

Updated: Appeals Court Won't Reconsider Ex-College President's Fraud Suit Against State Officials

Katheryn Hayes Tucker, Daily Report

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Judge Gary Andrews

John Disney/Daily Report

The original version of this article reported that the appeals court was considering the ex-college president's motion for reconsideration. The court has now rejected the motion.

It took the Georgia Court of Appeals just three days to say no to a former college president who asked for reconsideration of a decision tossing his lawsuit on the basis the state's sovereign immunity.

The lawsuit claims he was falsely blamed for a \$16 million budget shortfall created and covered up by others.

In April 2012, Anthony Tricoli was ousted as president of Georgia Perimeter College, prior to any investigation, after the sudden discovery of a \$16 million deficit, according to his Athens-based attorney, Stephen Humphreys. "It was a sudden discovery because the head budget officer ... had reported a \$4 million surplus 10 days earlier," Humphreys said.

Tricoli sued officials with the college, the University System of Georgia and the Board of Regents, plus the state attorney general.

He alleged fraud, breach of contract and violations of the Georgia Racketeer Influenced and Corrupt Organizations Act, known as RICO. He contended that others knew and covered up spending from the college's reserves, and he alleged they never found all the missing money.

Stone Mountain Circuit Superior Court Judge Daniel Coursey Jr. dismissed Tricoli's lawsuit, saying state officials were protected by sovereign immunity. The judge also held that Tricoli had no breach of contract claim because he had resigned. Tricoli had argued he was threatened and tricked into resigning to take another position, a deal on which the chancellor later reneged.

The chancellor's office did not respond to an opportunity to comment. In a March 30 opinion, the Court of Appeals issued a 6-1 decision upholding Coursey's dismissal of the lawsuit.

"It is an imaginative theory of recovery to assert against the state itself, but that is about all it is—imagination," Presiding Judge Gary Andrews wrote for the majority. Andrews said the racketeering act does not express any waiver of sovereign immunity.

Concurring with Andrews were: Presiding Judges Anne Barnes, John Ellington and Stephen Dillard and Judges Christopher McFadden and Elizabeth Branch.

Presiding Judge M. Yvette Miller dissented, arguing that the majority's reasoning led to a "nonsensical result." Miller said the racketeering act does waive sovereign immunity, not for isolated instances of fraud and criminal conduct, but for a pattern of behavior, as alleged by the lawsuit.

"Imaginative or not, it is irrelevant whether Tricoli will prevail ultimately on the merits of his RICO allegations," Miller wrote. "The only issue before this court now is whether he has pled claims that can overcome sovereign immunity at this stage of the litigation. Tricoli has certainly done so."

Seven-judge panels decide Court of Appeals matters when a three-judge panel cannot agree on a decision.

Attorney General Sam Olens, whose office is defending the officials, declined to comment. His office had argued that it was Tricoli's responsibility as part of his \$190,000-a-year job to review the actual balance sheets and not rely only on the reports of others.

Humphreys argued that Olens "is overlooking the fact that the

knowing falsification of the official reports of a state agency is a felony, regardless of whether Tricoli should or could have detected it." Humphreys said that almost \$10 million in state and federal funds still remains unaccounted for four years later. "No one, including the university system and the attorney general, is looking for it," he said. In his motion for reconsideration, Humphreys wrote that "most citizens of Georgia would be quite surprised to learn that they are completely vulnerable to any and every criminal scheme machinated at the highest levels of their government. It does not matter how malicious the scheme, or how grossly power entrusted by the people is abused."

The case is: Anthony Tricoli v. Robb Watts, No. A15A2256

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