

# FILED

MAR 31 2016

STATE OF SOUTH DAKOTA

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
5TH CIRCUIT CLERK OF COURT

IN CIRCUIT COURT

COUNTY OF BROWN

By \_\_\_\_\_



FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,  
Plaintiff,

CRIM. NO. 16-383

vs.

**AFFIDAVIT IN SUPPORT  
OF PROBABLE CAUSE**

JOOP BOLLEN,  
DOB: 04/13/1963  
Defendant.

Undersigned affiant, being first duly sworn on his oath, states as follows:

Affiant, Jon L. Bierne, is a Supervisory Special Agent with the South Dakota Division of Criminal Investigation, and has been so employed for approximately 20 years. Your affiant states that, during the course of his career with DCI, he has worked independently, and in conjunction with other agencies, on hundreds of investigations into all manner of criminal activity. Those investigations include inquiries into complaints of theft, embezzlement, or other misappropriation of funds.

On or about 12/23/2015, your affiant was assigned by DCI Director Gortmaker to conduct further investigation into the fate of state funds from various sources at the Governor's Office of Economic Development (GOED), and their ultimate use at Northern Beef Packers, a Brown County based business. Funds had been provided on numerous occasions from 2011 through 2013. These matters had previously been the subject of a criminal investigation as they related to Richard Benda, a former cabinet secretary of the Department of Tourism and State Development (DTSD) with oversight of GOED and the State Department of Tourism. Benda had left government employment in January, 2011 and immediately went to work for the South Dakota Regional Center (SDRC), an Aberdeen, SD company owned and operated by Joop Bollen. The previous investigation had uncovered evidence of theft and misuse of funds by Benda, who died in October, 2013, prior to the filing of any criminal charges.

Your affiant states that in December, 2009 Richard Benda, acting as the Secretary of Tourism and GOED, entered into a contract with Joop Bollen, as President of SDRC Inc. This contract was further amended in 2010. The contract created a partnership where SDRC, on behalf of the State of SD, would identify and recruit investors through the EB-5 program to invest in South Dakota businesses. The EB-5 program is a federal immigration program allowing for foreign investors to provide funding of \$500,000 plus fees, to a US business in exchange for qualification for permanent residency status. The contract established certain parameters regarding the agreement, including the solicitation of foreign funds to be used as a "loan model of investment", meaning that investors were loaning their money through the SDRC and did not receive an equity interest in the projects in which they were investing. The contract further established a fee schedule for SDRC to collect from foreign investors. SDRC was directed to establish three separate accounts to manage the fees from the contract. Those accounts were to be designated as follows:

1. **Indemnification Fund #1** – Funded from a portion of the fees received by SDRC for administering the program on behalf of the State of South Dakota. Funds in this account were to be used to satisfy any obligations of SDRC not covered by the insurance policy required by the contract. Funds were also to be used to reimburse the State of SD for any expenses incurred investigating claims arising out of the EB-5 program. There was no limit of the funds to be maintained in this account.
  
2. **Expense Account** – Funded from a portion of the funds in **Indemnification Fund #1** which were to be swept into the Expense Account and used to pay for expenses incurred by representatives of the DTSD in carrying out the program. The sweeping of funds into the Expense Account was to be done at the direction of the DTSD.
  
3. **Indemnification Fund #2** – This fund was to be established and funded with \$500,000 by December 31, 2010. The contract specified that, no later than December 31, 2011, this account must contain no less than \$1,000,000. The purpose of this account was to provide "a security interest" to the State of South Dakota in order to "secure the obligations of SDRC and indemnify and hold the State of South Dakota harmless".

Your affiant states that Joop Bollen is engaged in ongoing civil litigation with the state of South Dakota regarding these funds. Your affiant states that documentation filed by Bollen, through his attorneys, includes admissions that the State was granted a security interest in

**Indemnification Fund #2.** In an Answer and Counterclaim filed November 19, 2015, Bollen admits that SDRC granted the state a security interest in **Indemnification Fund #2**. This document further asserts that the State never requested any action on behalf of the SDRC to “perfect” the interest. In an affidavit filed March 9<sup>th</sup>, 2016, Bollen again acknowledges the security interest of the State of SD, but again indicates that the contract was terminated before any such interest was “perfected”.

According to the language in the contract, upon termination of the contract, or the conclusion of the business affairs of SDRC and the DTSD, the funds in the **Expense Fund and Indemnification Fund #1** would be turned over to the State of SD. Six years and sixty days after the termination of the agreement or winding up of the business affairs, the remaining funds in **Indemnification Fund #2** not obligated to pay claims, are to be returned to SDRC.

Bollen did open the three accounts as designated in this contract at Great Western Bank in Aberdeen, SD. Investigation revealed that those accounts are designated as **Operating Account, Contingency Fund #1 and Contingency Fund #3**. In addition to these accounts at Great Western Bank, Bollen maintained a **Primary SDRC Account**, as well as several other accounts each related to separate EB-5 projects.

Your affiant further states that, based on a review of the account previously identified as **Indemnification Fund #2/Contingency Fund #3**, it is apparent that Bollen used funds from this account on several occasions to personally benefit. These occasions are further described as follows:

- 1. February 17th, 2012 - \$300,000** is transferred from this fund to the SDRC primary account labeled “Joop and Pyush”. On that same date, \$500,000 is transferred from the SDRC primary account to Brown County in order to purchase TIF bonds on the Northern Beef Project. Your affiant states that, in 2015 alone, Joop Bollen received over \$32,500 in principal and interest payments from Brown County as a bond holder for bonds purchased with funds from this account. Your affiant states that, as a bond holder, he will continue to receive principal and interest payments from Brown County until the bonds reach maturity, expected in 2027.
- 2. April 13th, 2012 - \$370,000** was transferred from this fund to the SDRC Primary account labeled as a “loan”. On that same date, \$410,000 is transferred from the SDRC Primary Account to Pyush Patel. Your affiant states that Pyush Patel is an authorized signer

on many accounts held by SDRC and, according to the most recent annual report filed by SDRC with the SD Secretary of State's Office, he is the Vice President of SDRC. According to that same report, he is listed as a resident of Griffin, GA.

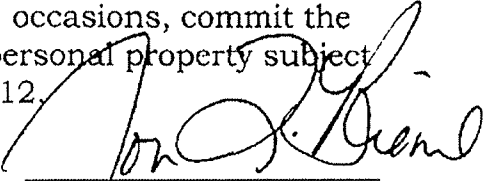
3. **April 27<sup>th</sup>, 2012 - \$96,838.74** was transferred from this fund to the SDRC Primary Account. On the same date, the same exact amount is wire transferred from the SDRC Primary Account to Christie's Fine Art, with a London address. This transfer corresponds to a purchase of an Egyptian artifact from that merchant.
  
4. **May 7<sup>th</sup>, 2012 - \$166,606.89** is transferred from this fund to another account held by Bollen labeled LP3 account. These funds, along with the majority of the remaining funds in the LP3 account are subsequently transferred to the SDRC primary account on May 29<sup>th</sup>, 2012. ***Your affiant states that in the previous instances where funds were transferred from the Indemnification Fund #2/Contingency Fund #3, funds in matching amounts were transferred back in to the account order to replenish the money taken. Your affiant states that in the existing records, there is no similar transaction regarding the \$166,606.89. Those funds never appear to be replenished to the account.***
  
5. **June 19<sup>th</sup>, 2012 - \$310,000** is transferred from this fund to the SDRC Primary account. On June 20<sup>th</sup>, that same amount is wired from the SDRC Primary account to the Harer Family Trust. Your affiant states that the Trustee of the Harer Family Trust is Dr. Benson Harer, a collector of Egyptian artifacts that are offered for display and sale.

Your affiant states that, based on a review of the account by staff of the South Dakota Office of the Auditor General, this account did not meet the required \$1,000,000 full fund level until on or about September of 2013. Thus, on each of the five occasions Bollen used Indemnification Fund #2/Contingency Fund #3 for a personal use, he subjected DTSD to a risk that DTSD could not be indemnified under the terms of the contract.

Your affiant states that, based on the foregoing information, there is probable cause to believe that Joop Bollen did remove or dispose of property subject to a security interest in violation of SDCL 44-1-12. Your affiant states that on 5 occasions, Bollen did remove funds from the **Indemnification Fund #2/Contingency Fund #3** account for personal use, or for a use not intended. Your affiant further states that at the

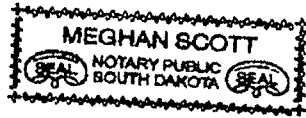
times that these withdrawals occur, the fund was not satisfied in accordance with the contract.

Your affiant states that for the above stated reasons there is probable cause to believe that Joop Bollen did, on five (5) occasions, commit the offense of Destruction, disposal, or removal of personal property subject to a security interest in violation of SDCL 44-1-12.

  
\_\_\_\_\_  
AFFIANT

Subscribed and sworn to before me, a notary public, this 30<sup>th</sup> day of March, 2016.

(SEAL)



  
\_\_\_\_\_  
Notary Public - South Dakota

My commission expires:

*Sept. 12, 2017*