

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Aug 09 2022**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
The Honorable Letitia H. Verdin

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S.C. SUPREME COURT

Appellate Case No. 2022-000881

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Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc. and on behalf of all other similarly situated members of Woodington Homeowners' Association, Inc.,

Appellant,

v.

Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix; McCabe, Trotter, & Beverly, P.C.; and State Farm Fire and Casualty Company,

Respondents,

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**RESPONDENT MCCABE TROTTER & BEVERLY, PC'S RETURN TO  
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

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COMES NOW RESPONDENT, McCabe Trotter & Beverly, PC ("MTB") and submits this Return to Petition for Writ of Certiorari. Petitioner's Petition for Writ of Certiorari should be denied because the Court of Appeals appropriately affirmed the lower courts' rulings because Petitioner failed to state any claim against MTB which could form a basis for relief. Further, there are no "special [or] important reasons" to grant Petitioner's claim as described by Rule 242, SCACR.

**I. Petitioner’s Does Not Have a Constitutional Right to Discovery Before the Court’s Consideration of Dismissal Pursuant to Rule 12(b)(6), SCRPC.**

Petitioner argues that the trial court should have afforded him the opportunity to conduct discovery before dismissing his case pursuant to Rule 12(b)(6), SCRPC. In so arguing, Petitioner misconstrues the requirements and purpose of the rule. Rule 12(b)(6) provides that a Defendant may ask the court to dismiss a claim if it fails to state any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). Allowing discovery before ruling on such a motion would be superfluous because, “[a] decision on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint.” Burns v. Gardner, 328 S.C. 608, 614, 493 S.E.2d 356, 359 (1997). Therefore, information gained through the discovery process could not aid any party or the court with respect to a motion to dismiss. The trial court properly dismissed Petitioner’s complaint before allowing discovery because Petitioner failed to state any claim for relief under any theory of his case against MTB. Accordingly, the Petition for Writ of Certiorari should be denied.

**II. Petitioner’s Does Not Have a Constitutional Right to a Jury Trial Before the Court’s Consideration of Dismissal Pursuant to Rule 12(b)(6), SCRPC.**

Petitioner argues that the trial court’s dismissal deprived him of his constitutional right to a trial by jury. However, the purpose of a motion under Rule 12(b)(6) is “to test the formal sufficiency of the statement of the claim for relief; the motion is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff’s case.” 5B *Wright & Miller* § 1356. In evaluating a motion to dismiss under Rule 12(b)(6) the court must consider the facts alleged in the complaint as true. Woodell by Allen v. Marion School Dist. One, 307 S.C. 297, 414 S.E.2d 794, 73 Ed. Law Rep. 552 (Ct. App. 1992). Dismissal is appropriate where the complaint is so deficient that, assuming all the factual allegations are true, there still

exists no basis for relief. It is only where the claimant states a valid claim under South Carolina law that a case progresses to the fact finding stage for consideration by a jury.

In this case the lower courts all correctly held that Petitioner's claims against Respondent MTB were not legal claims recognized by South Carolina. It would be inappropriate for the trial court to allow incognizable claims to proceed to a jury trial. Accordingly, Petitioner's Petition for Writ of Certiorari should be denied.

**III. Petitioner Failed To Preserve Any Argument That He Was Discriminated Against Based Upon His Status As A Self-Represented Litigant.**

Petitioner alleges that the lower courts ruled against him because he is a self-represented litigant. Petitioner failed to make this argument before the trial court, the circuit court, or the Court of Appeals. "An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). Because this issue was raised for the first time in Petitioner's Petition for Writ of Certiorari, it is not preserved for review by this court and should be denied.

August 8, 2022

/s Stephanie Trotter Kellahan  
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