THE STATE OF SOUTH CAROLINA

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowners Association, Inc., and Keep It Green, Inc., ... Respondents,

v.

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

Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the . . . . Appellant.

MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL

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MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS APPEAL

INTRODUCTION

On January 7, 2022, the Respondents filed a complaint under the Uniform Declaratory Judgment Act (UDJA) against Georgetown County, Georgetown County Council and Council members in their capacities as elected members and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, questioning the validity of Ordinances 21-24 and 21-25. Although named as a Defendant in the complaint, the Appellant should have been named as a "party-in-interest" pursuant to S.C. Code Ann. § 15-53-80 or an "involuntary plaintiff" pursuant to Rule 19(a)(2), SCRCP. See *Appendix pp. 2 & 7.*

The Appellant's Motion to Dismiss, in essence, was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of Uniform Declaratory Judgment Act (UDJA) or an involuntary plaintiff in accordance with Rule 19(a)(2), SCRCP. It was not a motion to dismiss the entire case in where there were no sufficient facts for a cause of action against the Appellant. In this appeal, the Appellant is challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Respondents' Complaint. The Motion to Dismiss the Respondents' Complaint in its entirety was made by the County Council on April 11, 2022. See *Appendix pp. 77 – 78.*

A Rule 12(b)(6), SCRCP Motion to Dismiss Benjamin F. Goff, Sr., Trustee (Appellant) as a Defendant was filed on January 25, 2022. The Appellant's Motion to Dismiss the Appellant as a Defendant was heard, May 19, 2022. On or about May 25, 2022, the Appellant was informed by the Lower Court in an email that the motion was denied and a fair reading indicated a cause of action against the Appellant. The Order on Appeal was authored by the Respondents' lawyer and filed by the Lower Court on dated June 3, 2022. See *Appendix pp. 2 – 7.*

STATEMENT OF FACTS

1. There are no facts stated in the Respondents' Complaint that constitutes a fairly read cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCP. See *Appendix pp. 11 - 42.*

2. Statements made by the Plaintiffs' lawyer in an Email message, a Letter and Transcript on Record summarily states that her clients have no specific claims against the Appellant. See *Appendix p. 75; Appendix p. 76; and Appendix p. 94, Lines 10 - 15.*

3. The allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members. See *Appendix pp. 11 - 42.*

4. The Stipulation of Dismissal between the Respondents' and Georgetown County lawyers dismissed any and all claims against the Georgetown County Council and elected members and there are no remaining claims. See *Appendix pp. 81 - 82.*

5. Pursuant to Rule 19(a)(2), SCRCP, the Appellant should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80. See *Rule 19(a)(2), SCRCP and Uniform Declaratory Judgment Act,* (UDJA), S.C. Code Ann. § 15-53-80.

6. The Respondents' lawyer, in authoring the Order on Appeal, served in the role of advocate and advisor in an adversarial proceeding. See *Rule 1.8(l), S.C. Rules of Professional Conduct.*

ARGUMENT

I. APPEALABLE INTERLOCUTORY ORDER

Standard of Review: The Order on appeal involves the merits in the action, in effect determines the outcome of the action, is an abuse of discretion and will prevent an appeal of a final judgment.

Citations: In accordance with S.C. Code Ann. § 14-3-330 - Appellate jurisdiction in law case states in part: The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

The SC Supreme Court has held that an abuse of discretion arises in cases in which: (1) the judge issuing the order was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support. See *Rochester v. Holiday* Magic, Inc., 253 S.C. 147, 169 S.E. (2d) 387 (1969); See *Brown v. Weathers*, 251 S.C. 67, 160 S.E. (2d) 133 (1968); See *Holliday v. Holliday*, 235 S.C. 246, 111 S.E. (2d) 205 (1959); See *Simon v. Flowers*, 231 S.C. 545, 99 S.E. (2d) 391 (1957).

"In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court." See *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). "The appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and policies of this state and the Court's sense of law, justice, and right." Id. at 467, 636 S.E.2d at 605-06.

Rule 201, Right to Appeal (a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.

Discussion: The Respondents' Motion to Dismiss Appeal does not cite any facts or evidence that this is not an appealable interlocutory order. An allegation or statement of a mere legal conclusion is insufficient to state a cause of action for dismissal. See Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Smith v. Ashmore, 184 S.C. 316, 192 S.E. 565 (1937). The denial of the Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant impacts the merit of the case and will prevent the appeal of a final judgment. Both the Lower Court and Respondents' lawyer misinterpreted the Appellant motion to dismiss him as a defendant as a request to dismiss the case. The Appellant understood the necessity of defending his interest as a party. That is why the Appellant petitioned the court to defined him as a party-in-interest as required the under the

Uniform Declaratory Judgment Act (UDJA), S.C. Code Ann. § 15-53-80 or an involuntary plaintiff under with Rule 19(a)(2), SCRCP. Instead of understanding that a required party should not be a defendant, the Appellant has been made culpable for allegations against the County Council and charged with a fairly read cause of action, where none exist. Absent facts and evidence, an innocent person should not be accountable based on an error in judgment or an abuse of discretion.

An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a). An interlocutory order is appealable under subsection (1) only if it involves the merits, that is, "finally determines some substantial matter forming the whole or a part of some cause of action or defense...." See *Henderson v. Wyatt*, 8 S.C. 112 (1877). Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer.

The threshold issue is whether this Court of Appeals will consider this interlocutory appeal. This interlocutory appeal of the Lower Court Order is based on the grounds that it involves the merits of the legal action and the Appellant will suffer substantial harm to rights and prevents a judgment from which an appeal might be taken, if the order is not corrected until the case is over pursuant to S.C. Code Ann. § 14-3-330(1) and S.C. Code Ann. § 14-3-330(2)(a).

The right to appeal in this case is controlled by S.C. Code Ann. § 14-3-330 (1976 & Supp.1994). Only two of its provisions are potentially applicable to this matter. First, § 14-3-330(1) allows the appeal of an interlocutory order "involving the merits." To involve the merits, the order must "finally determine some substantial matter forming the whole or part of some cause of action or defense...." See *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993).

Under S.C. Code Ann. § 14-3-330(2), an order which affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken is immediately appealable. An intermediate/interlocutory order is immediately appealable only if it involves the merits of the case or affects a substantial right. S.C. Code Ann. § 14-3-330 (1976). Moreover, this Order effectively discontinues the lawsuit against the County Council and elected members and substitutes the Appellant, thus bringing the order under paragraph S.C. Code Ann. § 14-3-330(2)(a). The Order on Appeal in this case, affect the merits and prevents a proper judgment from being rendered in the action from which an appeal might to taken, and the Appellant cannot seek review of the current order from the Lower Court. See *Appendix pp. 2 – 7.*

The Georgetown County Council's lawyer filed a Motion to Dismiss the entire legal action on the grounds of legislative immunity and lack of judicial power to grant relief. That motion was apparently resolved with an agreement to file a Stipulation of Dismissal which dismissed any and all claims against the County Council and elected members with none remaining. The Stipulation of Dismissal did not involve and was not signed by the Appellant. All allegations in the Respondents' Complaint were directed at the County Council and elected members. See *Appendix pp. 77 – 78; and Appendix pp. 81 – 82.*

A letter, dated May 4, 2022, was sent to the Lower Court stating that the Motion to Dismiss was resolved in lieu of a Stipulation of Dismissal pursuant to Rule 41, SCRCP between the County Council's and Plaintiffs' (Respondents') lawyer. It was filed on May 5, 2022 and stated in part that the parties hereby stipulated, pursuant to Rule 41, SCRCP, to the dismissal, without prejudice, of any and all claims against the County Council and elected members and dismissed them as necessary parties under S.C. Code Ann. § 15-53-80. See *Appendix pp. 79 – 80.*

The Appellant's Motion to Dismiss, in essence, was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of Uniform Declaratory Judgment Act (UDJA) or an

involuntary plaintiff in accordance with Rule 19(a)(2), SCRCP. In this appeal, the Appellant is challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Complaint. Effectively, the Lower Court allowed the accused defendants to be released and the unaccused and inadvertently or deliberately designated defendant to remain and be charged with an unspecified cause of action. Consequently, the Appellant is being sued for having submitted a rezoning application that was accepted by the Planning Department, recommended by the Planning Commission and approved and adopted into ordinances by the County Council and elected members. See *Appendix p. 17, Para. 31.*

The Order states that "[T]he court finds that Respondents' Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment". However, all allegations of controversy are against County Council and elected members, who have been removed from the complaint with any and all claims dismissed. These claims of controversy are now assigned to the Appellant. The Order states that "[T]he court finds that Defendant Goff Trust was properly named as a defendant in this declaratory judgment action" presumes sufficient facts for a cause of action against the Appellant, where none exist. See *Appendix pp. 5 – 6.*

In filing the Motion to Dismiss, the Appellant's sought the removal of the Trustee as a Defendant and to be designated a party-in-interest as required by the UDJA. Further, the Appellant's Motion to Dismiss addressed the inadequacy and futility of the Respondents' Complaint against the County Council because the validity of the Appellant's ordinances was being challenged. In the Complaint and Respondents' Motion in Opposition, the lawyer clearly stated that the UDJA required anyone whose substantial rights are at risk to be named a party. However, the UDJA does not state that the party must be a defendant. The Appellant is a party-in-interest and the Respondents' lawyer clearly recognized that in the opposing motion and in an email, letter and the

transcript, summarily stating that her clients have no claims against the Appellant. See *Appendix pp. 44 – 48; and Appendix pp. 49 - 68.*

Respondents' lawyer states in an email that "my clients have no specific claims (causes of action) against you (Appellant), the only reason you are included as a party is that the Declaratory Judgment Act states that all parties in interest must be named, and the Appellant's Trust is arguably a party-in-interest." In that only the Appellant is named as a Defendant in the Complaint, it translates into no claims against the Appellant's or Trust. For all legal purposes, the Appellant is owner of all assets within the trust; therefore, if the trust is definable as a party-in-interest, the Appellant should be a party-in-interest. See *Fed.R.Civ.P. 17(a) and* (b). The Appellant's Trust, as a legal entity, was not sued and cannot be sued. The Respondents' lawyer views the Appellant and Appellant's Trust as independent actors, as does the Lower Court in the docket, and conflates them in the Order on Appeal. This is an error in the interpretation of federal and state laws, an abuse of discretion by the Lower Court and a violation of professional conduct by the Respondents' lawyer. See *Appendix p. 75; Appendix p. 76; Appendix p. 92, Lines 3 - 6 and p. 94, Lines 10 - 15.*

The Lower Court apparently interpreted the Appellant's motion as only to dismiss the entire Complaint and failed to recognize the specific request of the removing the Appellant as a Defendant and to designate him as party-in-interest or involuntary plaintiff. Respondents' lawyer, in authoring the Order on Appeal, capitulated to the Lower Court's decision which sanctioned the Appellant as a Defendant with an implied a fairly read cause of action. The Respondents' Complaint was solely directed at the County Council with no stated allegations against the Appellant, hence the fairly read statement. In viewing the Appellant as a defendant, the Lower Court abused its discretion with regards to the Section 15-53-80 and the Respondents' Complaint. See *Appendix pp. 11 – 42.*

The Lower Court Order, which was authored by the Respondents' lawyer, contradicts statements made by the lawyer in an email missive to the Appellant, dated February 7, 2022. The

Respondents' lawyer is a current or former member/officer of the Keep It Green organization that supposedly opposes all rezoning efforts on the Waccamaw Neck area in Georgetown County. This Order raises questions of entitlement to equal protection under the law and whether the Appellant has any rights the Lower Court is bound to respect. See *Appendix p. 75; Appendix p. 76; Appendix p. 100; Appendix pp. 101 – 104; Appendix p. 92, Lines 3 – 6 and p. 94, Lines 10 – 15.*

The interlocutory order involves the merits of the case and will affect the substantial rights of the Appellant in this litigation and in effect determine the outcome and prevent a judgment from which an appeal might be taken. Given that County Council has legislative immunity that prevents arbitrary judicial intervention, this case should be terminated by the Court of Appeals.

With all allegations and claims in the Respondents' Complaint directed at the County Council and elected members having been dismissed, there are no remaining claims to litigate. It is counterintuitive to suggest any remaining claims against the approval and adoption of Ordinances 21-24 and 21-25 after dismissal of any and all claims against the County Council and elected members. The Appellant cannot defend against a phantom "fairly read" cause of action that is unstated and without a factual evidentiary basis. See *Appendix pp. 11 - 42.*

Contrary to the statement in the Stipulation of Dismissal, there are no remaining claims to adjudicate. There cannot realistically be any claims against the County since they have been dismissed against the County Council and elected members. The Appellant, who should not be a defendant, has been saddled with an unstated "fairly read" cause of action by the Lower Court where none exists in the Respondents' Complaint. This Order on Appeal is tantamount to a final judgment against the Appellant from which an appeal will be difficult, if not impossible.

This Interlocutory Order denying the Appellant's motion to dismiss him as a defendant and finding a fairly read unstated cause of action should be reviewed as an abuse of discretion. See *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An abuse

of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." See *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008).

In accordance with the plain language of the Uniform Declaratory Judgment Act, Section 15-53-80, the Appellant has an interest and should be named a party in the declaratory action. The presumed intent is to protect the rights of those parties who have a claim or interest to protect but are not defendants. "The determination of legislative intent is a matter of law." See *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, they must be taken and understood in their plain, ordinary and popular sense. *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530. The text of a statute is considered the best evidence of the legislative intent; therefore, the courts are bound to give effect to the expressed intent of the legislature. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Whether the Appellant should be a Defendant and a fairly read and unstated cause of action exists is a question of law. An appellate court may decide questions of law with no particular deference to the trial court. In re *Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008) (citation omitted). "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." See *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court is not required to defer to the trial court's legal conclusions. See *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

II. RESPONDENTS' LAWYER ADVOCATE/ADVISOR/MEMBER

Standard of Review: This is an adversarial litigation by the Keep It Green organization and its members and associates against the Appellant.

Citation: In Section 1,8(l), S.C. Rules of Professional Conduct, Conflict of Interest, Current Clients, Specific Rules:

> "In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact. A lawyer serving as an advocate in a particular matter shall not directly or indirectly engage in an ex parte communication with the hearing officer, trial judge or trier of fact concerning the proceeding." See *Rule 1.8 - Conflict of Interest: Current Clients: Specific Rules, S.C. R. Prof'l. Cond. 1.8(l).*

Discussion: The Respondents' lawyer, a current or former board member and/or president of Keep It Green, Inc, a Respondent in the Complaint. The Respondents, in the compulsory Counterclaim Complaint, are alleged to have engaged in a civil conspiracy against the Appellant. The Lower Court judge's clerk, in an email, dated May 25, 2022, requested the Respondents' lawyer to prepare the Order for the motion hearing Judge. The Respondents' lawyer, Cynthia Ranck Person, former chief executive officer and current board member of Keep It Green, Inc., represents the Respondents. In essence, the advocate was solicited to become an advisor to the hearing officer in an adversarial proceeding.

Keep It Green and its members participated in an organized and combined effort to oppose the rezoning of the Appellant's property. After the failure to prevent the approval and adoption of the ordinances, this legal action was filed for judicial intervention to render the ordinances null and void. See *Appendix pp. 11 – 42*. The Respondents' lawyer as an advocate and was invited to be an advisor by the trier of fact in preparing an Order that conflicted with previous admittances and failed to inform the court of the conflict, to the Appellant's knowledge, when solicited to prepare the Order on Appeal. See *Appendix pp. 8 – 9*; *Appendix p. 100; and Appendix pp. 101 – 104.*

The Order, as written by Respondents' lawyer conflicted with her written and transcript statements stating that the Respondents had no claims against the Appellant and his presence was necessitated by the Declaratory Judgment Act. However, the Act does not mandate the designation

of the parties as defendants; whereas, Rule 19(a)(2) states that in a proper case the Appellant should be an involuntary plaintiff to protect his interest. See *Appendix p. 92, Lines 3 – 6.*

Additionally, the Order does not state the findings and directives as provided in the email from the judge's clerk; rather, it repeats of the Respondents' Motion in Opposition and willing concurs that the Appellant is a Defendant with an unspecified cause of action. See *Appendix p. 75; Appendix p. 76;* Appendix *p.* 94; *and Appendix pp. 8 - 9.*

III. ORDER CONFLICTS WITH LAWYER'S ADMITTANCES

Standard of Review: The Order on Appeal conflicts with written and recorded transcript statements and admittances made by Respondents' lawyer.

Citations: Rule 3.3, S.C. Rules of Professional Conduct, Candor towards the Tribunal and Rule 19(a)(2)(i) states in part:

> "A lawyer shall not knowingly: (a) (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." (d) "In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." See *Rule 3.3 - Candor toward the Tribunal, S.C. R. Prof'l. Cond. 3.3.*
>
> Rule 19(a)(2)(i), SCRCP "if he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may "(i) as a practical matter impair or impede his ability to protect that interest." . . . "in a proper case, an involuntary plaintiff."

Discussion: The Lower Court Order that was authored by the Respondent's lawyer and approved by the motion hearing judge. However, the Lower Court Order is inconsistent with the admitted facts and the intent of the Respondents' Complaint for joining the Appellant, which was required by S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act, which required he be made a party-in-interest. Pursuant to 19(a)(2), SCRCP, the Appellant should have been joined as an involuntary plaintiff as opposed to a Defendant. There was no wrongdoing by the Appellant

stated in the pleadings; therefore, he should not have been named as a Defendant. Absence from the Order on Appeal are the specific guidance, contained in the directions provided to the Respondents' lawyer, from by the judge's clerk. The Lower Court guidance stated that:

> "The Motion to Dismiss is denied. A fair reading of the pleadings establishes a cause of action as against this Defendant. This is based solely on the contents of the pleadings as required by a motion under 12(b)(6). This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant. That remains to be decided. Defendant Goff is free to file a Motion for Summary Judgment at any stage, should he believe that is warranted. Attorney Persons, please draft a proposed order based on the above and e-file it to Judge John's attention."

In an email message, dated February 7, 2022, subject, Middleton v. Georgetown County..., the Respondents' lawyer stated:

> "We received your Motion to Dismiss and wanted to let you know that we have a potential resolution of your motion if the county is willing to agree. My clients have no specific claims against you, and the only reason you are included as a party is that the Declaratory Judgment Act states that all "parties in interest" must be named. As owner of the land, the trust is arguably a party in interest. If the county is willing to stipulate that you are not a party in interest for purposes of the DJA, and that a decision on the issues would be binding on all parties without having you as a party, we would agree to your dismissal without prejudice."

In a letter, dated February 15, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Respondents' lawyer stated:

> "My clients have no specific claims against you apart from the fact that the trust owns the real property. You are included as a party because the Declaratory Judgment Act provides that all "parties in interest" must be named. As owner of the land, the trust is a party in interest. If the county is willing to stipulate that a decision on the issues would be binding on all parties without having you named as a party, and if the court agrees, we would be willing to dismiss you without prejudice."

In the Transcript of Record on May 19, 2022, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Respondents' lawyer stated:

> "I certainly – I sympathize with Mr. Goff's position in the sense that I know he feels he didn't do anything wrong, and we don't think that he did something wrong. But it is a declaratory judgment action, and he does own the property that is affected by these ordinances. And so under the Declaratory Judgment Act, he is a necessary party." See Transcript Page 12, Lines 10-15.

Respondents' Complaint does not state any wrongdoing by the Appellant in the procedural approval and adoption of the ordinances. Even though, the Appellant's Trust is not individually listed as a Defendant in the Respondents' Complaint, it has been defined as a Defendant by the Court. The Appellant only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department, provided supporting memorandums of the need, and it resulted in the approval and adoption of the ordinances by the Georgetown County Council. See *Appendix p. 17, Para. 31.*

The Order on Appeal, as crafted by the Respondents' lawyer and approved by the Lower Court, does not reflect the case facts and admittances made in the written statements to the Appellant and the transcript in court. In accordance with Rule 19(a)(2)(i), SCRCP, the Appellant should be an involuntary plaintiff. The Appellant's motion was misconstrued as a motion to dismiss the Complaint as opposed to dismissing him as a defendant and redesignating him as a party-in-interest or involuntary plaintiff. This was clearly understood and expressed by the Respondents' lawyer. See *Appendix p. 75; and Appendix p. 76.*

It is disingenuous and a violation of professional conduct for the Respondents' lawyer to prepare an Order that defines the Appellant as a Defendant when the lawyer has stated otherwise in written communications. The Lower Court should have dismissed the Respondents' Complaint in its entirety as opposed to implying a cause of action against the Appellant to prolong this case. The unwillingness the Lower Court to redesignate the Appellant as an involuntary plaintiff or party-in-interest violated the constitutional privilege of rezoning private property by owners without the threat of becoming an unaccused defendant.

In that any and all claims have been dismissed against the County Council and elected members, the Order on Appeal has targeted the Appellant with an unspecified cause of action.

Having dismissed the County Council and elected members, the Respondents' lawyer, as the author, has disingenuously used the Order to support their Complaint and redirect the litigation towards the Appellant as a Defendant with an implied, unstated and unsupported cause of action. Absence the County Council and elected members, there are no remaining claims or defendants other than the Appellant. See *Appendix pp. 5 – 6.*

IV. NO STATED FACTS FOR A CAUSE OF ACTION AGAINST APPELLANT

Standard of Review: As required under Rule 12(b)(6), the complaint does not state any cause of action against the Appellant or any facts that can be construed as a cause of action against the Appellant and the Respondents' lawyer admitted in written statements and the transcript that her clients have no claims against the Appellant.

Citations: The Appellate Court may review questions of law and abuse of discretion.

Rule 12(b)(6), SCRCP states as a defense, in law or fact to a cause of action: "failure to state facts sufficient to constitute a cause of action" should dismiss a complaint.

"An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." See Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008).

"Upon review of an action in equity, this Court may make factual findings based on its own view of the preponderance of the evidence." See *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 120-21, 603 S.E.2d 905, 907 (2004). "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. See *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

Discussion: A motion to dismiss should be granted under Rule 12(b)(6) when the complaint fails to state facts sufficient to constitute a cause of action. The court need not adopt a party's legal conclusions based on those alleged facts. See *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293, 296 (1981); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010); *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E. 2d 362, 364-65 (Ct. App. 2001). An allegation of a mere legal conclusion is insufficient to state a cause of

action. See *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (1986); *Smith v. Ashmore*, 184 S.C. 316, 192 S.E. 565 (1937).

Nowhere, in the Respondents' Complaint is there any allegations of wrongdoing by the Appellant. The Respondents' lawyer has stated in an email message, letter and the transcript that her clients have no specific claims against the Appellant. "The only reason you are included as a party is that the Declaratory Judgment Act states that all "parties in interest" must be named." However, arbitrarily and capriciously, the Appellant was named as a Defendant in the Summons and Complaint, Court Docket and Order on Appeal. It is inconceivable that a "fair reading" of the Respondents' Complaint would conclude that a cause of action exists against the Appellant. With the previous admittances of no claims against the Appellant, the motion decision and Order by the Lower Court contradicts the reality, admitted facts and evidence in the case. See *Appendix pp. 5 – 6.*

In deciding a motion to dismiss, all pleadings are to be construed in a light most favorable to the plaintiff; however, in this instant complaint, the alleged facts by the Respondents are speculative conclusions and contrived evidentiary facts. The Respondents' Complaint does not state any facts that constitutes a cause of action against the Appellant as required by 12(b)(6), SCRCP. All allegations of wrongdoing in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members along with a request to nullify and void the Ordinances 21-24 and 21-25. Having stipulated to dismiss all claims against the County Council and elected members, the Appellant has been left as a party regardless of designation. On April 11, 2022, the lawyer for the County Council and elected members filed a Motion to Dismiss the Complaint based on legislative immunity relating to the enacting the challenged ordinances and the lack of power of the court to compel the County Council to take legislative action with respect to the challenged ordinances. See *Appendix pp. 77 - 78.*

A Letter to Court, dated May 4, 2022, implied an agreement between the lawyers resulted in a Stipulation of Dismissal, filed of May 5, 2022, to dismiss the all claims against the County Council and elected members from the Respondents' Complaint. With the real Defendants exonerated and protected by legislative immunity, this left the Appellant as the sole Defendant in a legal action in which he did nothing wrong. Absent the claims against the County Council, the Complaint is void. The Lower Court rejected the Respondents' lawyer transcript statement of no claims against Appellant. With the dismissal of the County Council and elected members, the Respondents should not be allowed to continue this litigation against the Appellant for exercising a constitutional right to petition for rezoning of private property. See *Appendix p. 17, Para. 31.*

V. LEGISLATIVE IMMUNITY VOIDS COMPLAINT

Standard of Review: The Lower Court accepted a Stipulation of Dismissal that allowed the Georgetown County Council and elected members to be dismissed from the complaint based on legislative immunity and lack of judicial power to render relief.

Citations: Pursuant to Rule 41(b), Involuntary Dismissal: Non-suit: The complaint should be dismissed, as requested, for failure to prosecute and comply with the stated rule.

> In a case decided by the S.C. Supreme Court, owners of property adjacent to rezoned land challenged the rezoning ordinance, arguing it conflicted with the local Zoning Land Development Regulations (ZLDR). See *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E.2d 92 (Ct. App. 2007), petition for cert. filed (S.C. January 24, 2008). The court specifically held that the zoning regulations and S.C. Code Ann. § 6-29-740 provide "County Council with final decision-making authority in rezoning actions. Id. at 560, 654 S.E.2d at 96-97. As noted in Mikell, "there is nothing to suggest that County Council cannot change an ordinance that it created." Id. at 561, 654 S.E.2d at 97.
>
> With regards to legislative immunity, the Courts have opined in multiple cases: South Carolina recognizes the longstanding doctrine of legislative immunity for legislators carrying on their legislative duties. See *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (holding a legislator was absolutely immune from liability for comments made during the performance of his legislative duties). Legislative immunity protects legislators from "deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good." See *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951). The public good is undermined by any restriction placed on a legislator's ability to

exercise legislative discretion, including the fear of personal liability. See *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998).

Discussion: Although few South Carolina cases discuss legislative immunity, the Supreme Court has addressed similar public policy considerations for immunity for other types of public officials carrying out their official duties. See *Williams v. Condon*, 347 S.C. 227, 242-43, 553 S.E.2d 496, 505 (Ct. App. 2001) (noting qualifying a prosecutor's immunity would "prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system" (quoting *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976).

Specifically, the South Carolina Supreme Court stated that: "The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the Courts, and they will not be interfered with . . . unless there is plain violation of the constitutional rights of citizens. There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the Planning and Zoning Commission and the city council of a municipality has acted after considering all the facts, the Court should not disturb the finding unless such action is arbitrary, unreasonable, or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority.

Likewise, the power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations." See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (citation omitted).

With respect to judicial review of zoning ordinances, the S.C. Supreme Court has noted that there is a strong presumption in favor of validity of municipal zoning ordinances and validity of

their application. See *Bob Jones University, Inc. v. City of Greenville*, 243 S.C. 351, 133 S.E.2d 843 (1963). The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon the party attacking it to show through clear and convincing evidence the arbitrary and capricious nature of the ordinance. See *Town of Scranton v. Willoughby*, 306 S.C. 421, 412 S.E.2d 424 (1992). The Court has concluded that the action of a municipality regarding the rezoning of property will not be overturned by a court as long as the decision is "fairly debatable". See *Rushing v. City of Greenville*, 265 S.C. 285, 217 S.E.2d 797 (1975).

The S.C. Supreme Court has cautioned that, "[i]t is not the role of the courts to substitute their judgment for that of local legislative bodies, which are better qualified to act upon local zoning matters." See *Smith v. Georgetown County Council*, 292 S.C. 235, 355 S.E.2d 864 (Ct.App.1987). Id. 355 S.E.2d at 866. The record in this case contains such evidence as to preclude finding that the zoning ordinances are arbitrary and capricious.

A Land Use Plan prepared by the Planning Commission has no power to zone property. The plan does not establish the zoning for the property, nor does it mandate the County Council to abide by the plan. It merely provides a general direction for considering future rezoning, which is a legislative process. See *Hampton v. Richland County*, 292 S.C. 500, 357 S.E.2d 463 (Ct.App.1987) (an ordinance rezoning a particular piece of property, like an ordinance adopting a comprehensive zoning plan, is legislative, and as such, presumptively valid because it is not the court's prerogative to pass upon the wisdom of the municipality's decision).

As stated in the Motion to Dismiss for Georgetown, et al, "Ordinances 21-24 and 21-25 were enacted within legitimate legislative activity by the County Council and are legislatively immune and not subject to judicial review." See *S.C. Pub. Int. Found. v Courson*, 420 S.C. 120, 125, 801 S.E.2d 185, 187 (Ct. App. 2017). Courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance. See *Foster v. Taylor*, 210 S.C. 324,

333, 42 S.E.2d. 531, 536 (1947) ("The court will, of course, not attempt to compel the legislature by mandamas to perform a legislative duty or function.")".

Accordingly, the Respondents' Complaint which contested the approval and adoption of Ordinances 21-24 and 21-25 is not viable. In that courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance, no relief, if any, is available to the Respondents in this litigation. Consequently, the Respondents' challenge to the County Council's approval and adoption of Ordinance 21-24 and Ordinance 21-25, enacted on October 26, 2021 and codified on November 9, 2021 is barred by doctrines of legislative authority and judicial lack of power to compel a legislative body. In agreeing to the Stipulation, the Respondents have acquiesced to legislative immunity, the inability of the court to grant relief and the futility of the complaint against the County Council and Appellant.

VI. COUNTY COUNCIL'S MOTION TO DISMISS NOT HEARD

Standard of Review: Georgetown County filed a Rule 12(b)(6) Motion to Dismiss the Complaint in its entirety that was scheduled and not heard by the Lower Court; thereby, preventing a fair and necessary adjudication that should have ended the litigation and denying the Appellant procedural due process under the Fourteenth Amendment.

> **Citation:** In not hearing the County's Motion to Dismiss, the Appellant's constitutional rights were abridged:
>
> The U.S. Const. amend. XIV: Procedural due process, based on principles of fundamental fairness, that addresses which legal procedures are required to be followed in state proceedings. Relevant issues, include notice, opportunity for hearing and basis of decision.

Discussion: The County's Motion to Dismiss the Respondents' complaint in its entirety was scheduled for a hearing on May 19, 2022 and the Court Docket does not reflect that it was withdrawn by motion. Presumably, the County's motion was resolved by the Stipulation of Dismissal between the County's and Respondents' lawyers. As stated in County's Rule 12(b)(6),

SCRCP Motion to Dismiss, a complaint should be dismissed for the "failure to state facts sufficient to constitute a cause of action. See *Appendix 77 - 78.*

The County's lawyer sent and filed a letter to the Honorable Judge Benjamin H. Culbertson on May 4, 2022 stating that the parties have reached a resolution on the County Council's Rule 12(b)(6), SCRCP Motion to Dismiss that was filed on April 11, 2022. The Appellant was not a part of the discussion or agreement and was not served with the filings as required by Rule 5(a), SCRCP.

In lieu of proceeding with the Motion to Dismiss, the County and Respondents' lawyers apparently agreed in the Stipulation of Dismissal to dismiss any and all claims against the County Council and elected members and stated that they are not necessary parties under S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act. The Stipulation of Dismissal, which effectively removed the County Council and elected members as Defendants should not have prevented the Lower Court from hearing and ruling on the County Council's Motion to Dismiss. In essence, by not hearing the motion, the Appellant was denied due process and equal protection and has incurred a substantial risk of irreparable injury and harm.

The motion stated that the County Council and elected members had legislative immunity as it relates to enacting the challenged ordinances since they were in the sphere of legitimate legislative activity. Additionally, it stated that no relief was possible in that courts lack the power to compel a legislative body to take legislative action with respect to a challenged ordinance. Settled case laws were cited to support both grounds for dismissal of the Respondents' Complaint in its entirety. Absence, a hearing and oral argument, the Appellant was denied his constitutional rights to due process of the law as required by the Fourteenth Amendment.

In the so-called resolution of the County's Motion to Dismiss and the agreed Stipulation of Dismissal, the County and Respondents dismissed without prejudice any and all claims against the Georgetown County Council and elected members. All of the allegations in the Respondents'

Complaint were directed at the County Council for approving and adopting the challenged ordinances. Having dismissed all claims against the County Council, the Respondents' Complaint became futile and moot. Therefore, neither the Appellant nor the County should continue as defendants in this action. The Appellant was joined under Section 15-53-80 of UDJA. Although, the County as a legal entity can sue and be sued, it was not the individual actor in the litigation as opposed to the County Council and elected members. There was an apparent tacit agreement to avoid the hearing on the Motion to Dismiss that had a high probability of being granted to allow purported and non-existent constitutional claims in continuation of the Respondents' Complaint to void and nullify the Appellant's ordinances.

The S.C. Supreme Court has opined that county ordinances are not challengeable unless they are arbitrary and capricious. Additionally, the appellate courts have stated that controversies that are "fairly debatable" are not ripe for judicial intervention. With regard to the ordinances, the Respondents' Complaint alleges a violation of the County Council Rules of Procedure and those allegations are fairly debatable.

Instead of challenging the County's Motion to Dismiss, the Respondents agreed to a resolution to dismiss any and all claims against the County Council and elected members. Whereas, a hearing and ruling on the motion would have, more likely than not, ended the Complaint in its entirety. With regard to the ordinances, the Respondents' Complaint did not allege or specify any constitutional issues, but rather an administrative violation of the County Council Rules of Procedure. The Lower Court, in not hearing and ruling on the County Council's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP failed to consider if a cause of action existed for constitutional issues. The statement that the Respondents seek to challenge the constitutionality of the ordinances in the County's Motion to Dismiss is an unsupported statement that allows another pathway to nullify the ordinances; thereby, implying that constitutional violations only occurred with the

Appellant ordinances as opposed to those approved and adopted concurrently, before and after. If heard and ruled on by the Lower Court, the County lawyer's Motion to Dismiss should have resulted in the dismissal of the Complaint in its entirety based on the doctrine of legislative immunity that deters judicial intervention.

VII. COUNTY'S AND RESPONDENTS' STIPULATION OF DISMISSAL

Standard of Review: The Appellant was not a party to the agreement or informed regarding the Respondents and County Council lawyers' Stipulation of Dismissal and was not requested to sign the Stipulation of Dismissal at any time.

> **Citation:** Rule 41(a)(B), SCRCP states in part: An action may be dismissed - (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action.
>
> Rule 41(b), SCRCP states in part: Involuntary Dismissal: Non-suit, Effect Thereof; For failure of the plaintiff to prosecute and comply with these rules.

Discussion: A Stipulation of Dismissal pursuant to Rule 41, SCRCP between the County Council's .and Plaintiffs' lawyer was filed on May 5, 2022 which states that the parties hereby stipulated, pursuant to Rule 41, SCRCP, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council in their capacities as elected members of the Georgetown County Council.

The Respondents' lawyer and the lawyer for Georgetown County and County Council agreed to the dismissal of any and all claims without prejudice against the "Georgetown County Council and elected Council members Defendants based on legislative immunity that prevented judicial intervention to grant relief. With all allegations and claims in the Respondents' Complaint directed at the County Council and elected members, there are no remaining claims to litigate against the County or the Appellant. See *Appendix pp. 81 - 82*.

The Stipulation of Dismissal appeared predicated on Georgetown County and Respondents continuing the Complaint without the County Council and elected members to further litigate the purported constitutionality of the ordinances as implied in the County lawyer's Motion to Dismiss. With the Stipulation of Dismissal, the County lawyer's Motion to Dismiss was scheduled but not heard on May 19, 2022. In that the County and Appellant had filed their Answers to the Complaint, pursuant to Rule 41(a)(B), SCRCP the Stipulation of Dismissal was required to be signed by all parties.

The Respondents' lawyer conceded to settled case laws on legislative immunity of County Councils and the Court's lack of power to intercede. The Stipulation of Dismissal between the Respondents' lawyer and the County Council's lawyer, submitted to the Court on May 5, 2022, essentially voided the Respondents' Complaint in accordance with settled case laws. This was an admittance of the lack of a justiciable controversy pursuant to S.C. Code Ann. § 15-53-70 and the futility of any and all claims to void and nullify the challenged ordinances. The Respondents effectively accepted the unquestioned validity of the ordinances and in fact, the futility of Complaint. It was exculpatory with respect to Appellant and ordinances.

VIII. NO CONSTITUTIONAL ISSUES INVOLVING ORDINANCES

Standard of Review: There are no allegations or claims in the complaint or statements in the affidavits or pleadings that the Respondents were deprived of property, due process of law or any constitutional rights of the United States or South Carolina.

Citations: S.C. Code Ann. § 15-53-80, Parties, states in part:

> "If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard."

> "[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution." See *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 154, 705 S.E.2d 53, 54,

55 (2011). "[T]he power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations." See *Rush v. City of Greenville*, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965).

Discussion: S.C. Code Ann. § 15-53-80 of the Uniform Declaratory Judgment Act requires service on the Attorney General if an ordinance alleged to be unconstitutional. No such service occurred because the allegations against the County Council involved only administrative violations of County Council Rules of Procedure related to the passage of the ordinances.

A municipal ordinance is a legislative enactment and is presumed to be constitutional. See *Bibco Corp. v. City of Sumter*, 332 S.C. 45, 504 S.E.2d 112 (1998). The burden of proving the invalidity of a zoning ordinance is on the party attacking it and it is incumbent on the attacking party to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. Id.; see also *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 489 S.E.2d 630 (1997) (a strong presumption exists in favor of the validity and application of zoning ordinances). "Zoning is a legislative act which will not be interfered with by the courts unless there is a clear violation of citizen's constitutional rights." See *Knowles v. City of Aiken*, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991).

"There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and when the planning commission and the city council of a municipality have acted after reviewing all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or in clear abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority." See *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963).

There were no alleged violations of the South Carolina Constitution, deprivation of property or due process of law, regarding the approval and adoption of the Ordinances 21-24 and 21-25. In

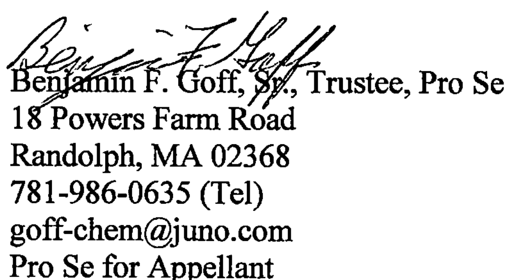
that Georgetown County remains a Defendant, a statement in the filed Motion to Dismiss that County is the proper party to challenge the constitutionality of a county ordinance suggests further litigation on constitutionality. The Respondents' Complaint did not allege deprivation of property or due process law violations or any challenge to the constitutionality of the ordinances. See *Appendix pp. 11 – 42; and Appendix pp. 83 - 99.*

CONCLUSIONS

The Respondents' Motion to Dismiss Appeal should be denied. Any and all claims in the Respondents' Complaint have been dismissed against the County Council and elected members, who have legislative immunity and the Respondents' Complaint does not state any claims against the Appellant. The Appellant should not have been named as a Defendant as opposed to an Involuntary Plaintiff or Party-in-Interest. The Respondents' lawyer admitted in written statements and the hearing transcript that her clients have no claims against the Appellant. This interlocutory Order is appealable because it affects the merits of the case, substantial rights of the Appellant and will prevent the appeal of a final judgment.

Respectfully Submitted,

Date: October 11, 2022



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Pro Se for Appellant

IX. APPENDIX (Separately Bound)

RECEIVED
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowners Association, Inc., and Keep It Green, Inc., Respondents,

v.

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

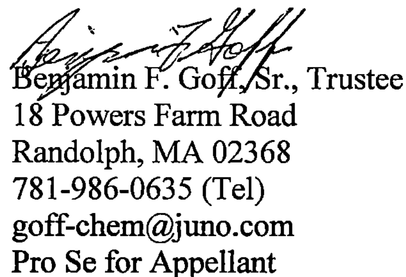
Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion and Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on October 11, 2022 to the following:

Cynthia Ranck Person, Esq.
Keep It Green Advocacy, Inc.
P.O. Box 1922
Pawleys Island, SC 29585
Attorney for Respondents

H. Thomas Morgan, Jr., Esq.
Smith Robinson, Holler Dubose and Morgan, LLC
Post Office Drawer 39
Camden, SC 29020
Attorney for Georgetown County



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RECEIVED
OCT 14 2022
SC Court of Appeals

October 11, 2022

The Honorable Jenny Abbott Kitchings
S.C. Court Administration
Clerk, Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Ernest Middleton, III, et al, Respondents v. Benjamin F. Goff, Sr., Trustee, Appellant, Appellate Case No. 2022-000811

Dear Ms. Kitchings:

Please find for filing are an original and six copies to two separate returns to motions filed in the referenced case:

Respondents:

1. Motion in Opposition to Respondents' Motion to Dismiss Appeal;
2. Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
3. Appendix to Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
4. Certificate of Service.

Defendant Georgetown County:

1. Motion in Opposition to Motion to be Designated as a Respondent;
2. Memorandum of Law in Opposition to Motion in Opposition to Motion to be Designated as a Respondent;
3. Certificate of Service.

Thank you for your consideration.

Respectfully Submitted,

Benjamin F. Goff, Sr., Trustee

cc: Cynthia Ranck Person, Esq.
H. Thomas Morgan, Jr., Esq.