THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jul 22 2022

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case Number: 2019-000941
Unpublished Opinion Number: 2022-UP-207 (SC Ct. App. filed May 18, 2022)
Petition for Rehearing denied June 22, 2022

Floyd Hargrove, ... Petitioner

v.

Anthony E. Griffis, Sr., ... Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on May 18, 2022. App. pgs. 1 - 3. Counsel for Petitioner certifies that the petition for rehearing was made on June 1, 2022 and finally ruled on by the Court of Appeals on June 22, 2022. App. pgs. 4 - 16.

QUESTIONS PRESENTED FOR REVIEW

Did the Court of Appeals err in affirming the Trial Court's dismissal, pursuant to SCRCP Rule 12(b)(6), of Petitioner's two causes of action in his complaint? Broken into subparts, did Petitioner sufficiently plead a cause of Breach of Fiduciary Duty against an attorney who did not represent Petitioner? Did Petitioner sufficiently plead a cause of Civil Conspiracy and did the holding in *Paradis v Charleston County School District*, 861 SE2d 774 (SC 2021) apply retroactively to the analysis of this claim?

CONSIDERATIONS FAVORING REVIEW

This Court should review the Order of the Court of Appeals as to all issues raised on direct appeal and relied upon by the circuit court in its dismissal because that Court applied contract law analysis to a pleading of breach of fiduciary duty in its dispositive ruling, overlooked the facts and law cited by Petitioner, and cited no law in its discussion in dicta of some of the other issues.

At the outset, Petitioner would note the two most significant issues which were misapprehended or overlooked: 1) that the statute of limitations accrual date of November, 2009 was modified by an alternate payment arrangement, see Argument I(B) below, and 2) that a watershed opinion changing the law concerning the elements of the tort of civil conspiracy,

issued after the appellate briefing of this case,[1] should have been applied retroactively.

Finally, as an equitable matter favoring consideration and pled in the complaint, Petitioner possesses an equitable interest in a real estate commission, this real estate transaction involved multiple attorneys and other licensed professionals, one of the attorneys expressly implicated Respondent as the cause of non-payment of the commission, yet Petitioner still has not been paid but his lawsuit has been thrown out at the pleading stage.

[1]This opinion, *Paradis v Charleston County School District*, 861 SE2d 774 (SC 2021), was provided by undersigned counsel to the Court of Appeals on July 19, 2021, pursuant to SCACR Rule 208(b)(7). This opinion was re-filed by the Supreme Court on August 18, 2021.

STATEMENT OF THE CASE

Petitioner filed a summons and complaint on or about July 18, 2018. R. p. 50-57. This complaint alleged two causes of action, breach of fiduciary duty and conspiracy, over 86 paragraphs pled within seven pages. R, p. 51-57. Petitioner sought a jury trial as to the issues of liability and damages. R. p. 51.

An answer was filed on November 14, 2018. R. p. 58. The answer contained a general denial as to both causes of action, an objection as to the existence of a fiduciary duty, and an objection to the pleading as to special damages. R. p. 58-61. The answer also complained of the failure to provide an expert affidavit, of the running of the statute of limitations, of the public policy preventing recovery by Petitioner, a lack of standing, and accord and satisfaction. R. p. 61.

The answer included four exhibits. R. pp. 63-79. These exhibits included documents relating to real estate negotiations. R. pp. 63-73. These exhibits also included emails and letters discussing the payment of the real estate commission of which Petitioner complains. R. pp. 74-79.

Respondent also filed a Notice and Motion to Dismiss pursuant to SCRCP Rule 12(b)(6) and SC Code Section 15-36-100 on November 14, 2018. This motion asserted dismissal was appropriate for the same reasons asserted as defenses in the answer except for the general denial, the denial as to the existence of a fiduciary relationship and the accord and satisfaction. A hearing was held on this motion on January 8, 2019.

The Honorable Eugene C. Griffith, Jr. presided at this hearing. The Petitioner was represented by undersigned counsel. Respondent represented himself.

Argument was held during which the Court referenced the pleadings in this case as well as pleadings in a related case which was referenced in the complaint. R. p. 80-120**.** The Court also considered the evidence attached as exhibits to the answer. After taking the matter under advisement, the Court requested that Respondent prepare a proposed order granting the motion.

Undersigned filed objections to the proposed order. R. pp. 14-18. Respondent filed a response to these objections. R. pp. 19-20. The Court signed the order without modification and it was filed on March 15, 2019.

Undersigned then filed a Motion to Alter or Amend. R. pp. 27-31. Respondent filed a response to this Motion. R. p. 32. The Court signed a Form 4 order denying the Motion on April 25, 2019. R. p. 24.

A Notice of Appeal was filed on May 28, 2019. This Notice was served upon Respondent on May 28, 2019. Briefing in the Court of appeals followed.

On May 19, 2021, the South Carolina Supreme Court issued the opinion captioned *Paradis v Charleston County School District*, 861 SE2d 774 (SC 2021). Undersigned provided a copy of this opinion to the Court of Appeals on July 19, 2021, pursuant to SCACR Rule 208(b)(7). This opinion was re-filed by the South Carolina Supreme Court on August 18, 2021.

The case was submitted to the Court of Appeals on April 1, 2022 and the circuit court order was affirmed by an unpublished opinion issued and filed on May 18, 2022. App. pgs. 1 - 3. A Petition for Rehearing was filed on June 1, 2022. App. pgs. 4 - 15. The Court of Appeals denied the petition on June 22, 2022. App. pg. 16.

This Petition for a Writ of Certiorari follows.

STATEMENT OF THE FACTS

On or about July 18, 2018, Petitioner filed a complaint asserting two causes of action. The first cause of action alleged a breach of fiduciary duty and the second cause of action alleged a civil conspiracy. The following facts are pled in the complaint.

Petitioner worked as a real estate agent who procured the sales contract between the seller of a piece of commercial real estate and the buyer. R. p. 51, ¶ 4-6. The sales price was averred as four million dollars ($4,000,000.00). R. p. 51, ¶ 7. The two point five percent (2.5%) commission, equaling one hundred thousand dollars ($100,000.00), was owed to the realty for whom the Petitioner was working at the time of closing. R, p. 52, ¶ 9. Respondent was the attorney representing the seller who owed the commission. R. p. 54, ¶ 44.

Petitioner was working for Citadel Realty at the time of the closing. R. p. 52, ¶ 13. Petitioner was owed seventy percent (70%) of this commission. R. p. 52, ¶ 15. Despite assurances from Citadel Realty that its legal counsel would obtain the commission, Petitioner was never paid. R. p. 52, ¶ 19-23.

Petitioner then made a demand of Citadel Realty which was unmet. R. pp. 52-53, ¶ 24-25. Petitioner filed suit against Citadel Realty on November 12, 2013. (R. p. 53, ¶ 26). This suit alleged three causes of action. R. p. 53, ¶ 27.

Petitioner filed a motion for default judgment followed by Citadel's motion to dismiss which, following conversion to a summary judgment motion, was granted. R. p. 53, ¶ 28-31. However, Petitioner filed a motion to alter or amend. This motion was partially granted and a part of the case was restored to the docket. R. p. 53, ¶ 32.

The matter was mediated on May 11, 2016. At this mediation, Petitioner was provided a

document from an attorney involved in the closing which assured counsel for Citadel Realty that the commission would be paid. R. p. 53, ¶ 34. Petitioner had not seen this document before despite discovery requests. R. p. 53, ¶ 35.

Petitioner then contacted the attorney for the purchaser of the property and was then provided a letter from the closing attorney. R. p. 53, ¶ 36-40. The closing attorney informed Petitioner that no commission was paid because Respondent told him not to pay the commission. R. p. 54, ¶ 43. This July 19, 2017 letter was the first time that Petitioner learned that another party, Respondent, caused the non-payment of the commission to anyone. R. p. 54, ¶ 43-49.

According to the letter, Respondent told the closing attorney that no real estate commission "remained due at the time of closing." R. p. 54, ¶ 50. Following the receipt of this information, undersigned contacted Respondent indicating an intention to file suit over this conduct. R. p. 54, ¶ 53-55. Respondent acknowledged in a January 23, 2018 email that no funds were allocated for the commission at all. R. p. 54, ¶ 56.

Respondent continued by asserting that alternate payment arrangements were made by which the commission would be paid at some future time following conditions precedent involving the development of the property. R. p. 55, ¶ 57-58. Petitioner was not aware of any alternative agreement, did not agree to the same and is unsure whether the condition precedent has occurred. R. p. 55, ¶ 59-62. Petitioner does not know if such an alternative agreement was made with others and only learned of this assertion via Respondent's January 23, 2018 email.

Petitioner spent resources litigating the case against Citadel Realty. R. p. 55, ¶ 70. Petitioner lost the value of his portion of the commission. R. p. 55, ¶ 72. Petitioner also lost an investment opportunity if an alternative payment arrangement was made. R. p. 55, ¶ 71.

ARGUMENT

The Court of Appeals erred in affirming the Trial Court's dismissal, pursuant to SCRCP Rule 12(b)(6), of Petitioner's two causes of action in his complaint. The Court of Appeals order overlooked facts stated in the pleadings, did not view these averments in the light most favorable to Petitioner, failed to address all of the issues ruled upon by the Trial Court, and did not retroactively apply a watershed change in law.

I. The Court of Appeals Erred in Affirming the Trial Court's Dismissal of the Claim of Breach of a Fiduciary Duty

A) An Expert Affidavit was Not Required Because the Complaint Pled a Duty Owed by Respondent to Petitioner which Arose Independent of Respondent's Duty to His Client.

This Court should issue a writ because the Court of Appeal's opinion discussing the fiduciary relationship fails to reference the facts pled viewed in a light most favorable to Petitioner. The opinion also omits discussion of the law concerning fiduciary duties owed to third parties. Further, the discussion omits analysis of the expert affidavit requirement as written in the applicable statute.

The South Carolina Supreme Court has expressly held that an "attorney may be held liable"... "where, in addition to representing his client, he breaches some independent duty to a third person..." *Stiles v. Onorato*, 457 SE2d 601, at 602 (SC 1995). The *Stiles* Court reached this holding following citation with approval to various cases from other jurisdictions which "recognize[d] that an attorney may be held liable where he acts in bad faith." *Stiles*, at 602. The *Stiles* opinion specifically mentioned that "an attorney may be held liable arising out of a conspiracy with his own client." *Id*.

The case of *LaBerre v Gold*, cited approvingly by the *Stiles* Court, held that an attorney may be liable when his actions in a real estate closing converted money owed to a third party to the benefit of his client. *Stiles*, at 602, citing *Laberre v Gold*, 520 So2d 1327 (Miss 1987). In *Laberre*, the sole attorney incorrectly disbursed purchase proceeds and failed to satisfy the obligations to a third party creditor. The *Laberre* Court noted that the attorney, Laberre, only represented the party who improperly converted the money. Nonetheless, the *Laberre* Court held: "[w]hile an attorney cannot be held liable to third parties for his actions made in furtherance of his role as counselor, he has a duty to refrain from committing tortuous acts against third parties." *LaBarre v. Gold*, 520 So. 2d 1327, 1331 (Miss. 1987).

Thus, attorney liability may take the form of other torts aside from professional negligence. Such liability can arise out of a special duty owed to third parties. As such, this conduct is beyond the reach of the statute requiring an expert witness affidavit.

Petitioner's complaint averred that Respondent was not his attorney. R, p. 54, ¶¶'s 44 & 47. Petitioner pled facts establishing his equitable interest in a portion of the sales commission. R, pgs. 51-52, ¶¶'s 4 - 18. Petitioner pled that Respondent directed the closing counsel not to pay any commission. R, p. 54, ¶¶'s 43 - 51[2].

Respondent owed a duty of fair dealing to third parties with interests in the closing such

[2]Respondent's alleged assertion to closing counsel that no commission was due, pled in Petitioner's complaint, is directly contradicted by Respondent's Answer and attached Exhibits in which he avers that the commission would be paid in an alternate fashion. See R, pgs. 58 - 59, ¶ 5. Petitioner asserts this contradiction, viewed in the light most favorable to his cause, suggests an attempt to extinguish Petitioner's equitable interest.

that an incorrect statement interfering with these interests would be unfair.[3] See *Stiles v Onorato*, 457 SE2d 601, 602 (SC 1995)(citing with approval *L & H Airco, Inc. v. Rapistan Corp.*, 446 NW2d 372 (Minn.1989) for the proposition that an attorney may be held liable for "affirmative misrepresentations") & SCACR Rule 407, Rule 4.4, n.1 ("Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but *that responsibility does not imply that a lawyer may disregard the rights of third persons*.")(emphasis added). Petitioner's complaint pled facts under which such a duty arose. The unpublished opinion did not discuss *Stiles* or the multiple cases analyzing duties owed to a third party nor did it apply these principles to the pleadings in the light most favorable to Petitioner.

Instead, the Court of Appeals indicated that "it seems firmly established that [Respondent] did not owe [Petitioner] a fiduciary duty. [Respondent] did not represent [Petitioner]." App, p. 3. This statement incorrectly implied that an attorney can not owe a duty to a third party and it incorrectly viewed the averments in the light most favorable to the moving party.

Likewise, the issuance of a writ is proper because of the statutory limitation on the need for an expert affidavit. An affidavit is required by statute when a complaint alleges "professional negligence." SC Code Section 15-36-100(B). In contrast, an affidavit is not required when a complaint avers "negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." SC Code Section 15-36-100(C)(2).

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[3] As to the proposition that the question of whether a fiduciary relationship exists is an equitable one, see *Island Car Wash, Inc. v. Norris,* 358 S.E.2d 150, 152 (SC Ct App 1987), overruled on other grounds by *Paradis v. Charleston Cnty. Sch. Dist.*, 861 S.E.2d 774 (SC 2021).

The opinion issued by the Court of Appeals omitted discussion of the statutory language but instead indicated that an affidavit was required because Respondent acted within "the scope of representing his client." While undersigned can imagine that such an interpretation is reasonable, this "scope of representation" language does not appear in the statute. Instead, the language triggering the need for an affidavit is "professional negligence."

Petitioner concedes that there is case law indicating that a claim of breach of a fiduciary duty merges with a legal malpractice claim when they arise from the same duty, but this is dissimilar to the situation here because the Complaint averred that there was no attorney-client relationship between Petitioner and Respondent. R, pgs. 51 - 57.

In *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 732 S.E.2d 166, 173 (SC 2012), this Court held that an expert affidavit was required when a claim of Breach of Fiduciary Duty merged with a claim of legal malpractice. In the *RFT Mgmt. Co.* opinion, this Court explicitly noted that in that case, there was no distinction between the fiduciary duty alleged by that plaintiff and the duty arising from the attorney client relationship which existed between that plaintiff and that defendant. *Id*., at 173.

In the case at bar, no attorney client relationship existed between the Petitioner and Respondent and this was pled in the complaint. While it may be that Respondent's directive to not pay any commission was heeded because he was the seller's attorney, the complaint pled that the commission was owed, that Petitioner had an equitable interest in this commission, that Petitioner was not Respondent's client, and that, but for Respondent's statement to the closing attorney, Petitioner would have received his equitable interest in the commission. These averments established a duty owed to a third party and that this duty did not arise out of any

attorney client relationship between Petitioner and Respondent.

In contrast, the Court of Appeals opinion improperly extended the *RFT Mgmt. Co.* holding to apply to situations in which there was no attorney/client relationship between a plaintiff and a defendant without even citing this case or the expert affidavit statute. The opinion characterized the claim as one of professional negligence without comparing the elements of legal malpractice with the elements of breach of a fiduciary duty owed to a third party not in privity with the attorney.[4]

Also, the Court of Appeals opinion incorrectly viewed the pleadings as if the Respondent's answers were true and the Petitioner's complaint was false. The opinion indicated that the Respondent "was obligated to follow the instructions of his client - the seller." App. pg. 3. However, Petitioner did not plead this defense theory. The Respondent did and the Court of Appeals considered this theory to be true, in contrast to the law concerning review of motions pursuant to SCRCP Rule 12(b)(6).

Thus, this Court should grant this petition and reverse the Court of Appeals for the reasons cited above.

B) The Statute of Limitations Had Not Expired Because the Pleadings Indicated the Payment Date had Changed from the Date of Closing until the Occurrence of Multiple Future Acts

When pronouncing the only dispositive ruling in this case, the Court of Appeals's opinion indicated Petitioner averred the closing occurred in May 2009 and that, following an unanswered demand (made by a third party - Citadel Realty), Petitioner should have known by November,

[4]South Carolina law "imposes a privity requirement as a condition to maintaining a legal malpractice claim in South Carolina." *Rydde v. Morris*, 675 S.E.2d 431, 435 (2009).

2009 that he would not receive his equitable interest in the commission. However, the averments in both the Complaint and Answer with its attached exhibits indicated that an alternate payment arrangement purported to modify the date the payment was due and imposed conditions precedent to this payment. Further, the Complaint indicated that Petitioner was unaware of the new conditions precedent for payment or the change in the identity of the realty to whom this commission would be paid.

Succinctly, Petitioner pled that he should have been paid from proceeds disbursed to a realty at the 2009 closing[5]. However, Petitioner also pled that he learned for the first time in January, 2018 that an alternate payment arrangement purportedly modified the terms of the payment. R, p. 55, ¶¶'s 57 - 69. Respondent's pleading also asserted an alternate payment arrangement. R, pgs. 58 - 59, ¶¶'s 5 - 10 & pgs. 69, 75, and 77.

On page 69 of the Record, this purported payment arrangement required the occurrence of at least two significant conditions precedent to the accrual of any time for payment: 1) the development and construction of at least 10 "residences" upon the land sold through Petitioner's real estate efforts and 2) the sale of 10 of these residences. See R, p. 69, ¶ 11 ("Said amount, however, to be paid in equal installments of Ten Thousand and NO/100 ($10,000.00) Dollars each simultaneously with the Release Payments for the first ten (10) Residences."). Despite Respondent's pleading indicating that Petitioner's "right to a commission pursuant to the Contract dated August 2, 2007, were voided by the default of the Purchaser (BDG) under that contract," the exhibits attached to this pleading indicated that "payment of the Brokerage fee ...

[5]Specifically, the payment would go to the realty for whom the Petitioner was working at the time of closing. R, p. 52, ¶ 9.

described in the contract *shall continue* to be payable by Seller to Southern Lifestyle Group.[6]" R, p. 60, ¶ 17 & p. 69, ¶ 11 (emphasis added to the second quote).

Thus, this Court should consider the averred modification to the payment arrangement affecting the accrual date of the cause of action for non-payment. This Court should also consider the conditions precedent imposed in the averred modification including the necessary development of the property, the construction of at least 10 residences and the sale of 10 of these homes. At a minimum, the Court should remand this matter on this ground to allow undersigned to plead the possible 10 dates upon which these conditions occurred. Viewed in the light most favorable to Petitioner, it would appear there could be 10 different statute dates depending on the occurrence of the conditions precedent.

Otherwise, this Court should grant the petition and reverse the Court of Appeals and remand this matter so that discovery may be conducted.

C/D) Public Policy Was Not Violated by Petitioner's Causes of Action and Petitioner had Standing to Sue

This Court should grant this petition and reverse the Court of Appeals order affirming the trial court to the extent that order does not overrule the circuit court's order finding that public policy prevented Petitioner from filing a suit for damages because the commission could not be paid directly to him. Further, this Court should do likewise concerning the affirmance of the trial court's order indicating that Petitioner did not have standing to sue. The trial court's order of dismissal did not cite any law concerning either of these separate grounds and the Court of

[6]While not explicitly referenced in the pleadings, the reference in this portion of the record to Southern Lifestyles suggests that is the realty for whom Petitioner was working at the time the original contract was signed in 2007, when viewed in the light favorable to Petitioner.

Appeals did not address either issue as it applied to either cause of action.

Succinctly, the Complaint alleged that Petitioner did not receive his equitable interest in the commission. ROA, p. 52, ¶¶s 15, 17, & 18; p. 54, ¶52. This portion was pled as seventy (70%) of the full commission. Not only is pursuit of this claim not improper on policy grounds but, in fact, is allowed by law including the right to redress a grievance and the right to pursue a civil claim guaranteed as constitutional rights.

Finally, Petitioner had standing. One with a financial interest in a controversy ordinarily will have standing to sue. *Lee v. Chesterfield Gen. Hosp., Inc.*, 344 S.E.2d 379, 384 (SC Ct. App. 1986), overruled on other grounds by *Paradis v. Charleston Cnty. Sch. Dist.*, 861 S.E.2d 774 (SC 2021). Even the Court of Appeals' opinion indicated Petitioner pled a sufficient financial interest to support a suit against a different person (the seller) under a different theory of recovery (Breach of Contract).

Thus, undersigned respectfully requests that this Court grant this petition and reverse the Court of Appeals ruling affirming the trial court's dismissal.

II. The Court of Appeals Erred in Affirming the Trial Court's Dismissal of the Claim of Civil Conspiracy and Failing to Retroactively Apply the Holding in *Paradis v. Charleston Cnty. Sch. Dist.*, 861 S.E.2d 774 (SC 2021).

This Court should reverse the Court of Appeals' ruling concerning the claim of civil conspiracy and retroactively apply the watershed change in law announced by this Court in the case captioned as *Paradis v. Charleston Cnty. Sch. Dist.*, 861 S.E.2d 774 (SC 2021). In *Paradis*, this Court overruled more than 40 years of precedent and indicated it was "returning to our long-standing precedent pre-*Todd*;" clarifying the proper elements required to be pled in a complaint asserting civil conspiracy. *Paradis*, at 780. The *Paradis* Court only precluded retroactive

application of this ruling to cases which were not final and had "already been tried under the *Todd* framework." *Paradis*, at 781.

The case at bar only proceeded to the pleading stage and, as indicated by the date of the Court of Appeal's opinion, was not yet final at the time of the change. Thus, this change in law should have been applied retroactively to Petitioner's cause.

A) An Expert Affidavit Was Not Required

An expert affidavit was not required as to the cause of action for civil conspiracy because this cause did not involve a claim of professional negligence. In fact, the *Paradis* Court's discussion of civil conspiracy claims provides an elementary basis to distinguish this cause from claims of negligence because "civil conspiracy is an intentional tort." *Paradis*, at 780, n. 9. Further, it would turn the professional relationship between the seller and Respondent on its head to find that a combination of two people seeking to prevent, delay and/or conceal payment obligations and the timing of those obligations would constitute part of the representation of the seller. Both pleadings, the Complaint and Answer with exhibits, indicate that a commission should have been paid but no pleading averred that any payment had been made. Instead, the pleadings averred that no commission was paid because Respondent told the closing attorney that no commission was due. R., p. 54, ¶¶'s 43 and 50.

Thus, for the simple reason that civil conspiracy is an intentional tort and not one sounding in negligence, no expert affidavit was required. This is even more so the case when all averred facts pointed to the need for payment of a commission but at the same time indicated no commission had been paid for a multitude of reasons not yet explored through either the discovery or trial process.

B) The Statute of Limitations Had Not Expired

The statute of limitations had not run as to civil conspiracy because civil conspiracy is a continuing tort and each overt act extends the scope of the conspiracy. This suit was filed in July, 2018. That was less than one year from Petitioner's first notification that the non-payment was occasioned by Respondent informing the closing lawyer that no commission was due. This suit was also filed within six months of Respondent informing undersigned counsel that a different payment arrangement premised on the construction and sale of 10 residences had been made.

This Court should consider the email from Respondent to undersigned refocusing the non-payment issue from the 2009 closing to the 10 lot sale arrangement as an overt act if the 10 lot sale arrangement is not true. However, if it is true that the commission was not due at the 2009 closing but, instead, after the closing of 10 different residences not yet constructed at the time of the 2009 closing, then the omission of the 10 partial payments, due upon these 10 sales, would each be an overt act. [7]

South Carolina has found that some torts should be considered continuing torts for purposes of the statute of limitations. See *Silvester v. Spring Valley Country Club*, 543 S.E.2d 563, 567 (SC Ct App 2001)(Finding a claim of nuisance may be considered a continuing tort). Likewise, other states have also made such findings in both similar and dissimilar contexts. See *Eubank v. Van-Riel*, 221 N.C. App. 433, 727 S.E.2d 25 (NC 2012)(Discussing various situations in which the "continuing wrong doctrine" applies); *Mears v. Gulfstream Aerospace Corp.*, 225

[7]Of course, no claim for commission would be ripe until the residences were constructed and sold.

Ga. App. 636, 640, 484 S.E.2d 659, 664 (GA 1997)(Discussing the continuing tort doctrine as related to a claim of intentional infliction of emotional distress); *Everhart v. Rich's, Inc*., 229 Ga. 798, 802, 194 S.E.2d 425, 428 (GA 1972)(Discussing application of the theory of continuing tort whenever "any negligent or tortious act is of a continuing nature and produces injury in varying degrees over a period of time."); and *Wyatt v. Union Mortg. Co.*, 24 Cal. 3d 773, 787, 598 P.2d 45, 53 (CA 1979)(citing a litany of cases as support for application of the "last over act" doctrine to a claim of civil conspiracy.").

Petitioner pled overt acts which occurred within a year of the filing of this complaint which furthered the goal of depriving Petitioner of his equitable interest in his portion of the commission proceeds. Thus, this Court should grant the requested writ and reversed the ruling of the Court of Appeals on this issue.

C/D) Public Policy Was Not Violated by Petitioner's Causes of Action and Petitioner had Standing to Sue

Petitioner incorporates by reference the arguments contained in Part I, C & D of this petition addressing these same issues above.

E) Petitioner Pled Special Damages

This Court grant the requested writ because the Court of Appeals overlooked the averments concerning special damages and failed to recognize the change in law during the pendency of this appeal. Apart from the change in law expressed in *Paradis*, Petitioner pled two types of special damages: 1) the costs of pursuing a different suit against his former employer when an alternate payment arrangement was made or discussed and 2) the loss of investment from the delay in receiving the payment as envisioned in the original contract for sale entered

between the seller and buyer. R, p. 55, ¶¶'s 70 & 71.

These two damages were not claimed as resulting from the first cause of action. The damage claimed under that cause of action was the loss of the equitable interest in the commission. Under the "force in numbers" theory, these alleged special damages might not have resulted had there not been a combination of actors.

Nonetheless, the *Paradis* case removes this element from the pleading requirements and this ruling should be applied retroactively to Petitioner's case.

Thus, this Court should grant this writ, reverse the Court of Appeals, and overrule this portion of the trial's court order of dismissal.

CONCLUSION

Therefore, Petitioner respectfully requests that this Court grant the petition, order briefing in this matter, reverse the judgment of the Court of Appeals and the trial court and remand this matter to the Beaufort County Court of Common Pleas. Alternatively, this Court should remand this case to the trial court for retroactive application of the *Paradis* decision as to the civil conspiracy claim.

Respectfully submitted by,

/s/ James A. Brown, Jr. July 22, 2022
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