

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

: IN THE COURT OF COMMON PLEAS  
: FIFTEEN JUDICIAL CIRCUIT

Ernest F. Middleton, III *et al.*,

: CASE NO. 2022 CP 2200032

Plaintiffs

v.

: ORDER DENYING  
: MOTION TO DISMISS OF  
: DEFENDANT GOFF TRUST

Georgetown County and Benjamin F.  
Goff, Sr., Trustee of the Benjamin F.  
Goff 2004 Revocable Trust dated June  
18, 2004,

Defendants

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**SC Court of Appeals**

On May 19, 2022, the court heard a Motion to Dismiss filed by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter "Goff Trust." Benjamin F. Goff, Trustee, appeared *pro se* on behalf of Defendant Goff Trust and Cynthia R. Person, Esquire appeared as attorney for Plaintiffs.

**I. BACKGROUND & PROCEDURAL HISTORY**

Plaintiffs filed a Declaratory Judgment Complaint on January 7, 2022, against Defendants Georgetown County and Goff Trust challenging the validity of two zoning ordinances changing the zoning on property owned by Defendant Goff Trust. Goff Trust filed a Motion to Dismiss and a Memorandum of Law in Support of Motion to Dismiss on January 25, 2022, requesting dismissal of Plaintiffs' Complaint pursuant to Rule 12(b)(5) and (6), SCRPC, raising insufficient service of process, lack of standing, failure to state a cause of action, and other matters relating to the underlying merits of the claim.

On February 25, 2022, Plaintiffs filed a Memorandum of Law in Opposition to Defendant Goff Trust's Motion to Dismiss. Thereafter, on February 28, 2022, Defendant Goff Trust filed a

Reply to Plaintiffs' Unfiled Response to Motion to Dismiss Benjamin F. Goff, Sr., Trustee, as a Defendant, and on March 14, 2022, a Reply to Plaintiffs' Opposition to Motion to Dismiss Benjamin F. Goff, Sr., Trustee, as a Defendant.

## **II. STANDARD OF REVIEW**

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint . . . .” Doe v. Marion, 373 S.C. 390, 398, 645 S.E.2d 245, 247-248 (2007). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Id. at 247-248 (citations omitted). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” Id. at 247. See also Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

The purpose of a Motion to Dismiss is for “the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim.” Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). Accordingly, the court’s review in this case is limited to the face of the complaint and whether it properly states any cause of action. Any matters raised in the Motion to Dismiss that relate to the underlying merits of the case or questions of fact may not be considered by the court.

## **III. FINDINGS**

### **A. Service of Process**

Defendant Goff Trust raises insufficient service of process under Rule 4, SCRCF, as a basis for dismissal pursuant to Rule 12(b)(5), SCRCF. Plaintiffs filed a Proof of Service on

February 25, 2022, certifying that service of the Summons and Complaint was accepted by the South Carolina Secretary of State on February 16, 2022, on behalf of Defendant Benjamin F. Goff, Sr., Trustee, pursuant to S.C. Code Ann., Section 15-9-440(3), which authorizes service of process upon the Secretary of State when there is no resident trustee of an *inter vivos* trust that owns real property in South Carolina that is the subject matter of a proceeding. A letter from the Secretary of State was attached to the Proof of Service confirming the acceptance of service and the date.

Rule 4(e), SCRCP, states that “[w]hen a statute ... provides for service of a summons and complaint ... upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute ... .” S.C. Code Ann., Section 15-9-440(3), states that

when there is no resident trustee, the nonresident trustee of an *inter vivos* trust shall be deemed to have consented to the service of any summons, notice or other legal process in connection with any proceeding in the courts of this State involving such trust, directly or indirectly, when served upon the Secretary of State, when the trust was created under the laws of this State or, in the case of a foreign trust, when part of the trust property is situated in this State.

Plaintiffs’ Complaint alleges that Defendant Goff Trust owns real estate in South Carolina that is the subject matter of this action (Complaint, pars. 23 & 24), and that Benjamin F. Goff, Sr., is the nonresident trustee of this trust. (Complaint, par. 23).

The court finds that service of process was made on Defendant Goff Trust in accordance with Rule 4, SCRCP, and S.C. Code Ann., Section 15-9-440(3).

### **B. Standing**

The Motion to Dismiss raises lack of standing as a basis for dismissal of Plaintiffs’ Complaint. “Standing refers to a party’s right to make a legal claim or seek judicial enforcement

of a duty or right ... and may be acquired (1) by statute, (2) under the principle of constitutional standing, or (3) via the public importance exception to general standing requirements.”

Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control, 430 S.C. 200, 210, 845 S.E.2d 481, 486 (2020) (citations omitted).

### C. Failure to State a Cause of Action

#### 1. Justiciability

Defendant Goff Trust claims that Plaintiffs’ Complaint should be dismissed for failure to state a cause of action due to the lack of a justiciable controversy. “A cause of action under the S.C. Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, is established by showing the existence of a justiciable controversy, defined as a real and substantial controversy which is appropriate for judicial determination.” Farmer v. CAGC Insurance Company, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (2018) (citations omitted). See also Jowers v. South Carolina Department of Health and Environmental Control, 423 S.C. 343, 354 815 S.E.2d 446, 452 (2018). “The Act is to be liberally construed and administered to achieve its intended purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 595, 748 S.E.2d 781, 786 (2013) (citations omitted).

The court finds that Plaintiffs’ Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment.

#### 2. Necessary Parties

Defendant Goff Trust contends that it should not be a defendant in this action. The Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-80, requires that “all persons shall be made parties who have or claim any interest which would be affected by the

declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.”

Plaintiffs’ Complaint alleges that as owner of the land in question, Defendant Goff Trust has a claim or interest that would be affected by a declaration. The court finds that Defendant Goff Trust was properly named as a defendant in this declaratory judgment action.

**IV. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, adjudged and decreed that the Motion to Dismiss filed on January 25, 2022, by Defendant Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, is DENIED for the reasons set forth above.

\_\_\_\_\_  
Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

\_\_\_\_\_, 2022

At Chambers, South Carolina



Georgetown Common Pleas

**Case Caption:** Ernest F Middleton III , plaintiff, et al VS Georgetown County ,  
defendant, et al  
**Case Number:** 2022CP2200032  
**Type:** Order/Other

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129