City Council explicitly seeking its guidance on Plaintiff's most recent proposal to the City Council. The Pleadings demonstrate that Defendant

'lawfully exercise[d] the judgment and discretion with which he is invested by virtue of his office[.]' Smith [v. State], 289 N.C. [303] at 331, 222 S.E.2d [412] at 430 [(1976)]."

The Court emphasized, "The plain text of Defendant's email indicates that [he] was seeking the City Council's direction and sharing with the City Council his assessment of the situation based on his own judgment. Defendant began with an explicit request for direction on how best to respond to Plaintiff's most recent proposal. Defendant explicitly offered the opinion that 'no harm' could come from discussing the proposal with Plaintiff. After reporting discrepancies between his understanding of the negotiations and Plaintiff's newest proposal, Defendant again explicitly requested '[d]irection from Council.' Defendant recommended that the City Council be mindful of the applicable open meeting laws and reiterated his desire to receive input from the City Council. These details of Defendant's email contradict Plaintiff's assertions that Defendant intentionally engaged in a process that lacked transparency. Rather, Defendant's email illustrates his intent to adhere to the City Council's wishes, comply with applicable laws regarding transparency of communications regarding City Council business, and fulfill his statutory obligations.... Because we presume that Defendant discharged his duties in good faith and exercised his power in accordance with the spirit and purpose of the law, and Plaintiff has not alleged facts to the contrary, the complaint failed to support a legal conclusion that [he] acted with malice or corruption."

**Synopsis**— Appeal by defendant-City Manager from January 2020 order. Reversed. Opinion by Judge Collins, with Judge Inman and Judge Berger concurring.