

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

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Appellate Case No.: 2022-000556

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

v.

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

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FINAL REPLY BRIEF OF APPELLANTS

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

### STATEMENT OF ISSUES ON APPEAL

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

### ARGUMENTS

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

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

Throughout Respondents' Brief, *Iqbal* is repeatedly cited to support the contention that the Complaint in the present matter was not well-pleaded. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). However, South Carolina has simply not adopted the federal court's Twombly/Iqbal pleading standard. Under the Federal Rule of Civil Procedure 8(a)(2), a Complaint must contain "a short and plain statement of *the claim* showing that the pleader is entitled to relief (emphasis added)." F.R.C.P. 8(a)(2). This Rule was expounded by *Twombly* and *Iqbal*, which ultimately defined what it means to have a "short and plain statement of *the claim* (emphasis added)" in federal court cases by directing that (1) the allegations must show plausible relief; and (2) mere legal conclusions are to be disregarded. *Iqbal*; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). This is very different than the South Carolina Rule of Civil Procedure 8(a)(2) which states that a Complaint must contain "a short and plain statement

of the facts showing that the pleader is entitled to relief (emphasis added).” S.C.R.C.P. 8(a)(2). In short, *Twombly/Iqbal* modified the Federal Rule and not the South Carolina state rule. Since that time, some states have taken the opportunity to explicitly adopt the Twombly/Iqbal federal pleading standard for their own courts, but South Carolina is not one of them.<sup>1</sup> In fact, North Carolina (which South Carolina tends to trend closely after) specifically declined to adopt Twombly/Iqbal in their state courts in *Holleman v. Aiken*, by stating that “[t]his Court does not have the authority to adopt a new standard of review for motions to dismiss.” *Holleman v. Aiken*, 193 N.C.App. 484, 668 S.E.2d 579 (N.C. App. 2008).

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

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

Respondents’ Brief primarily focuses on the incorrect pleading standard explained above and provides an argument identical to the one that was presented to the trial court in this case, instead of addressing the issue of whether there was an error of law. The Respondents, in fact, have not provided one single case or other source of authority to refute Appellants’ assertion that a failure to allow an amendment constitutes an abuse of discretion. *See* Respondents’ Brief p. 9-10. Therefore, Appellants continue to rely on the authority cited in their Brief and respectfully request this Court disregard any arguments to the contrary, as they plainly lack legal support.

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<sup>1</sup> For example, Massachusetts stated in *Iannacchino v. Ford Motor Co.*, that “[W]e take the opportunity to adopt the refinement of [the pleading] standard that was recently articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*.” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 888 N.E.2d 879 (2008).

## CONCLUSION

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

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Appellants' Final Reply Brief complies with S.C.A.C.R. 211 in that this Final Reply Brief is identical to Appellants' Initial Reply Brief with the exception of record citations, typographical errors and misspellings.

November 1, 2022

  
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