THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Steven H. John, Circuit Court Judge

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 and Georgetown County is a Respondent.

MOTION TO REINSTATE
APPELLATE CASE NO. 2022-000811

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
(781) 986-0635
Pro Se for Appellant

MOTION TO REINSTATE APPEALLATE CASE NO. 2022-000811

Pursuant to Rule 240, SCACR, the Appellant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, requests this Honorable Court to grant the Appellant's Motion to Reinstate Appellate Case No. 2022-000811. Under S.C. Code Ann. § 14-3-330(1) and S.C. Code Ann. § 14-3-330(2)(a), the appealed Order, in this case, affected the merits and has prevented a proper judgment from being rendered in the action on a Motion for Judgment on the Pleadings and a Motion for Summary Judgment. Currently, the Appellant will be tried in the trial court for an unstated fairly read cause of action despite Respondents admissions of no claims against the Appellant.

A final judgment against the Appellant will compromise a future appeal. Moreover, the Order effectively terminated the lawsuit against the Georgetown County Council and elected members and substituted the Appellant, thus bringing the Order under paragraph S.C. Code Ann. § 14-3-330(3). S.C. Code Ann. § 14-3-430 provides that "Upon an appeal under item (3) of Section 14-3-330 the court may review any intermediate order involving the merits and necessarily affecting the order appealed from."

In essence, the Appellant's Motion to Dismiss Benjamin F. Goff, Trustee as a Defendant was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of the 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 case in which there were no facts sufficient for a cause of action against the Appellant. In this dismissed appeal, the Appellant is challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where the Respondents made admissions of no claims against the Appellant in the Respondents' Complaint. In a Stipulation of Dismissal, the trial court allowed the accused

defendants, County Council and elected members, to be released 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. Pursuant to Rule 201(a), SCACR, an appeal may be taken, as provided by law, from any final judgment, appealable order or decision. This order has proven to be an unjustified final judgment against the Appellant.

The Respondents Motion to Dismiss the Appeal simply because it was interlocutory did not provide any facts or evidence to dispute that this was an appealable interlocutory order. Subsequent decisions by the trial court have proven that this order has affected the merits of the case, the substantial rights of the Appellant and will prevent an appeal of a final judgment from an unjustified trial. In support of this motion, the defendant states the following:

1. This intermediate appeal of the trial court Order was based on the grounds that it involved the merits of the legal action and the Appellant has suffered substantial harm to his rights and will 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).

2. 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.

3. 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.

4. 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).

5. The Stipulation of Dismissal pursuant to Rule 41, SCRCP between the County Council's and Respondents' lawyers that dismissed, without prejudice, any and all claims against the County Council and elected members was not signed by the Appellant.

6. 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.

7. The Order states that the court finds that Respondents' Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment; whereas, the controversy, if any, was specifically between the County Council and Respondents.

8. The Order states that the Appellant was properly named as a defendant in this declaratory judgment action which is in contradiction of S.C. Code Ann. § 15-53-80.

9. Admissions made by the Respondents' lawyer in an Email, a Letter and the Transcript on Record summarily states that her clients have no claims against the Appellant.

10. 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.

11. The trial court, though informed, did not consider that the finding of a fairly read cause of action against the Appellant was directly contrary to the position of the Respondents' clients.

12. The Appellant only submitted an application to rezone private property and has been designated and sanctioned by the trial court as a defendant for doing so.

13. Under the Declaratory Judgment Act, S.C. Code Ann. § 15-53-80, all persons with an interest in the litigation should be made parties; therefore, Appellant is a party-in-interest as opposed to a defendant in this litigation.

14. Respondents' lawyer admitted in written statements that the Trust is a party-in-interest, however, the lawyer has maintained in filings that the Trust, as property owner, is a defendant.

15. Despite admissions of no claims, the trial court has kept the Appellant as a defendant to be tried for an unstated fairly read cause of action where none exists the Respondents' Complaint.

16. Respondents stipulated to dismiss any and all claims against the Georgetown County Council and elected members based on legislative immunity and lack of judicial intervention.

17. The Appellant and Trust are defendants who cannot provide any recovery or relief or force the Georgetown County Council to rescind a legislative action.

18. Despite the Summons and Complaint only naming the Appellant as a defendant, the Respondents' court filings and court docket cites the Trust as the real defendant.

19. With the stipulation of dismissal of the County Council, the Respondents have abandoned the requested relief of voiding and nullifying the ordinances through their litigation.

Wherefore, Benjamin F. Goff, Trustee, requests this Honorable Court to grant the Appellant's Motion to Reinstate the Appeal. A Memorandum of Law in support of the Motion in Support of the Motion to Reinstate Appellate Case No. 2022-000811 is attached.

Respectfully Submitted,

Date: July 28, 2023

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

Steven H. John, Circuit Court Judge

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 and Georgetown County is a Respondent.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REINSTATE APPELLANT CASE NO. 2022-000811

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
(781) 986-0635
Pro Se for Appellant

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO REINSTATE APPELLATE CASE NO. 2022-000811

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.

The Appellant's Motion to Dismiss, Benjamin F. Goff, Trustee as a defendant, 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 even though there were no sufficient facts for a cause of action against the Appellant or Georgetown County and/or County Council and elected members. In the appealed Order, dated June 3, 2022, the Appellant challenged 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. See (R. Vol. II pp. 3-10) (R. Vol. II pp. 11-134) (R. Vol. II pp. 335-393)

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 May 25, 2022, the Appellant was informed in an email that the motion was denied and a fair reading indicated a cause of action against the

Appellant. The Appellant moves to reinstate the appeal of the intermediate Order, dated June 3, 2022 that was dismissed on a motion from the Respondents.

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 (R. Vol. II pp. 11-134).

2. Admissions made by the Respondents' lawyer in an Email Message, a Letter and Transcript on Record summarily states that her clients have no specific claims against the Appellant. See (R. Vol. II p. 331) (R. Vol. II p. 333) (R. Vol. II p. 276, Lines 10-15) (R. Vol. I p. 320, Line 18).

3. All allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members. See (R. Vol. II pp. 11-43).

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 (R. Vol. II pp. 258-259).

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. Respondents' lawyer made admissions in written statements that the Appellant's Trust is the party-in-interest, but states in the Order that the Trust, as property owner, is a defendant. See (R. Vol. II p. 331) (R. Vol. II pp. 3-8).

7. Despite admissions of no claims against the Appellant, the Appellant remains a defendant to be tried for an unstated fairly read cause of action where none exist the Respondents' Complaint. (R. Vol. II pp. 11-43).

8. Defendants are parties from whom one seeks recovery or relief; whereas, the Appellant and/or Trust cannot rescind a legislative action by the County Council. (R. Vol. II p. 43, para. 4).

9. The Appellant only submitted and supported an application to rezone private property, Case Number REZ-21-28323, to the Georgetown County Planning Department and the Planning Commission and County Council approved and adopted Ordinances 21-24 and 21-25. See (R. Vol. II pp. 77-80).

10. The Summons and Complaint only named the Appellant as a defendant; whereas, all of the Respondents' court filings cited the Appellant's Trust as the defendant and property owner. (R. Vol. II pp. 11-12) (R. Vol. II p. 17, para. 23).

11. The trustee, as the legal title holder of the trust's property or corpus, is generally the real party in interest with the power to prosecute or defend actions in the name of the trust under Fed.R.Civ.P. 17(a) and the trust cannot sue or be sued pursuant to Fed.R.Civ.P. 17(b).

12. The June 3, 2022 Order falsely states that Appellant, appeared pro se on behalf of Defendant Goff Trust, which is contrary to federal and state law since a pro se defendant can only personally self-represent or self-litigate. (R. Vol. II p. 3, para. 1).

ARGUMENT

I. REVIEWABLE INTERMEDIATE ORDER

Standard of Review:

> S.C. Code Ann. § 14-3-330(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; and (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment.

S.C. Code Ann. § 14-3-430. Review of intermediate orders. Upon an appeal under item (3) of Section 14-3-330 the court may review any intermediate order involving the merits and necessarily affecting the order appealed from.

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, SCACR states in part "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 was 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 has impacted the merit of the case and will complicate the appeal of a final judgment. Both the trial 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, the Appellant should not be accountable based on an error in judgment or an abuse of discretion. See (R. Vol. II pp. 3-10).

An intermediate 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 current Order, dated March 24, 2023 solidified the negative impact on the merits and potential final judgment resulting from the decision on May 25, 2022 and Order issued on June 3, 2022. It sets the stage for the Appellant to be tried for the submission of a rezoning application and is tantamount to a final judgment.

The threshold issue is whether this Court of Appeals will consider this motion to reinstate. This intermediate appeal of the trial court Order was based on the grounds that it involved the merits of the legal action. The Appellant will suffer ongoing substantial harm to his rights from this negative judgment, if the Order is not corrected until the case is over. See 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). The trial court created an undefined fairly read cause of action.

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 in this case, affected the merits and has prevented a proper judgment from being rendered in the action from which an appeal might to taken. The Appellant cannot seek review of the Order from the trial court. See (R. Vol. II pp. 3-10).

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 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 (R. Vol. II pp. 254-255) (R. Vol. II pp. 258-259). (R. Vol. II pp. 11-43).

A letter, dated May 4, 2022, was sent to the trial court stating that the Motion to Dismiss was resolved between the Respondent and Respondents lawyers. See (R. Vol. II pp. 263-264). Instead of hearing the motion, a Stipulation of Dismissal pursuant to Rule 41, SCRCP, was filed on May 5, 2022. The Stipulation of Dismissal dismissed, 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 (R. Vol. II pp. 258-259).

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 admissions of no claims were made against the Appellant in the Respondents' Complaint. Effectively, the trial 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. Respondents' affidavits do not state any facts and/or allegations against the Appellant who is being sued for having submitted a successful rezoning application. See (R. Vol. II pp. 11-43). (R. Vol. II pp. 46-76).

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 (R. Vol. II pp. 11-134).

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 (R. Vol. II pp. 194-198) (R. Vol. II pp. 199-218).

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 trial 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 trial court and a violation of professional conduct by the Respondents' lawyer. See (R. Vol. II p. 331) (R. Vol. II p. 333) (R. Vol. II p. 274, Lines 3-6) (R. Vol. II p. 276, Lines 10-15).

The trial 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 trial court's decision which sanctioned the Appellant as a Defendant with an implied 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 trial court abused its discretion with regards to the Section 15-53-80 of the UDJA and the Respondents' Complaint. See (R. Vol. II pp. 11-43).

The trial 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 trial court is bound to respect. See (R. Vol. II p. 326) (R. Vol. II pp. 327-330) (R. Vol. II p. 274, Lines 7-17) (R. Vol. II p. 276, Lines 10-15).

As evidenced in the Order, dated March 24, 2023, this intermediate order involved the merits of the case and has affected the substantial rights of the Appellant in this litigation and in effect has determined the outcome and will prevent a judgment from which an appeal might be taken. Given that the County Council has legislative immunity that prevents arbitrary judicial intervention, this case should be terminated by the Court of Appeals. (R. Vol. I pp. 3-10).

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 (R. Vol. II pp. 11-134).

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 trial 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 Intermediate 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).

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 trial 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 (R. Vol. II pp. 11-134). The Respondents' lawyer as an advocate was invited to be an advisor by the trier of fact in preparing an Order that conflicted with

previous admissions and failed to inform the court of the conflict, to the Appellant's knowledge, when solicited to prepare the Order. See (R. Vol. II pp. 9-10) (R. Vol. II p. 326) (R. Vol. II pp. 327-330.

II. ORDER CONFLICTS WITH LAWYER'S ADMISSIONS

Standard of Review:

> S.C. Code Ann. § 15-53-80 states "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. 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."
>
> 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 Order, as written by Respondents' lawyer conflicted with the written decision 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. See (R. Vol. II p. 274, 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 (R. Vol. II pp. 9-10) (R. Vol. II pp. 276, Lines 10-15) (R. Vol. II pp. 3-8) (R. Vol. II pp. 11-134).

However, the trial 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 are the specific guidance, contained in the directions provided to the Respondents' lawyer, from by the judge's clerk. The trial court guidance stated:

> "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." See (R. Vol. II pp. 9-10).

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." See (R. Vol. II p. 331).

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." See (R. Vol. II p. 333).

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 (R. Vol. II p. 276, 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 (R. Vol. II pp. 11-134).

The Order, as crafted by the Respondents' lawyer and approved by the trial court, does not reflect the case facts and admissions made in the written statements to the Appellant and in 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 (R. Vol. II p. 331) (R. Vol. II p. 333).

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 trial court should have dismissed the Respondents' Complaint in its entirety as opposed to implying a fairly read cause of action against the Appellant to prolong this case. The unwillingness the trial 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 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 real defendant other than the Appellant, who has been earmarked to be tried for a non-existent cause of action. See (R. Vol. I pp. 3-5).

III. NO STATED FACTS OR CLAIMS FOR A FAIRLY READ CAUSE OF ACTION

Standard of Review:

> 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: The Appellate Court may review questions of law and abuse of discretion. 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, dated June 3, 2022. 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 admissions of no claims against the Appellant, the motion decision and Order by the trial court contradicts the reality, admitted facts and evidence in the case. The trial court decision and Order and conflicts with admissions. (R. Vol. II pp. 331-333).

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 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. 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.

IV. SIMILAR COMPLAINTS BY RESPONDENTS' LAWYER DISMISSED BY COURT

Standard of Review:

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).

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).

Discussion: Keep It Green, Inc. ("KIG") has opposed residential rezonings in Georgetown County based on non-compliance with the South Carolina Planning Enabling Act and the Georgetown County Land Use Element of the Comprehensive Plan. In the Court of Common Pleas, KIG is a Plaintiff in four Georgetown County litigations filed in calendar years 2022 and 2023 challenging rezoning decisions by the County Council.

In addition to this case, Case No. 2022CP-22-00032, KIG litigations include Case Nos. 2022-CP-22-00912, 2023-CP-22-00007, and 2023-CP-22-00210. The former director for KIG is the lawyer for all of the plaintiffs in the KIG litigations. The Georgetown County Council and the landowners are named as defendants and allegations of non-conformance with the

Comprehensive Plan and S.C. Planning Enabling Act. Circuit Court Judge Steven H. John denied the Appellant's motion to dismiss him as a defendant, dated January 25, 2022 and implied a fairly read cause of action where the Respondents stated that there no claims against the Appellant in the Complaint and made admissions of no claims in written statement and the hearing transcript. The trial court granted the defendants' motions to dismiss the complaints in an Order, dated May 31, 2023, Case No. 2023- CP-22-0007, and in an Order, dated June 23, 2023, Case No. 2022CP-22-00912, because the Respondents in both cases did not state any claims upon which the Court could grant relief and cited incorrect and erroneous state and county laws. These findings are also applicable to the Appellant's Case No. 2022CP-22-00032.

In all four aforementioned active or dismissed cases, the Respondents requested by declaratory judgment that the ordinances adopted by the County Council be rendered null and void because they violated with the Comprehensive Plan and the S.C. Planning Enabling Act. Specifically, these are the same issues raised in the declaratory judgment in the Appellant's litigation, Case No. 2022CP-2200032, by the Respondents. See (R. Vol. II p. 38-43).

The Appellant's ordinances 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. 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.")".

As in the Appellant case, the Defendants cited legislative immunity in the motions to dismiss and that the Respondents "incorrectly and erroneously cited laws of both the State of South Carolina and Georgetown County as it relates to the underlying allegations of

Respondents' Complaint such that any requested relief is impossible, impractical as a matter of law and outside of the State of South Carolina such that dismissal with prejudice is the only proper action by the Court." See (R. Vol. II p. 36-43).

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 from the Appellant. 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, County Council and Appellant.

V. DISMISSED ORDER IMPACTED TRIAL COURT DECISIONS ON MOTIONS

Standard for Review:

> S.C. Code Ann. § 14-3-330 (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; and (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment.

Discussion: With limited deliberation, if any, the trial court dismissed the Appellant's Counterclaim Complaint and denied Motions for Judgment on the Pleadings and Summary Judgment. Despite the factual proof of a civil conspiracy and furtherance thereof through an overt legal action, the trial court granted Respondents' motion to dismiss the Appellant's Counterclaim. In addition, the trial court dismissed the Appellant's motion for judgment on the pleadings despite admissions of no claims and the motion for summary judgment, where there are no material facts to be tried against the Appellant. These decisions are tantamount to a pre-trial final judgment against the Appellant resulting from the trial court's abuse of discretion in

not dismissing the Appellant as a defendant and creating a fairly read cause of action without evidence thereof. The Appellant only submitted and supported a rezoning application.

The Uniform Declaratory Judgment Act (UDJA) Section 15-53-80, Parties, states in part that "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." A party is necessarily defined as a defendant.

According to Black's law Dictionary, "A defendant is the party against whom relief or recovery can be obtained in an action or suit. The plaintiff or defendant is understood to be the person by or against whom a suit is brought for relief or recovery. The plaintiff and defendant are parties in the writ, and parties on the record and all others who may be affected by the suit, indirectly or consequentially, are parties-in-interest, not defendants. A party is not restricted to strict meaning of plaintiff or defendant in a lawsuit, being defined as one concerned in or privy to a matter." In this legal action, the Appellant should be a party-in-interest, pursuant to S.C. Code Ann. § 15-53-80, not a defendant as requested in the Motion to Dismiss that was denied.

Rule 19(a), SCRCP states in part that "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action . . . if (2) 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 . . . If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff." Pursuant to Rule 19(a)(2), SCRCP, Goff Trustee could have been designated as an "Involuntary Plaintiff" by the Court as requested in the Motion to Dismiss that was denied.

Respondents' Complaint failed to state any facts that constitute a cause of action against the Appellant and the Respondents' lawyer has stated in written communications and in the motion hearing transcript that, in summary, her clients have no claims against the Appellant. There are no stated facts or claims in the Respondents' Complaint that constitutes a "fairly read", unspecified, cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCP and/or under any United States and/or South Carolina Statues, Laws or Rules of Civil Procedure.

In a Rule 12(c), SCRCP, Motion for Judgment on the Pleadings, after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Directing the Court's attention to the Appellant's motion for judgment on the pleadings, or, in the alternative, summary judgment, the court must apply the appropriate legal test. The test applicable for a judgment on the pleadings or a summary judgment is whether or not, when viewed in the light most favorable to the party against whom the motion is made, no genuine issues of material fact remain and the case can be decided as a matter of law. The Respondents have stated in filings and before the trial court that they have no claims against the Appellant. There are no genuine issues of material facts to be tried against the Appellant in the Respondents' Complaint; therefore, the Appellant is entitled to judgment in his favor as a matter of law based on the unsolicited admissions made in writings and in the hearing transcript.

According to Black's law Dictionary, "Admissions are confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. More accurately

regarded, they are statements by a party, or someone identified with him or her in legal interest, of the existence of a fact which is relevant to the cause of his adversary. They are against the interest of the party making them. It is not essential that an "admission" be contrary to interest of party at time it is made; it is enough if it be inconsistent with a position which party takes either in pleadings or at trial." The Respondents' lawyer made admissions in an email message, a letter and motion hearing transcript that, in summary, stated that her clients have no claims against Goff Trustee.

CONCLUSIONS

The Appellant's Motion to Reinstate Appeal should be granted. 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 made admissions in written statements and the hearing transcript that her clients have no claims against the Appellant. This intermediate Order was appealable because it has affected the merits of the case, impacted the substantial rights of the Appellant and will prevent the appeal of any final judgment after a trial. Fairness and justice require this Honorable Court to grant the Motion to Reinstate of the appeal order and subsequently dismiss the Respondents' Complaint in its entirety.

Respectfully Submitted,

Date: July 28, 2023

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

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED
AUG 01 2023
SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable William H. Seals, Jr.

Appellate Case No. 2023-000615

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 and Georgetown County is a Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Reinstate Appellate Case No. 2022-000811 and Memorandum in Support of Motion to Reinstate Appellate Case No. 2022-000811 in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed to Rachel E. Lee, Esq., Smith Robinson Holler Dubose Morgan, LLC, 2530 Devine Street, Third Floor, Columbia, SC 29205 with postage prepaid on July 28, 2023.

Benjamin F. Goff, Sr., Trustee, Pro Se
18 Powers Farm Road
Randolph, MA 02368

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable William H. Seals, Jr.

Appellate Case No. 2023-000615

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 and Georgetown County is a Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Reinstate Appellate Case No. 2022-000811 and Memorandum in Support of Motion to Reinstate Appellate Case No. 2022-000811 in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed to Cynthia Ranck Person, Esq., Keep It Green Advocacy, Inc., P.O. Box 1922, Pawleys Island, SC 29585 with postage prepaid on July 28, 2023.

Benjamin F. Goff, Sr., Trustee, Pro Se
18 Powers Farm Road
Randolph, MA 02368

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED
AUG 01 2023
SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Stephen 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 and Georgetown County is a Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Reinstate Appellate Case No. 2022-000811 and Memorandum in Support of Motion to Reinstate Appellate Case No. 2022-000811 in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed to Cynthia Ranck Person, Esq., Keep It Green Advocacy, Inc., P.O. Box 1922, Pawleys Island, SC 29585 with postage prepaid on July 28, 2023.

Benjamin F. Goff, Sr., Trustee, Pro Se
18 Powers Farm Road
Randolph, MA 02368

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

AUG 01 2023

SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Stephen H. John

Appellate Case No. 2023-000811

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 and Georgetown County is a Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Reinstate Appellate Case No. 2022-000811 and Memorandum in Support of Motion to Reinstate Appellate Case No. 2022-000811 in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed to Rachel E. Lee, Esq., Smith Robinson Holler Dubose Morgan, LLC, 2530 Devine Street, Third Floor, Columbia, SC 29205 with postage prepaid on July 28, 2023.

Benjamin F. Goff, Sr., Trustee, Pro Se
18 Powers Farm Road
Randolph, MA 02368

RECEIVED

AUG 01 2023

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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., Respondents, v. Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, Appellant, Case No. 2022-CP-22-00032

Dear Ms. Kitchings:

Enclosed for filing in the above case are the following:

(1) Proof of service of the Final Brief of Appellant;
(2) Proof of Service of the Final Reply Brief of Appellant
(3) Final Brief of Appellant (15 copies)
(4) Final Reply Brief of Appellant (15 copies)
(5) Motion to Reinstate Appellate Case No. 2022-000811
(6) Memorandum in Support of Motion to Reinstate Appellate Case No. 000811
(7) A Motion filing fee of $50.

Respectfully,

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, Massachusetts 02368
(781) 986-0635
Pro Se for Appellant

cc: Cynthia Ranck Person, Esq.
Keep It Green Advocacy, Inc.
Post Office Box 1922
Pawleys Island, South Carolina 29585
(570) 971-8636
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