THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Civil Court Appeal Case No. 2021-CP-08-00513

Appellate Case No. 2021-000768

Aracelis Santos, ... Appellant,

v.

Harris Investment Holdings, LLC, City of Hanahan, City of Hanahan Police Department, John Doe #1 and John Doe #2, employees of the City of Hanahan Police Department, Defendants,

of which

Harris Investment Holdings, LLC is..... Respondent.

RESPONDENT'S FINAL BRIEF

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I. Did the circuit court properly grant Respondent's motion to dismiss where the Lease had expired and Respondent was entitled under the Lease and South Carolina law to retake possession of the Property?

INTRODUCTION

This dispute arises from Respondent's rightful repossession of its property after the expiration of a commercial lease. Appellant Aracelis Santos ("Santos") sued Respondent Harris Investment Holdings, LLC ("HIH") after HIH retook possession of commercial property that Santos leased from HIH and HIH subsequently demolished the building. The circuit court properly dismissed Santos' claims because the lease had long-since expired, HIH had repeatedly instructed Santos to vacate the leased premises to no avail, and HIH had the right, under the lease and South Carolina law, to use self-help to retake possession of the property.

This is not first lawsuit between these parties. HIH previously filed an action in the magistrate's court to eject Santos from the leased premises. Following a trial, the magistrate granted HIH's application for ejectment and awarded HIH its attorneys' fees. The magistrate concluded that ejectment was proper because Santos' operation of a nightclub in the leased premises created a public nuisance. Specifically, the magistrate determined that "Santos has maintained [the leased premises] as a place where the laws are publicly, repeatedly, persistently, and intentionally violated, thus disturbing the public peace." After the circuit court affirmed the magistrate's rulings, Santos appealed to this Court, and that appeal remains pending.

While Santos' appeal was pending, the lease expired according to its terms. Upon expiration of the lease term, HIH repeatedly directed Santos to leave the property, but she refused. Accordingly, HIH exercised its rights under the lease and South Carolina law to repossess its leased premises. Under clear precedent from the South Carolina Supreme Court, HIH cannot be held

liable for doing so. Because the circuit court correctly dismissed Santos' claims, this Court should affirm.

STATEMENT OF THE CASE

Santos leased commercial property located at 5901 Loftis Road, Hanahan (the "Property") from Respondent HIH. Santos and her boyfriend, Benjamin Reyna ("Reyna"), operated a nightclub on the Property known as "El Alamo." The lease agreement for the Property dated December 15, 2015 (the "Lease") stated that the term commenced on December 1, 2015 and expired on November 30, 2018. (R. p. 83; 12/15/2015 Lease.) The Lease contained no right of renewal, and it expressly required Santos to surrender the Property to HIH in "broom clean" condition upon expiration of the term. (R. p. 88; Lease, Sec. 22.) HIH's remedies for Santos' failure to surrender the premises upon expiration of the term included the right to "re-enter and forthwith repossess the entire Premises." (R. p. 89; Lease, Sec. 30.)

After receiving reports from Hanahan authorities of repeated dangerous criminal activity at El Alamo, on November 14, 2016, HIH filed an application in the magistrate's court to eject Santos from the Property. (R. p. 180; Application for Ejectment.) Following a bench trial on October 11, 2017, the magistrate granted HIH's application for ejectment and subsequently awarded HIH its attorney's fees. (R. pp. 11-36, 12/7/2017 Order; R. pp. 37-44, 2/9/2018 Order.) The magistrate concluded that "Santos has maintained El Alamo as a place where the laws are publicly, repeatedly, persistently, and intentionally violated, thus disturbing the public peace." (R. p. 31; 12/7/2017 Order.)

On February 8, 2018, Santos appealed the magistrate's orders to the circuit court (Case No. 2018-CP-08-00266).[1] After several months of litigation over the amount of the appeal bond, on

[1] Santos subsequently filed a second civil appeal in the circuit court (Case No. 2018-CP-08-1008), in which she not only sought to appeal the magistrate's order of ejectment and related rulings, but

May 17, 2018, the magistrate issued an Amended Bond to Stay Execution on Appeal. (R. p. 10; 5/17/2018 Bond Order.) The Bond Order provided that, once Santos posted bond, execution of the ejectment warrant would be stayed pending appeal. (R. p. 10.) Santos subsequently posted the bond and continued to occupy the Property. (R. p. 55; 3/2/2021 Compl. ¶ 11.)

On November 30, 2018, while Santos' appeals remained pending in the circuit court, the Lease expired according to its terms. (R. p. 83; Lease, p. 1.) On October 16, 2018, HIH sent Santos notice via certified mail directing her to vacate the Property and remove her belongings by midnight on November 30. (R. p. 129; 10/16/2018 Ltr. from Merritt Abney.) On February 26, 2019, HIH again instructed Santos to vacate the Property and notified her that her refusal to do so constituted a breach of the lease and trespass. (R. p. 131; 2/26/2019 Ltr. from Merritt Abney.)

When Santos failed to vacate the Property as required by the Lease, HIH retook possession of the Property pursuant to the express terms of the Lease. On or about March 22, 2019, while officers of the Hanahan Police Department were present, contractors retained by HIH demolished the building in accordance with a permit obtained from the Town of Hanahan. (R. p. 54; 3/2/2021 Compl. ¶ 4.)

On June 6, 2019, the circuit court affirmed the magistrate's ruling. (R. pp. 49-51; 6/6/2019 Order.) Santos subsequently filed a notice of appeal in this Court (Case No. 2019-001169), but she appealed only the circuit court's orders affirming the magistrate's award of attorney's fees to HIH as the prevailing party. She did not appeal the lower courts' conclusion that Santos breached the Lease and her ejectment was proper. These findings are therefore the law of the case. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a

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also purported to assert various tort claims against HIH. With Santos' consent, the circuit court ordered her to dismiss this second action without prejudice. When she failed to comply, the circuit court dismissed the action on its own. (R. pp. 45-48; 6/6/2019 Order.)

party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.").

On March 2, 2021, Santos filed the instant action, in which she alleged that HIH wrongfully repossessed and demolished the building and conspired to do so with the City of Hanahan and its police department. (R. pp. 52-64; 3/2/2021 Compl.) On April 2, 2021, HIH filed a Motion to Dismiss Santos' Complaint for failure to state causes of action against HIH. (R. pp. 65-67; 4/2/2021 Mot. to Dismiss.) HIH argued that it was entitled to retake possession under the express terms of the Lease and South Carolina law and that Santos' individual causes of action were legally deficient. (R. pp. 68-81; 5/25/2021 Mem. in Support.)

On May 27, 2021, Santos filed a Memorandum of Law on HIH's Motion to Dismiss. (R. pp. 142-147; 5/27/2021 Santos' Opp. Mem.) Santos argued that HIH improperly retook possession of the Property because 1) Santos retained the right to possess the Property pursuant to a "holdover" provision in the Lease, 2) the Bond Order prohibited HIH from retaking possession while her appeal of the magistrate court's ruling was pending, and 3) HIH did not retake possession peaceably. (R. pp. 142-147.) Santos did not otherwise respond to HIH's arguments in support of dismissal of her specific causes of action, except to request leave to amend to correct any deficiencies identified by the Court. (R. pp. 142-147.)

The hearing on HIH's Motion to Dismiss took place on June 3, 2021, before the Honorable Judge Bentley D. Price. (R. pp. 166-179; 6/3/2021 Hearing Transcript.) On June 14, 2021, Judge Price issued a Form 4 Order granting HIH's Motion to Dismiss in toto. (R. pp. 4-6; 6/14/2021 Form 4 Order.)

On June 15, 2021, Santos filed a Motion for Reconsideration of the circuit court's order dismissing the claims against HIH. (R. pp. 148-157; 6/15/2021 Santos' Motion for

Reconsideration.) The circuit court denied the motion via written order entered on June 29, 2021. (R. pp. 7-9; 6/29/2021 Order Denying Reconsideration.) This appeal followed.

STANDARD OF REVIEW

When reviewing a dismissal for failure to state a claim, an appellate court applies the same standard as the circuit court—the pleadings are construed liberally, and all well-pled facts are presumed true. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 498–99 (2014) (citation omitted). The court need *not*, however, presume the truth of allegations pled merely in conclusory fashion or stating legal conclusions. *HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) ("[O]n a 12(b)(6) motion, the court is required to presume all well pled *facts*, not propositions of law, to be true.") (emphasis in original); *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (stating that even under the liberal standard applicable to a motion to dismiss, a mere conclusory allegation, unsupported by particular allegations of fact, is insufficient). Under this standard, a claim should be dismissed when the facts alleged in the complaint do not support relief. *Brouwer v. Sisters of Charity Providence Hospital*, 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014).

In considering a motion to dismiss, the circuit court ordinarily must base its rulings on the allegations set forth in the complaint. *Doe v. Marion,* 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). However, the court may also consider documents attached to or referenced in the complaint. *Brazell v. Windsor,* 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). In addition, the court may take judicial notice of court orders and other filings from related litigation. *Doe v. Bishop of Charleston,* 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 (2014) (recognizing that a circuit court may take judicial notice when ruling on a 12(b)(6) motion without converting it into one of summary judgment); *see also* Rule 201(d), SCRE ("A court shall take judicial notice if requested

by a party and supplied with the necessary information."); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").[2]

ARGUMENT

I. The circuit court correctly dismissed Santos' Complaint pursuant to Rule 12(b)(6), SCRCP, for failure to state a claim against HIH.

Santos alleges that HIH improperly retook possession of commercial Property she leased from HIH and demolished the building. But Santos' Lease had expired, HIH had instructed her to vacate, and HIH had the right, under the Lease and South Carolina law, to retake possession of the Property. In addition, Santos' specific causes of action that she attempts to assert are legally deficient. Accordingly, the circuit court correctly granted HIH's motion to dismiss.

A. Santos fails to state a claim against HIH because HIH had the right under the Lease and South Carolina law to retake possession after expiration of the Lease term.

All of Santos' causes of action relate to HIH's conduct in retaking possession and demolishing the Property after expiration of the Lease term. But HIH had the right under the Lease and South Carolina law to retake possession at the conclusion of the Lease term without an order of any court. The Lease expressly granted HIH the right, upon Santos' failure to surrender the premises, to "re-enter and forthwith repossess the entire Premises." (R. p. 89; Lease, Sec. 30.) Moreover, under South Carolina law, where a tenant has no right to continue in possession upon expiration of the lease term, the landlord may expel her from the premises without legal process and may not be held liable for doing so. *Rush v Aiken Mfg. Co.*, 58 S.C. 145, 36 S.E. 497, 499

[2] Thus, in addition to the Complaint, the circuit court was entitled to consider the Lease between HIH and Santos, which Santos also references in the Complaint (R. p. 54; 3/2/2021 Compl. ¶ 6.), as well as the rulings and orders of the magistrate's court and the circuit court relating to HIH's eviction of Santos and Santos' related appeals. (R. pp. 11-36; R. pp. 37-44; R. pp. 45-48; R. pp. 49-51.)

(1900) (holding that the landlord could retake possession upon expiration of the lease term without process of law); *Barbee v. Winnsboro Granite Corp.*, 190 S.C. 245, 2 S.E.2d 737, 738 (1939) (affirming that "the rule in this state is that, where the tenancy has terminated, the landlord may enter upon and retake possession of the premises, and he commits no trespass upon the real estate in so doing, even if force is used in making such entry, and therefore, in such a case, he is not liable to a civil action for trespass.").[3] Furthermore, nothing in the commercial ejectment statutes indicates that the legislature intended to make the ejectment remedy exclusive or to abrogate the self-help remedies available under the common law. *See* S.C. Code Ann. § 27-37-10, et. seq. Thus,

[3] South Carolina is not alone in this regard. Despite the widespread existence of ejectment statutes, most jurisdictions permit a commercial landlord to exercise self-help in retaking possession of the leased property upon expiration of the term. *See, e.g.*, *Restatement of the Law of Property* 2d § 14.2, Reporter's Note (1977) ("[A]n apparent majority of jurisdictions still permits the landlord to use some degree of self-help to recover possession of the leased property from a holdover tenant" and "maintain that the existence of the statutory remedy does not prohibit the landlord from using self-help."); *Shorter v. Shelton*, 33 S.E.2d 643, 647 (Va. 1945) (holding landlord has a common law right to retake possession from a holdover tenant and summary ejectment statutes are not the landlord's exclusive remedy); *Laney v. State*, 842 A.2d 773, 785 (Md. 2004) ("The right of peaceable self-help, therefore, is a viable mechanism for a title owner of property to obtain actual possession of real property from a holdover mortgagor."); *In re Estate of Sauder*, 156 P.3d 1204, 1216 (Kan. 2007) ("Generally, courts enforce clauses in commercial leases that reserve a landlord's right to peaceably reenter commercial premises and regain possession if a tenant breaches a material obligation."); *Watson v. Brown*, 686 P.2d 12 (Haw. 1984) (holding that a summary eviction proceeding is not exclusive remedy available to landlord for breach of lease and landlord may resort to self-help to repossess premises); *Rucker v Wynn*, 441 S.E.2d 417, 420 (Ga. App. 1994), *disapproved of on other grounds by George v. Hercules Real Estate Servs., Inc.*, 795 S.E.2d 81 (Ga. App. 2016) (holding that where terms of commercial lease gave a landlord the right to reenter and take possession of premises without recourse to legal proceedings, he may do so); *Martinez v. Ulloa*, 22 N.Y.S.3d 787 (N.Y. App. Term 2015) (holding a landlord may utilize self-help to regain possession of the demised commercial premises where permitted by lease agreement); *In re 1345 Main Partners, Ltd.*, 215 B.R. 536 (Bankr. S.D. Ohio 1997) (holding that, under Ohio law, a commercial lessor may resort to self-help repossession, pursuant to a valid lease provision, as remedy for lessee's breach of lease agreement); *Brown v. State Cent. Bank*, 459 F. Supp. 2d 837 (S.D. Iowa 2006) (holding that, under Iowa law, landlord could resort to self-help where commercial tenant failed to vacate leased premises after expiration of term and there was no genuine dispute about landlord's entitlement to possession).

HIH had the right, under the Lease and South Carolina law, to retake possession without legal process upon expiration of the Lease term.

Moreover, there can be no dispute that the Lease term had expired when HIH retook possession. The Lease term ended on November 30, 2018. (R. p. 83; Lease, p. 1.)[4] The Lease contained no right of renewal, and it expressly required Santos to surrender the Property at the conclusion of the term. (R. p. 88; Lease, Sec. 22.) Accordingly, HIH was entitled to retake possession when it did so in March of 2019.

Santos argues, however, that she was entitled, under Section 22 of the Lease, to remain in the Property after the Lease term expired by paying 150% of the amount of rent. But that is not at all what the provision says. Section 22 states as follows:

> **22. HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

(R. p. 88; Lease, Sec. 22.) This section expressly required Santos to "surrender" the Property "at the end of the term of this lease." The section did not grant Santos the *option* to stay beyond the expiration date by paying 150% of the rent. Rather, the section imposed a *penalty* on Santos, in the form of increased rent, for illegally holding over after the end of the Lease term. (R. p. 88.) Thus, Santos had no right under Section 22 to remain in the Property after November 30, 2018.

[4] In fact, although the Lease term had not yet expired when the magistrate ordered the eviction, the magistrate expressly recognized in the ejectment order that the Lease was set to expire on November 30, 2018. (R. p. 12; 12/7/2017 Order at 2.)

Santos next argues that, by retaking possession of the Property, HIH violated the terms of the Bond Order dated May 17, 2018, which stayed the warrant of execution issued in connection with the Ejectment Order. HIH did not violate the Bond Order. The relevant portion of the Bond Order states as follows:

> Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

(R. 10; 5/7/2018 Bond Order.) The Bond Order merely stayed the sheriff's execution of the warrant of ejectment issued by the magistrate. Nothing in the Bond Order precluded HIH from retaking possession of the property in accordance with South Carolina law *upon the subsequent expiration of the Lease term*. The Bond Order does not direct HIH to do, or to not do, anything, and it does not address what should or should not happen upon expiration of the Lease. HIH therefore did not violate any provision of the Bond Order, and the Bond Order did not give Santos the right to remain in the Property after expiration of the Lease.

Santos also argues HIH can be held liable for retaking possession because HIH failed to do so *peaceably*. But HIH retook possession, and demolished the building, without breaching the peace. As Santos expressly alleges, Hanahan law enforcement was present on the scene when HIH retook possession. (R. pp. 54, 55-56; 3/2/2021 Compl. ¶¶ 4, 12.) Santos does not allege, nor could she, that force was used against her person at any time. Thus, the Complaint fails to allege facts that, if accepted as true, establish that HIH breached the peace in retaking possession of the Property. *See Barbee*, 190 S.C. at 245, 2 S.E.2d at 738 ("It is entirely well settled that, unless the tenant is driven off either by actual force applied to him, or as the only apparent way of avoiding its use [against him] at the time, he cannot be regarded as forcibly expelled, and there is no forcible

entry.") (quoting *Smith v. Detroit Loan & Building Association*, 73 N.W. 395, 398 (Mich. 1897)). Although HIH denies that any restaurant equipment belonging to Santos was in the building when it was demolished, the allegation that equipment was demolished with the building would not establish a breach of the peace, particularly since HIH repeatedly directed Santos in writing to vacate and remove any belongings from the building after expiration of the Lease. (*See id.*; *see also* R. pp. 129, 131.) Accordingly, the circuit court correctly dismissed Santos' claims against HIH pursuant to Rule 12(b)(6), SCRCP.

B. Santos' allegations in support of specific counts are legally deficient.

The circuit court's dismissal of Santos' Complaint was also proper because Santos failed to plead the required elements of her specific causes of action. Further, Santos failed to preserve her arguments in this regard for appellate review by failing to respond to these arguments in her circuit court filings, at the hearing on the motion to dismiss, or even in her briefing to this Court.

i. Santos failed to preserve her arguments for appellate review.

As an initial matter, Santos has not preserved for appellate review any argument that the circuit court erred in dismissing her specific causes of action on the grounds discussed below. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the ***long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court*** and obtain a ruling before an appellate court will review those issues and arguments." (emphasis added)).

Here, Santos failed to present *any* arguments to the circuit court to rebut HIH's substantive arguments regarding Santos' failure to plead the required elements of her claims. Instead, Santos merely made repeated arguments to the circuit court that she should be given a chance to amend

her Complaint. Santos has not otherwise raised any substantive arguments before the circuit court to show how her causes of action were pleaded sufficiently to survive a Rule 12(b)(6) motion. (*See* R. pp. 142-147, 5/27/2021 Santos' Opp. Mem.; R. pp. 166-179, 6/3/2021 Hearing Transcript; R. pp. 148-157, 6/15/2021 Santos' Motion for Reconsideration.) Moreover, Santos similarly fails to present any such arguments before this Court in her Initial Brief.

As a result, Santos failed to preserve for appellate review any arguments that the circuit court erred in dismissing the causes of action discussed below.

ii. Santos failed to allege the elements of fraud.

The elements of fraud are: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 334, 574 S.E.2d 502, 509 (Ct. App. 2002) (quoting *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993)). "A complaint is fatally defective if it fails to allege all nine elements of fraud. Where the complaint omits allegations on any element of fraud, the circuit court should grant the defendant's motion to dismiss the claim." *Id*. (quotation marks omitted).

Santos pleads no statement, much less a misrepresentation, by HIH to Santos. The only misrepresentation alleged is HIH's purported statement "to the City that the demolition permit was necessary to abate asbestos." (R. p. 57; 3/2/2021 Compl. ¶ 16.) But Santos alleges no false statement *made to her*.[5] Moreover, she did not, and cannot, plead that HIH intended a

[5] Even if Santos had standing to plead fraud based on the alleged statements by HIH to the City, which she does not, her fraud claim would still fail because she alleges the City was not ignorant of the truth. (R. p. 57; 3/2/2021 Compl. ¶ 20 (alleging the City "knew [the representation by HIH] was false").)

misrepresentation be acted upon by Santos, that Santos relied on the truth of any alleged representation by HIH, or that she had a right to rely on the same. Because Santos failed to plead at least four elements of fraud, the circuit court correctly dismissed her fraud claim.

iii. Santos' cause of action for "tortuous [sic] interference with prospective business relations" failed to state a claim.

South Carolina does not recognize a cause of action for tortious "interference with business relations." Instead, South Carolina recognizes two distinct torts for intentional interference with business relationships, which have specific pleading requirements: intentional interference with existing contract and intentional interference with prospective contract. Santos alleges no interference with an existing contract, only interference with "prospective" business relations. (R. p. 63; 3/2/2021 Compl., Seventh Cause of Action.)

The elements of intentional interference with prospective contract are: (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. *See Brown v. Stewart*, 348 S.C. 33, 55, 557 S.E.2d 676, 688 (Ct. App. 2001); *Love v. Gamble*, 316 S.C. 203, 214, 448 S.E.2d 876, 882 (Ct. App. 1994). Importantly, "[t]he plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party," and that the defendant's actions caused a third party not to agree to a prospective contract, resulting in damage to the plaintiff. *United Educ. Distributors, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 15, 564 S.E.2d 324, 329 (Ct. App. 2002). In other words, the potential contract must have been a "close certainty" and not speculative, *Santoro v. Schulthess*, 384 S.C. 250, 263, 681 S.E.2d 897, 904 (Ct. App. 2009), and the plaintiff must allege that a defendant "thwarted" the proposed contract, resulting in damage to the plaintiff. *United Educ. Distributors, LLC*, 350 S.C. at 18, 564 S.E.2d at 330.

Santos fails to allege a specific contract that HIH allegedly thwarted. She merely alleges that she was "damaged by the defendant's acts in destroying her business and equipment." (R. p. 63; 3/2/2021 Compl. ¶ 54.) This allegation is plainly inadequate under South Carolina law. Thus, the circuit court properly dismissed Santos' claim for "interference with prospective business relations."

iv. Santos failed to state a claim for abuse of process because she does not allege HIH initiated a lawsuit for an ulterior purpose.

In South Carolina, the "essential elements" of an abuse of process cause of action are: "(1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding." *Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014). Ulterior purpose "exists if the process is used to secure an objective that is not legitimate in the use of the process." *Pallares*, 407 at 370–71, 756 S.E.2d at 133 (citation and internal quotation marks omitted). "[N]o action lies where a person has an incidental or concurrent motive of spite or merely seeks to gain a collateral advantage from the process." *Id*. at 371, 756 S.E.2d at 133. Instead, the "collateral objective must be the sole or paramount reason for acting." *Id*. at 371, 756 S.E.2d at 134 (citation and internal quotation marks omitted). "An allegation that a party had a 'bad motive' or an 'ulterior purpose' in bringing an action, standing alone, is insufficient to sustain an abuse of process claim." *Id*. at 371, 756 S.E.2d at 133.

Here, Santos makes only the conclusory allegation that HIH used police officers to assist it in retaking possession of the Property and that HIH did so "for an ulterior purpose." (R. p. 59; 3/2/2021 Compl. ¶ 30.) Santos does not say what the purported ulterior purpose consisted of or allege it was HIH's sole reason for acting. *See also Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding that conclusory allegations are not facts sufficient to constitute a cause of action). In addition, "process" means commencing litigation. *See Pallares*,

407 S.C. at 370-71, 756 S.E.2d at 133; *see also Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 70, 567 S.E.2d 251, 253 (Ct. App. 2002) ("To sustain a claim for abuse of process, it is axiomatic that the judicial process must in some manner be involved.") (citation and internal quotation marks omitted). But Santos does not allege HIH commenced a lawsuit for an ulterior purpose. (R. p. 59; 3/2/2021 Compl. ¶¶ 27-30.) Allegedly asking police officers to assist in retaking possession of property is not the type of "process" required to support this cause of action. Accordingly, the circuit court was correct in dismissing Santos' claim for abuse of process.[6]

v. Santos failed to state a claim for breach of the covenant of quiet enjoyment because she had no right to quiet enjoyment of the Property after the Lease expired.

The Lease provided for Santos to have "peaceable possession" of the Property, but only "[s]ubject to the terms, covenants, and conditions of [the] lease." (R. p. 89; Lease, Sec. 29.) The Lease expired according to its terms on November 30, 2018, before the events that underlie Santos' allegations, and it contained no right of renewal. (R. p. 83; Lease, p. 1.) Santos had no right to peaceable possession after the Lease expired and HIH repeatedly instructed her to vacate the Property and remove any belongings. Thus, the circuit court properly dismissed this cause of action.

[6] To the extent Santos' Complaint could be construed to allege that HIH's commencement of the ejectment action in 2016 constitutes abuse of process, that claim would be barred by the statute of limitations. Abuse of process has a three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530; *see also Whitfield Const. Co. v. Bank of Tokyo Tr. Co.*, 338 S.C. 207, 222, 525 S.E.2d 888, 896 (Ct. App. 1999). The limitations period begins to run when the plaintiff "knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. Santos filed this lawsuit on March 2, 2021, which is over four years after Santos was served with pleadings, and appeared, in the ejectment action.

vi. Santos failed to state a claim for intentional infliction of emotional distress because she fails to allege any extreme and outrageous conduct or severe emotional distress.

To recover for intentional infliction of emotional distress, the plaintiff must establish that: (1) the defendant intentionally inflicted severe emotional distress; (2) the conduct was so "extreme and outrageous" as to exceed "all possible bounds of decency"; (3) the defendant's conduct caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007) (citing *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776, 778 (1981)).

The threshold for establishing a claim for intentional infliction of emotional distress under South Carolina law is very high. There is a "heightened burden of proof" where "the plaintiff must show both that the conduct on the part of the defendant was 'extreme and outrageous,' and that the conduct caused distress of an "extreme or severe nature.'" *Hansson*, 374 S.C. at 356, 650 S.E.2d at 71 (quoting *Ford*, 276 S.C. at 162, 276 S.E.2d at 778). "Even callous, offensive, or extremely insensitive behavior" does not necessarily establish the tort. *Doe v. Erskine Coll.*, CIV.A. 8:04-23001RBH, 2006 WL 1473853 at *14, n.18 (D.S.C. May 25, 2006) (citing *Hawkins v. Greene,* 311 S.C. 88, 427 S.E.2d 692, 694 (Ct. App. 1993) (stating that to permit recovery on a claim of intentional infliction of emotional distress, the defendant's conduct must be "so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community"); *Shipman v. Glenn,* 314 S.C. 327, 443 S.E.2d 921, 922 (Ct. App. 1994) (holding evidence of "both callous and offensive" conduct could not provide the basis for an action for intentional infliction of emotional distress). Thus, "the court plays a significant gatekeeping role" to "prevent claims for intentional infliction of emotional distress from becoming a panacea

for wounded feelings rather than reprehensible conduct." *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 (citations and internal quotation marks omitted).

The conduct alleged in Santos' Complaint fails to meet this heighted pleading standard. Santos alleges HIH retook possession of its Property and demolished its own building. (R. pp. 61-62; 3/2/2021 Compl. ¶¶ 41, 44.) But because Santos failed to surrender the Property upon expiration of the Lease, HIH had the right under the Lease and South Carolina law to take these actions. Regardless, HIH's alleged conduct was not "extreme and outrageous" as a matter of law.

Nor does Santos plead that her alleged emotional distress was sufficiently severe. In *Hansson*, the Supreme Court emphasized that a plaintiff must plead and prove emotional distress so severe that no reasonable person could be expected to endure it. *See* 374 S.C. at 356, 650 S.E.2d at 70 ("Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area."). The plaintiff's claim in *Hansson* that he lost sleep and developed a habit of grinding his teeth was insufficient to survive summary judgment. *Id.* at 356, 650 S.E.2d at 70; *see also AJG Holdings LLC v. Dunn*, 392 S.C. 160, 169, 708 S.E.2d 218, 223 (Ct. App. 2011) (plaintiffs failed to establish severity as a matter of law despite testimony that the defendant's actions caused them to become "emotionally ill", lose twenty pounds, develop high blood pressure and digestive problems and required them to take medication for high blood pressure and nervousness). Santos alleges only that HIH's conduct caused her "to be afraid for her safety and severe emotional distress." (R. p. 62; 3/2/2021 Compl. ¶ 43.) This allegation fails to

state a claim under *Hansson* and *Dunn*. Thus, Santos' claim for intentional infliction of emotional distress was properly dismissed by the circuit court.

vii. Santos failed to state a claim for conspiracy because she does not plead additional facts in furtherance of the conspiracy separate from other wrongful acts alleged in the Complaint.

A "plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cty. Sch. Dist.*, No. 2018-002025, 2021 WL 1992245, at *6 (S.C. May 19, 2021); *see also Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719, 727 (1942).

Santos failed to plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, which requires dismissal. *See Paradis*, 2021 WL 1992245, at *6 ("The plaintiff . . . failed to plead any overt acts in furtherance of the conspiracy. Thus, the Court correctly concluded the civil conspiracy claim failed as a matter of law. In that situation, the Court noted, the plaintiff's repetition of the same acts as the prior claims was insufficient to salvage the claim."); *see also Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."). Santos alleges only that Defendants "entered into an unlawful combination" to deprive her "from the right to enter her own business or to have access to judicial review" and to injure her "by destroying her business and equipment." (R. p. 56; 3/2/2021 Compl. ¶ 13.) She alleges this same conduct in support of her other causes of action. (R. pp. 58, 59, 61, 62, 63, 64; 3/2/2021 Compl. ¶¶ 23-25, 29-31, 37-38, 43-45, 47-48, 54, and 57.) Because Santos

failed to plead additional conduct in furtherance of the conspiracy, separate and independent from other wrongful acts she alleges in the Complaint, the circuit court correctly dismissed Santos' civil conspiracy claim.

viii. Santos fails to state a claim against HIH for attorney's fees under S.C. Code Ann. § 15-77-300, -310 because the statute does not provide for award of attorney's fees against a private party such as HIH.

Section 15-77-300 provides only for fee awards against the State. S.C. Code Ann. § 15-77-300 ("[T]he court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs ***against the appropriate agency*** . . .." (emphasis added)). HIH is not a state agency and, therefore, the statute provides no authority for award of attorney's fees against HIH.[7] *See also S.C. Pub. Int. Found. v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017) ("[A]gency under the state action statute must be limited to executive branch agencies."). Santos does not and cannot raise any other viable authority allowing recovery of attorney's fees against HIH. Thus, Santos cannot recover attorney's fees from HIH, and the circuit court did not err in dismissing this cause of action.

II. The circuit court did not err in issuing a Form 4 Order which did not include findings of fact and conclusions of law.

Santos appears to argue that Rule 52, SCRCP, required the circuit court to issue findings of fact and conclusions of law in dismissing her Complaint with prejudice pursuant to Rule 12(b)(6). This argument fails because Rule 52 requires no such thing.

Rule 52(a), SCRCP, requires the circuit court to state its findings of fact and conclusions of law *only* in "all actions tried upon the facts without a jury or with an advisory jury." This requirement is inapplicable here because the circuit court did not try this case upon the facts. *See*

[7] Chapter 77 of Title 15 of the Code of Laws of South Carolina is entitled "Suits Involving State, State Agencies and Officials and United States," and, therefore, it does not apply to HIH, which is a private limited liability company.

Collins Music Co. v. IGT, 353 S.C. 559, 565, 579 S.E.2d 524, 527 (Ct. App. 2002) ("The requirement imposed upon the court by Rule 52(a), SCRCP to 'find the facts specially and state separately its conclusions of law' is limited to cases tried without a jury or with an advisory jury and is inapplicable here."). Indeed, Rule 52(a) specifically provides that "***[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12*** or 56 or any other motion except as provided in Rule 41(b)." (emphasis added). It makes sense that findings of fact would not be required in ruling on a Rule 12(b)(6) motion because a Rule 12(b)(6) motion does not call for fact finding but rather merely challenges the sufficiency of the complaint.

Santos also suggests that Rule 41(b) applied here, such that Rule 52(a) required the circuit court to issue findings of fact and conclusions of law. But Rule 41(b) clearly does not apply. Rule 41(b) allows the defendant in a nonjury trial to move the circuit court "as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified."[8] *Wedlake v. Acord*, No. 2018-001209, 2021 WL 1291922, at *3 (Ct. App. Apr. 7, 2021) (citation and internal quotation marks omitted). As this Court explained in *Fleshman v. Trilogy*, No. 2005-UP-354, 2005 WL 7084030, at *3 (Ct. App. May 23, 2005):

> According to Rule 41(b), "[i]f the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a)." However, Rule 52(a) provides that findings of fact and conclusions of law are unnecessary when a court decides motions under Rule 12.
>
> Rule 41, is not applicable to this case. It applies in situations where the plaintiff has presented all of its evidence. In this case, Respondents moved to dismiss pursuant to Rule 12(b)(6). Because ***Rule 52, SCRCP does not require the circuit court to make findings of fact or conclusions of law in Rule 12 rulings***, the circuit court did not err in issuing a form order.

[8] Rule 41(b) also addresses involuntary dismissal of a complaint "[f]or failure of the plaintiff to prosecute or to comply with these rules," but this circumstance is not at issue in this action.

Id. (emphasis added). *See also Woodson v. DLI Properties, LLC*, 406 S.C. 517, 526–27, 753 S.E.2d 428, 433 (2014) (stating that "findings [of facts] and conclusions [of law] are not required for appellate review" because Rule 52 provides that such findings and conclusions "are unnecessary on decisions of motions under Rules 12 or 56"); *Kinghorn as Tr. for the Mildred Ann Kinghorn Tr. dated 28 Apr. 2004 v. Sakakini*, 426 S.C. 147, 151, 825 S.E.2d 748, 750 (Ct. App. 2019) ("Thus, pursuant to Rule 52(a), SCRCP, the circuit court is not required to state its findings of fact and conclusions of law in decisions on motions to dismiss, summary judgment motions, or any other motion except those dealing with involuntary dismissal."). Because Rule 41(b) comes into play only after the plaintiff presents all of his or her evidence in a non-jury trial, Rule 41(b) is inapplicable here, and Rule 52(a) therefore did not require the circuit court to make findings of fact and conclusions of law.

Santos' argument that this Court should reverse the circuit court because she is unable to ascertain the basis of the circuit court's ruling also fails. By order dated June 24, 2008, the South Carolina Supreme Court approved the form used by the circuit court in this case. *See* Rule 84, SCRCP ("The Supreme Court shall prescribe the content and format of forms required by these rules."); *see also Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 629 n.4, 779 S.E.2d 826, 830 (Ct. App. 2015) (citing Order re: Form 4, Judgment in a Civil Case, No. 2008–06–24–01 (S.C. Sup. Ct. filed June 24, 2008)).[9] Thus, issuance of a Form 4 order is within a South Carolina circuit court's discretion and is entirely appropriate. *See Easterling v. Burger King Corp.*, 416 S.C. 437, 454, 786 S.E.2d 443, 452 (Ct. App. 2016) ("The circuit court acted within its discretion in issuing a Form 4 order, and we find Easterling's arguments to the contrary unavailing."). When a circuit

[9] The Form 4 form has subsequently been revised several times, with the latest revision in 2017. *See* Order re: Revised Judgment in a Civil Case Form (SCRCP Form 4C), No. 2017-02-15-01 (S.C. Sup. Ct. filed February 15, 2017).

court issues a Form 4 order, unless stated otherwise therein, the presumption is that the court issued the order because it agreed with the arguments of the winning party. *See Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 554, 762 S.E.2d 687, 688 (2014) ("The circuit court, in a Form 4 order, summarily ended the case, thereby agreeing with [defendant] and denying all relief [plaintiff] sought."). Moreover, a trial "court's form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal." *Easterling*, 416 S.C. at 453, 786 S.E.2d at 452 (citation and internal quotation marks omitted). Here, the parties have "provided an ample record for this [C]ourt to conduct meaningful appellate review" of the circuit court's dismissal of Santos' Complaint. *Id*. Further, it is clear from the record that the circuit court issued a Form 4 Order because it agreed with HIH's arguments presented to the circuit court in its briefing, as well as during oral argument at the hearing on the motion to dismiss. The use of a Form 4 Order provides no grounds for reversal of the circuit court's ruling.

III. The circuit court did not err in dismissing the claims against HIH without granting Santos leave to amend.

Santos argues in her Initial Brief that the circuit court erred in dismissing her claim against HIH with prejudice rather than giving her leave to amend. But the circuit court properly dismissed the claims against HIH with prejudice because allowing her to amend would have been futile, and Santos never even explained to the circuit court, or to this Court, what additional facts she could allege to cure her pleading deficiencies. Thus, the circuit court properly exercised its discretion by not granting Santos leave to amend the Complaint.

Circuit courts have wide latitude in deciding whether to allow amendment of pleadings. *See Berry v. McLeod*, 328 S.C. 435, 449–50, 492 S.E.2d 794, 802 (Ct. App. 1997) (affirming circuit court's dismissal with prejudice and without leave to amend and noting that such a ruling "is within the sound discretion of the circuit court and will rarely be disturbed on appeal.");

Newman v. Old West, Inc., 286 S.C. 394, 334 S.E.2d 275 (1985) (holding circuit court's dismissal with, rather than without, prejudice was not an abuse of discretion). This is particularly true when—as here—the plaintiff's Rule 59(e) motion and subsequent appellate brief fail to cite any new factual allegations that would impact the issue. *See Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 153, 723 S.E.2d 835, 840–41 (Ct. App. 2012) (holding the circuit court did not err by dismissing the complaint with prejudice and noting an appellate court will not reverse such a ruling when the plaintiff has not identified any new facts that would alter the analysis). A circuit court does not abuse its discretion in denying a motion to amend if the amendment would be futile. *See Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997).

A. Santos failed to identify additional facts she could have alleged to cure her pleading deficiencies.

The circuit court did not err in dismissing Santos' claims against HIH with prejudice because Santos failed to submit a proposed amended pleading or to otherwise indicate how she proposed to amend her Complaint to cure the deficiencies. When interpreting the South Carolina Rules of Civil Procedure, South Carolina courts look "for guidance to cases interpreting the federal rules." *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016). The language of Rule 15(a) of the Federal Rules of Civil Procedure closely mirrors the language of Rule 15(a) of the South Carolina Rules of Civil Procedure. Federal courts have held a party seeking leave to amend "must either attach a copy of the proposed amendment to the motion or set forth the substance thereof." *U.S. ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1362 (11th Cir. 2006); *see also Roskam Baking Co. v. Lanham Mach. Co.*, 288 F.3d 895, 906 (6th Cir. 2002) (holding a court must be able to determine whether "justice so requires" an amendment, "and in order to do this, the court must have before it the substance of the proposed amendment"); *D.R. Horton, Inc. v. Landbank Fund VIII, LLC*, No. 4:08-CV-1711-TLW-TER, 2009 WL 10678195, at *1 (D.S.C. Mar.

31, 2009) ("The cases interpreting Rule 15 require the party seeking to amend to attach a copy of the proposed amendments to the motion, and failure to do so may result in denial of the leave to amend."). In addition, a party "should not be allowed to amend [his] complaint without showing how the complaint could be amended to save the meritless claim." *Atkins*, 470 F.3d at 1362 (alteration in original) (citation and internal quotation marks omitted). Thus, Santos had to provide the circuit court with the substance of her amendment for the circuit court to determine whether it should grant Santos' request to amend, and Santos had to demonstrate to the circuit court that her proposed amended pleading would withstand a motion to dismiss. Santos failed even to attempt to do either of these things.

In addition, Santos' motion for reconsideration in the circuit court (R. pp. 148-157; 6/15/2021 Santos' Motion for Reconsideration) and her appellate briefing (*see* 02/09/2022 Santos' Initial Brief) fail to identify any new facts or theories that she could or would have raised. As a result, the dismissal with prejudice was appropriate and should be affirmed. *See Sullivan v. Hawker Beechcraft Corp*., 397 S.C. 143, 153, 723 S.E.2d 835, 840–41 (Ct. App. 2012) (refusing to reverse or alter circuit court's ruling dismissing complaint with prejudice when plaintiff has not identified any new facts that would alter the analysis); *see also Spence v. Spence*, 368 S.C. 106, 130–31, 628 S.E.2d 869, 882 (2006) (affirming circuit court's dismissal with prejudice and noting that even when a claim should have been dismissed *without* prejudice, the appellate court will nevertheless affirm the dismissal with prejudice when the appellant's brief merely rehashes the same inadequate facts and claims and fails to identify any new facts or theories of recovery).

In her Initial Brief, Santos relies almost exclusively on the *Spence* opinion for the notion that the circuit court can *never* grant dismissal under Rule 12(b)(6) with prejudice and without leave to amend. But *Spence* does not say that. Instead, the court in *Spence* held that "when a

complaint is dismissed with prejudice and the plaintiff erroneously is denied the opportunity to file and serve an amended complaint," the appellate court still "may in its discretion affirm the dismissal of the complaint with prejudice" when "the plaintiff fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted." *Spence*, 368 S.C. at 130–31, 628 S.E.2d at 882. This is precisely the situation and outcome that are warranted here because Santos has failed to present any new or additional factual allegations or theories that could be sufficient to give rise to a claim.

IV. Santos' due process rights were not violated.

Santos also argues that her due process rights were violated because the circuit court dismissed her Complaint with prejudice via a Form 4 Order. Santos provides no legal support for her argument, aside from her misinterpretation of Rules 41(b) and 52, SCRCP. As discussed in detail above, Rules 41(b) and Rule 52 do not require the circuit court to state its findings of fact and conclusions of law in its Rule 12(b)(6) ruling. *See Kinghorn*, 426 S.C. at 151, 825 S.E.2d at 750 ("Sakakini argues the circuit court erred in issuing a Form 4 order which failed to include detailed findings of fact and conclusions of law and violated due process. We disagree."). Further, the circuit court's dismissal of Santos' lawsuit did not affect her liberty or property interests and, therefore, does not implicate her due process rights.

In any event, Santos' due process rights were not violated in this instance. "Procedural due process requires notice and the opportunity to be heard." *McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 194, 743 S.E.2d 843, 847 (Ct. App. 2013) (citation and internal quotation marks omitted); *see also State ex rel. McLeod v. Brown*, 278 S.C. 281, 284, 294 S.E.2d 781, 782 (1982) ("We believe that an order substantially affecting a party's rights should not be made in a case without notice to the party prejudiced by it and an opportunity to be heard."); *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) ("The requirements of due process not

only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review."). Here, it is undisputed that Santos received notice of HIH's Motion to Dismiss, and Santos filed her opposition to HIH's Motion. (R. pp. 142-147; 5/27/2021 Santos' Opp. Mem.) There is also no dispute that Santos had the opportunity to be heard because she received the notice of the hearing on HIH's Motion to Dismiss, and Santos' counsel in fact appeared at said hearing and argued on behalf of Santos against HIH's Motion before the circuit court. (R. pp. 166-179; 6/3/2021 Hearing Transcript.) Finally, there is no dispute that Santos had and took advantage of the opportunity of judicial review when she filed her Motion for Reconsideration of the circuit court's dismissal order. (R. pp. 148-157; 6/15/2021 Santos' Motion for Reconsideration.) Thus, Santos received proper notice of HIH's Motion, had an adequate opportunity to be heard by submitting her opposition brief and presenting her arguments at the hearing on HIH's Motion, and received judicial review via the circuit court's consideration of her Motion for Reconsideration. *See, e.g.*, *Greenville Pharm. Rsch., Inc. v. Parham & Smith, LLC*, No. 2016-000569, 2017 WL 6371317, at *1 (S.C. Ct. App. Dec. 13, 2017) (finding circuit court did not violate appellant's due process rights because circuit court gave appellant several opportunities at hearing on respondent's Rule 12(b)(6) motion to argue for existence of private cause of action against respondent, circuit court informed appellant of its option to file motion to reconsider, and appellant filed motion to reconsider).

As a result, the circuit court's dismissal with prejudice of Santos' Complaint did not deny or violate her due process rights.

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court's dismissal of Santos' Complaint with prejudice.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Civil Court Appeal Case No. 2021-CP-08-00513

Appellate Case No. 2021-000768

Aracelis Santos, ... Appellant,

v.

Harris Investment Holdings, LLC, City of Hanahan, City of Hanahan Police Department, John Doe #1 and John Doe #2, employees of the City of Hanahan Police Department, Defendants,

of which

Harris Investment Holdings, LLC is..... Respondent.

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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