

THE STATE OF SOUTH CAROLINA

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OCT 14 2022

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
MOTION TO BE DESIGNATED AS A RESPONDENT

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
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Pro Se for Appellant

**MEMORANDUM IN OPPOSITION TO
MOTION TO BE DESIGNATED AS A RESPONDENT**

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, 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 Respondents' 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), SCRPC.

A Rule 12(b)(6), SCRPC 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, despite statements that the Respondents had no claims against the Appellant. The Order on Appeal, dated June 3, 2022, was authored by the Respondents' lawyer.

STATEMENT OF FACTS

1. The 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. See *Exhibit A*.
2. A letter to the Lower Court stated that the motion was resolved with an agreement to file a Stipulation of Dismissal. See *Exhibit B*.
3. 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 *Exhibit C*.

4. The County's Motion to Dismiss hearing was scheduled concurrently with the Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant on May 19, 2022. See *Exhibits D and E*.
5. 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.

ARGUMENT

I. GEORGETOWN COUNTY HAS NO RIGHT TO BE DESIGNATED A RESPONDENT

Standard of Review: The Defendant Georgetown County wants to be designated as a respondent in an appealable interlocutory order in which it is not aggrieved by the order, all allegations and claims have been dismissed against the County Council and elected members and the County's rights will not be unduly prejudiced in the Appellate Court.

Citation: South Carolina Appellate Court Rule 201(a), S.C. App. Ct. R. 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. (b) Only a party aggrieved by an order, judgment, sentence or decision may appeal.

South Carolina Appellate Court Rule 202(a), S.C. App. Ct. R. Designation of Parties:

(a) The party appealing shall be known as the appellant and the adverse party as the respondent.

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). Such orders are reviewable after final judgment. See *Pendergrass v. Martin*, 275 S.C. 413, 272 S.E. (2d) 172 (1980).

Discussion: In contradiction to South Carolina Appellate Court Rules, the Defendant Georgetown County ("County") seeks by motion to be designated as a Respondent in the Appellant's appeal of an interlocutory order. The County is not an aggrieved or adverse party and does not state what harm or unduly prejudice will occur when all claims against County's clients have been dismissed by the Lower Court. As an advocate, the County's lawyer has

adequately defended the County Council's approval and adoption of the challenged ordinances against the allegations in the Respondents' Complaint. The interest of the County, if any, will not be served by participation in the appeal as a Respondent. In accordance with South Carolina Appellate Court Rule 202(a), S.C. App. Ct. R., the respondent is an adverse party; therefore, their participation would be presumed adversarial by the Appellate Court.

Only, an aggrieved party may appeal and the County should not be opposed to the Appellant's appealable interlocutory order which defines him as a defendant with a fairly read and unstated cause of action in a complaint where all allegations were made against the County Council. Any and all allegations against the County Council and elected members have been dismissed and there are no remaining claims against Georgetown County. If they exist, the County's lawyer should have specified such claims in the motion or an accompanying memorandum of law. A memorandum with citation of authorities in support of the motion was not provided with the motion as required by Rule 240(c)(2), S.C. App. Ct. R.

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 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).

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, effect 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.

The 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.

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, SCRPC between the County Council's and Plaintiffs' lawyer. It was filed on May 5, 2022 and stated in part that the parties hereby stipulated, pursuant to Rule 41, SCRPC, to the dismissal, without prejudice, of any and all claims against the County Council and elected members and dismissed them as necessary parties under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-80.

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.

II. 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).

S.C. Supreme Court: “The County Council's decision was not arbitrary or capricious, as required by the applicable scope of review. See *Bear Enters. v. County of Greenville*, 319 S.C. 137, 141-42, 459 S.E.2d 883, 886 (Ct. App. 1995) (stating the reviewing court will focus on whether the municipal zoning authority's decision was arbitrary or capricious). County Council reviewed the Planning Department report and the Planning Commission recommendation and

minutes and received a public briefing, with questions and answers, for the second and third readings. Accordingly, County Council's decision was neither arbitrary nor capricious.”

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).

The lawyer for Georgetown County and County Council filed a Motion to Dismiss the Plaintiffs' Complaint citing case laws that clothed the County Council with legislative immunity relating to enacting the challenged ordinances. Subsequent to the scheduled court hearing, the lawyers agreed to a Stipulation of Dismissal to dismiss the claims against the County Council and elected members as Defendants in the case. This was an affirmation by the Respondents that the approved and adopted ordinances were valid and beyond judicial intervention. The County Council and elected members' Motion to Dismiss was scheduled in the Court Roster for May 19, 2022, but was not heard by the Lower Court.

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.

III. COUNTY COUNCIL'S MOTION TO DISMISS RESOLVED

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), SCRCF Motion to Dismiss, a complaint should be dismissed for the "failure to state facts sufficient to constitute a cause of action. *See County Motion to Dismiss p. 1 - 2 (April 11, 2022).*

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), SCRCF 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), SCRCF.

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.

In lieu 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), SCRCF 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 adoption 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.

IV. 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), SCRCF 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), SCRCF 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, SCRCF between the County Council's and Plaintiffs' lawyer was filed on May 5, 2022, states that "The parties hereby stipulated, pursuant to Rule 41, SCRCF, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of the Georgetown County Council, in the above-captioned matter. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. Seq."

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 *Stipulation of Dismissal p. 1 – 2* (May 5, 2022).

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), SCRPC 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.

The dismissal of the Georgetown County Council and elected members, at whom the allegations in the Complaint are directed, voided all allegations of procedural violations and protects the validity of the Ordinances 21-24 and 21-25. Also, the Respondents have dismissed any and all claims against County Council and elected members and there are no remaining claims. This was tantamount to voiding all allegations regarding the approval and adoption of the ordinances; thereby, ending the Respondents' Complaint in its entirety. With the acceptance of the Stipulation of Dismissal, there are no remaining claims to prosecute; therefore, pursuant to Rule 41(b), SCRPC it should have been involuntarily dismissed as a non-suit in the Lower Court.

CONCLUSIONS

Any and all claims in the Respondents' Complaint have been dismissed against the County Council and elected members, who have legislative immunity. The Appellant's motion was centered on redesignation from a defendant to a party-in-interest in accordance with the Uniform Declaratory Judgment Act or an involuntary plaintiff under Rule 19(a)(2), SCRPC. Georgetown County will not be unduly prejudice if the Order on Appeal is vacated or the Respondents' Complaint is dismissed in its entirety. Therefore, there are no plausible reasons for the County to participate as a Respondent in the Appeal. The County's Motion to be Designated as a Respondent should be denied.

Respectfully Submitted

Date: October 11, 2022


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Pro Se for Appellant

Exhibit A, Georgetown County Council Motion to Dismiss
Exhibit B, County Lawyer Letter of Resolution to Lower Court
Exhibit C, County and Respondents Stipulation of Dismissal
Exhibit D, Motion to Dismiss/Morgan
Exhibit E, Motion/Dismiss Benjamin F. Goff SR TR/Pro Se

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

) C/A NO.: 2022-CP-22-00032

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

Plaintiffs,

vs.

Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004

Defendants.

DEFENDANTS GEORGETOWN COUNTY COUNCIL, LOUIS MORANT, LILLIE JEAN JOHNSON, RAYMOND NEWTON, STEVE GOGGANS, EVERETT CAROLINA, JOHN THOMAS, AND BOB ANDERSON, IN THEIR CAPACITY AS ELECTED MEMBERS OF GEORGETOWN COUNTY COUNCIL'S MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas, and Bob Anderson, in their capacities as elected members of Georgetown County Council, (hereinafter "Defendants") move to dismiss the Complaint against them. Plaintiffs' Complaint seeks to challenge the constitutionality of an ordinance passed by Defendants but Defendants are not a proper party to such action. Defendants enjoy legislative immunity as it relates to enacting the challenged ordinances. Since defendants enacted the ordinances in the sphere of legitimate legislative activity, and Defendants' actions in doing so are not subject to judicial review. *S.C. Pub. Int. Found. v. Courson*, 420 S.C. 120, 125, 801 S.E.2d 185, 187 (Ct. App. 2017).

Further, there is no relief Plaintiffs could obtain from these Defendants, as 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 mandamus to perform a legislative duty or function.”). If Plaintiff prevails, he could obtain whatever relief he is entitled to obtain from Georgetown County, which is the proper party to challenge the constitutionality of a county ordinance.

Based on the contents of this motion, any accompanying memorandum, evidence, documents, and/or authorities which may be submitted to the Court prior to or during the hearing on this motion, and the arguments of counsel for Defendants, Defendants pray the Complaint against these Defendants be dismissed in its entirety. Further, Defendants pray for such other and further relief as this Court may deem just and proper under the circumstances.

RESPECTFULLY SUBMITTED,

SMITH | ROBINSON
Smith Robinson Holler DuBose and Morgan, LLC

By: *s/H. Thomas Morgan Jr.*
H. Thomas Morgan, Jr., SC Bar #73585
Rachel Lee, SC Bar No. 104184
ATTORNEYS FOR DEFENDANTS
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MORANT, LILLIE JEAN JOHNSON,
RAYMOND NEWTON, STEVE GOGGANS,
EVERETT CAROLINA, JOHN THOMAS, AND
BOB ANDERSON, IN THEIR CAPACITIES AS
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April 11, 2022

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Reply To: Camden

May 4, 2022

VIA EMAIL

The Honorable Benjamin H. Culbertson
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**RE: Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert E. Hunt and Jeane M. Sullivan, The Colony Homeowners Association, Inc., and Keep It Green, Inc., Plaintiffs, vs. Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, Defendants.
C/A No. 2022-CP-22-00032**

Dear Judge Culbertson:

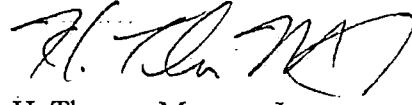
I hope this correspondence finds you and your staff well. Rachel Lee and I represent the Defendants in the above-referenced case filed by Plaintiff Keep It Green Advocacy, Inc., represented by Cindy Ranck Person.

The parties have reached a resolution of our Motion to Dismiss. The Stipulation of Dismissal of Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, was filed with the Court April 28, 2022. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgments Act, SC Code of Laws 15-53-10, et. seq.

Thank you for your consideration of this matter and your willingness to preside over this matter. If there are any questions, please do not hesitate to contact me. I am copying Plaintiff's Counsel on this communication with the Court.

Very truly yours,

SMITH ROBINSON HOLLER
DuBOSE AND MORGAN, LLC

A handwritten signature in black ink, appearing to read "H. Thomas Morgan, Jr.", written in a cursive style.

H. Thomas Morgan, Jr.

HTM/sr

cc: Cindy Ranck Person, Esquire (via electronic mail)
Rachel Lee, Esquire (via electronic mail)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GEORGETOWN)

C/A NO.: 2022-CP-22-00032)

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

Plaintiffs,)

vs.)

Georgetown County, Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004)

Defendants.)

STIPULATION OF DISMISSAL OF DEFENDANTS GEORGETOWN COUNTY COUNCIL, LOUIS MORANT, LILLIE JEAN JOHNSON, RAYMOND NEWTON, STEVE GOGGANS, EVERETT CAROLINA, JOHN THOMAS, AND BOB ANDERSON, IN THEIR CAPACITY AS ELECTED MEMBERS OF GEORGETOWN COUNTY COUNCIL

The parties hereby stipulate, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, to the dismissal, without prejudice, of any and all claims against Defendants Georgetown County Council, Louis Morant, Lillie Jean Johnson, Raymond Newton, Steve Goggans, Everett Carolina, John Thomas and Bob Anderson, in their capacities as elected members of Georgetown County Council, in the above-captioned matter. This dismissal has no effect on the remaining claims or defendants. The parties further stipulate that the dismissed parties are not necessary parties under Section 15-53-80 of the South Carolina Uniform Declaratory Judgments Act, SC Code of Laws 15-53-10, *et. seq.*

<<<<<Signatures on following page>>>>>

WE SO STIPULATE:

By: s/Cynthia Ranck Person

Cynthia Ranck Person, SC Bar #105126

Attorney for Plaintiff

KEEP IT GREEN ADVOCACY, INC

PO BOX 1922

Pawleys Island, SC 29585

(570) 971-8636

Kig.advocacy@gmail.com

By: s/H. Thomas Morgan, Jr.

H. Thomas Morgan, Jr., SC Bar #73585

Rachel Lee, SC Bar #104184

Smith Robinson

Attorneys for Defendants Georgetown County

Council, Louis Morant, Lillie Jean Johnson,

Raymond Newton, Steve Goggans, Everett

Carolina, John Thomas and Bob Anderson, in their

capacities as elected members of Georgetown

County Council

935 Broad Street

Post Office Drawer 39

Camden, South Carolina 29020

(803) 432-1992

tommy@smithrobinsonlaw.com

Rachel.lee@smithrobinsonlaw.com

From: <Courtmail22_DoNotReply@sccourts.org>

To: <goff-chem@juno.com>

Cc: <jlawrence@gtcounty.org>

Sent: Wed, Apr 27, 2022 11:25 AM

Subject: Motion "MDISMS-Motion to Dismiss/Morgan" for Case "2022CP2200032-Ernest F Middleton III , plaintiff, et al VS Georgetown County , defendant, et al" was added to a Motions Roster for 5/19/2022 at 1:30 PM

"WebEx VIRTUAL Hearings" See Motion Roster News for Important Information and instructions.

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If your case is settled, or your motion is "RESOLVED, WITHDRAWN, or MOOT", please notify immediately by submitting correspondence through the E-Filing system. If you have any other communication regarding this case, please CONTACT Jennifer Lawrence, CP Court Coordinator @ jlawrence@gtcounty.org or Lucinda LeSane, CP Supervisor at llesane@gtcounty.org

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**From:** <Courtmail22\_DoNotReply@sccourts.org>

**To:** <goff-chem@juno.com>

**Cc:** <jlawrence@gtcounty.org>

**Sent:** Wed, Apr 27, 2022 11:25 AM

**Subject:** Motion "MDISMS-Motion/Dismiss Benjamin F Goff Sr TR/Pro Se" for Case "2022CP2200032-Ernest F Middleton III , plaintiff, et al VS Georgetown County , defendant, et al" was added to a Motions Roster for 5/19/2022 at 1:30 PM

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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.

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
Post Office Drawer 39
Camden, SC 29020
Attorney for Georgetown County


Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
781-986-0635 (Tel
goff-chem@juno.com
Pro Se for Appellant

SMITH ROBINSON

Forward thinking. Results driven.

Smith Robinson Holler DuBose and Morgan, LLC

COLUMBIA 2530 Devine Street, Columbia, SC 29205
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SUMTER 126 N. Main Street, Sumter, SC 29151
P: 803.778.2471 F: 803.778.1643

CAMDEN 935 Broad Street, Camden, SC 29020
P: 803.432.1992 F: 803.432.0784

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