

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Sep 16 2022**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Clifton Newman, Circuit Court Judge

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Appellate Case No.: 2022-000556

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JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston  
Gentlemen's Club & Generation X Cabaret, Appellants,

v.

Carolina Coin Amusement, LLC, and Ronald J. Davis, Respondents.

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**INITIAL REPLY BRIEF OF APPELLANTS**

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Jarrel L. Wigger, Esquire  
S.C. Bar No.: 011824  
Wigger Law Firm, Inc.  
8086 Rivers Avenue, Suite A  
N. Charleston, SC 29406  
(843) 553-9800  
Attorney for Appellants

Edward L. Phipps, Esquire  
Mark R.H. Huber, Esquire  
The Phipps Law Firm  
571 Savannah Hwy.  
Charleston, SC 29407  
Attorney for Respondents

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## TABLE OF AUTHORITIES

### CASES

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### OTHER AUTHORITIES

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In response to the Respondents' Initial Brief, Appellants provide additional case law and other authority addressing the proper pleading standard for state court cases and abuse of discretion.

### STATEMENT OF ISSUES ON APPEAL

1. WHETHER TWOMBLY/IQBAL IS THE APPROPRIATE PLEADING STANDARD FOR THE PRESENT MATTER.
2. WHETHER FAILURE TO ALLOW AN AMENDMENT CONSTITUTES AN ABUSE OF DISCRETION.

### ARGUMENTS

The Appellants continue to rely on their Initial Brief and the arguments contained therein. In particular, Appellants would briefly reiterate that because justiciable issues were presented at the time of the hearing (particularly, the discovery date of the misconduct alleged), the trial Court erred in failing to allow the Appellants to amend their Complaint.

#### **I. TWOMBLY/IQBAL IS NOT THE APPROPRIATE PLEADING STANDARD FOR THE PRESENT MATTER.**

Throughout Respondents' Initial Brief, *Iqbal*<sup>1</sup> is repeatedly cited to support the contention that the Complaint in the present matter was not well-pleaded. However, South Carolina has simply not adopted the federal court's Twombly/Iqbal pleading standard. Under the Federal Rule of Civil Procedure 8(a)(2), a Complaint must contain "a short and plain statement of *the claim* showing that the pleader is entitled to relief (emphasis added)."<sup>2</sup> This Rule was expounded by *Twombly*<sup>3</sup> and *Iqbal*,<sup>4</sup> which ultimately defined what it means to have a "short and plain statement of *the claim* (emphasis added)" in federal court cases by directing that (1) the

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<sup>1</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

<sup>2</sup> F.R.C.P. 8(a)(2)

<sup>3</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

<sup>4</sup> *Supra* FN 1.

allegations must show plausible relief; and (2) mere legal conclusions are to be disregarded.<sup>5</sup>

This is very different than the South Carolina Rule of Civil Procedure 8(a)(2) which states that a Complaint must contain “a short and plain statement of *the facts* showing that the pleader is entitled to relief (emphasis added).”<sup>6</sup> In short, Twombly/Iqbal modified the Federal Rule and not the South Carolina state rule. Since that time, some states have taken the opportunity to explicitly adopt the Twombly/Iqbal federal pleading standard for their own courts, but South Carolina is not one of them.<sup>7</sup> In fact, North Carolina (which South Carolina tends to trend closely after) specifically declined to adopt Twombly/Iqbal in their state courts in *Holleman v. Aiken*, by stating that “[t]his Court does not have the authority to adopt a new standard of review for motions to dismiss.” *Holleman v. Aiken*, 193 N.C.App. 484, 668 S.E.2d 579 (N.C. App. 2008).

Because this heightened pleading standard has not been adopted by South Carolina state courts, it is inapplicable to the present matter and any reference thereto, either in Respondents’ Initial Brief or otherwise, should not be considered by this Court. Instead, the Complaint in case should be judged only by the rule set forth in our state’s Rule 8(a)(2), which requires only a “short and plan statement of the facts.”<sup>8</sup>

## **II. FAILURE TO ALLOW AN AMENDMENT UNEQUIVOCALLY CONSTITUTES AN ABUSE OF DISCRETION.**

Respondents’ Initial Brief primarily focuses on the incorrect pleading standard explained above, and provides an argument identical to the one that was presented to the trial court in this case, instead of addressing the issue of whether there was an error of law. The Respondents, in

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<sup>5</sup> See generally FN 1 and 3.

<sup>6</sup> S.C.R.C.P. 8(a)(2)

<sup>7</sup> For example, Massachusetts stated in *Iannacchino v. Ford Motor Co.*, that “[W]e take the opportunity to adopt the refinement of [the pleading] standard that was recently articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 888 N.E.2d 879 (2008).

<sup>8</sup> *Supra* FN 6.

fact, have not provided one single case or other source of authority to refute Appellants' assertion that a failure to allow an amendment constitutes an abuse of discretion.<sup>9</sup> Therefore, Appellants continue to rely on the authority cited in their Initial Brief and respectfully request this Court disregard any arguments to the contrary, as they plainly lack legal support.

### CONCLUSION

The Appellants further respectfully submit that the dismissal of this matter without allowing Appellants to amend their Complaint constitutes clear error and should be reversed.

Respectfully submitted,

**WIGGER LAW FIRM, INC.**



Jarrel L. Wigger, Esquire  
S.C. Bar No.: 011824  
Wigger Law Firm, Inc.  
8086 Rivers Avenue, Suite A  
N. Charleston, SC 29406  
(843) 553-9800  
Attorney for Appellants

September 16, 2022.

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<sup>9</sup> Initial Brief of Resp. p. 9-10; (ROA p. \_\_\_)

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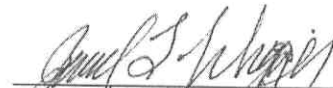
**APPELLANTS' DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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Appellants propose the following be included in the Record on Appeal:

1. Complaint
2. Defendant Ronald J. Davis' Motion to Dismiss of October 14, 2021
3. Defendants' Motion to Dismiss of January 11, 2022
4. Plaintiffs' Response in Opposition to Motion to Dismiss of March 18, 2022
5. Plaintiffs' Response in Opposition to Motion to Dismiss of March 18, 2022
4. Order of March 31, 2022;
5. Order of April 15, 2022;
6. Transcript of Hearing of March 21, 2022;
7. Affidavit of W. Scott Hendrix

I certify that this Designation contains no matter which is irrelevant to this appeal.



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Jarrel L. Wigger, Esquire

S.C. Bar #: 011824

Wigger Law Firm, Inc.

8086 Rivers Avenue, Suite A

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**SC Court of Appeals**

N. Charleston, SC 29406  
(843) 553-9800  
Attorney for Appellants

Edward L. Phipps, Esquire  
Mark R.H. Huber, Esquire  
The Phipps Law Firm  
571 Savannah Hwy.  
Charleston, SC 29407  
Attorney for Respondents

July 25, 2022

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PROOF OF SERVICE

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I certify that I have served the Appellant's Initial Reply Brief and Designation of Matter to be included in the Record on Appeal on Carolina Coin Amusement, LLC and Ronald J. Davis, Respondents, by depositing a copy of the Motion in the United States Mail, postage prepaid and via email, on September 16, 2022, addressed to Respondents' Attorney of record, Edward L. Phipps, Esquire, Mark R.H. Huber, Esquire, The Phipps Law Firm, 571 Savannah Hwy., Charleston, SC 29407.

  
Jarrel L. Wigger, Esquire, Fed. I.D. # 6345  
Wigger Law Firm, Inc.  
8086 Rivers Avenue, Suite A  
N. Charleston, SC 29406  
(843) 553-9800  
Attorney for Appellant

# Wigger Law Firm, Inc.

ATTORNEYS AT LAW

JARREL L. WIGGER\*  
EMILY HANEWICZ TONG

MATTHEW O. KING  
KINDREA N. WILSON  
JULIAN A. FERGUSON

1334 Ashley River Road  
Charleston, SC 29407

(843) 203-1500  
(843) 203-1501 Fax

North Charleston  
(843) 553-9800

Summerville  
(843) 851-9900

\*Board Certified Civil Trial Specialist  
By National Board of Trial Advocacy

September 16, 2022

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**VIA ELECTRONIC AND U.S. MAIL**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211  
ctappfilings@sccourts.org

Re: JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston  
Gentlemen's Club & Generation X Cabaret, Appellant v. Carolina Coin  
Amusement, LLC, and Ronald J. Davis, Respondents.  
Appellate Case No. 2022-000556

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of: Appellant's Initial Reply Brief, Designation of Matter (also previously submitted with Appellant's Initial Brief), Proof of Service and a self-addressed stamped envelope. Should you have any questions or need any additional information, please do not hesitate to call.

Respectfully,

  
Jarrel L. Wigger

JLW/EHT

cc:

Edward L. Phipps, Esquire  
Mark R.H. Huber, Esquire  
The Phipps Law Firm  
571 Savannah Hwy.  
Charleston, SC 29407  
Attorney for Respondent