

THE STATE OF SOUTH CAROLINA

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Steven H. John

APPELLATE CASE NO. 2022-000811

RECEIVED

OCT 14 2022

SC Court of Appeals

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.

MOTION IN OPPOSITION TO
MOTION TO BE DESIGNATED AS A RESPONDENT

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
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(781) 986-0635 (Tel)
goff-chem@juno.com
Pro Se for Appellant

MOTION IN OPPOSITION TO MOTION TO BE DESIGNATED AS A RESPONDENT

Now comes the Appellant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, to request this honorable court to deny the Defendant Georgetown County Motion to be Designated as a Respondent. This request is based on the grounds that pursuant to South Carolina Appellate Court Rule 201(a), S.C. App. Ct. R., Subject to Appeal: Only a party aggrieved by an order, judgment, sentence or decision may appeal and South Carolina Appellate Court Rule 202(a), S.C. App. Ct. R. Designation of Parties: The party appealing shall be known as the appellant and the adverse party as the respondent. Defendant Georgetown County is not an aggrieved or adverse party and will not be unduly prejudice since any and all claims against the County Council and elected members have been dismissed.

The lawyer for the Georgetown County and County Council agreed to a Stipulation of Dismissal that dismissed any and all claims against the County Council and elected members. In essence, Georgetown County as the political subdivision, has no interest in the Order on Appeal that would be unduly prejudice by the Appellate Court decision.

In the County Council's Motion to Dismiss, which was resolved by the stipulation, the Defendants' lawyer stated legislative immunity and the inability of the judicial to grant relief, to which the Respondents agreed and stipulated. This was the proper defense and effectively terminated all claims against Georgetown County and County Council and elected members and validated the ordinances that were being challenged in the Lower Court.

In his 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. In the Stipulation of Dismissal, the Lower Court allowed the accused County Council and elected members to be dismissed and

the unaccused and inadvertently or deliberately designated Appellant as a defendant 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.

In support of this motion, the defendant states the following:

1. The Defendant Georgetown County filed a Motion to Dismiss the County Council and elected members that resulted in an agreed Stipulation of Dismissal and resolution of the Motion to Dismiss and subsequently not heard by the Lower Court.
2. The Stipulation of Dismissal pursuant to Rule 41, SCRPC between the County Council's and Respondents' lawyers dismissed, without prejudice, any and all claims against the County Council and elected members and there are no stated remaining claims.
3. All allegations and the purported justiciable controversy in the Respondents' Complaint are directed at the County Council and elected members.
4. 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), SCRPC.
5. The Order states that the court finds that Respondents' Complaint alleges facts sufficient to establish a controversy and state a cause of action against the Appellant for declaratory judgment is unsupported in the Respondents' Complaint, which is devoid of facts and evidence to support the any of the claims.
6. The Respondents' Affidavits do not state that they were deprived of property or due process of law or any constitutional guaranteed rights.

7. A memorandum with citation of authorities in support of the motion was not provided with the Defendant Georgetown County motion as required by Rule 240(c)(2), S.C. App. Ct. R.


8. The approval and adoption of the Appellant's ordinances by the County Council has been incorporated into an ongoing conflict between the County government and the Keep It Green organization over rezoning on the Waccamaw Neck area in Georgetown County.

9. Although not alleged in the Respondents' Complaint, any purported constitutional issues would be applicable to all ordinances approved adopted by the County Council over whatever questionable time period and not unique to Appellant's ordinance.

Wherefore, Benjamin F. Goff, Trustee, requests this honorable court to deny the Defendant's Motion to be Designated as a Respondent. The Defendant is not an aggrieved or adverse party in this Order on Appeal and a decision favorable to the Appellant will not cause harm or unduly prejudice the rights of the Defendant in the Lower Court. A Memorandum of Law support of the Motion in Opposition to the Motion to be Designated as a Respondent is attached.

Respectfully Submitted,

Date: October 11, 2022


Benjamin F. Goff, Trustee, Pro Se
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Pro Se for Appellant

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v.

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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 the Motion to be Designated as a Respondent 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
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Camden, SC 29020
Attorney for Georgetown County


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October 4, 2022

RECEIVED Reply To: Camden

OCT 14 2022

SC Court of Appeals

South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: *Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowner 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.*

Appellate Case No. 2022-000811

Dear Court of Appeals:

I represent the Defendant Georgetown County in the above-referenced appeal filed by Defendant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004.

I greatly appreciate the Court's service in filing the Motion to Be Designated as a Respondent. Enclosed please find the original Motion and Proof of Service, six copies of the Motion, check number 9068 for the \$50.00 filing fee, and a postage paid return envelope.

If there are any questions, please do not hesitate to contact me. I am copying Plaintiff's Counsel and Appellant on this communication with the Court.

Very truly yours,

SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC



H. Thomas Morgan, Jr.

HTM/sr

cc: Cynthia Ranck Person, Esquire
Benjamin F. Goff, Sr., Trustee