THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

William H. Seals, Jr., Circuit Court Judge

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.

FINAL BRIEF OF APPELLANT

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

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STATEMENT OF THE CASE

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, ("Appellant") 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. A Rule 12(b)(6), SCRCP Motion to Dismiss the Appellant as a Defendant was filed on January 25, 2022.

In the resolution of the County's ("Respondent") Motion to Dismiss filed on April 11, 2022, the Respondents and Respondent agreed to a Stipulation of Dismissal, which 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 Respondent should continue as defendants in this action. The Appellant was deliberately joined under S.C. Code Ann. § 15-53-80 of UDJA as a defendant.

An agreed "Stipulation to Dismissal", between the Respondents' lawyer and the Respondent's lawyer was submitted to the Court on May 5, 2022 pursuant to Rule 41, SCRCP; therefore, Respondent's Motion to Dismiss was not heard by the Trial Court. The Appellant's Motion to Dismiss him as a Defendant was heard, May 19, 2022. On or about May 25, 2022, Appellant was informed by the Court's law clerk in an email that the motion was denied and a fair reading indicated a cause of action against the Appellant. The Order was authored by the

Respondent' lawyer as requested by the law clerk. In the Motion for Summary Judgment, the Appellant followed the guidance of the Trial Court judge in challenging the failure to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Respondents' Complaint. The interlocutory order was appealed on June 10, 2022. It was tantamount to a final judgment and appealable; however, it was dismissed on motion by the Court of Appeals on December 7, 2022.

Pursuant to Rule 12(b)(6), the Respondents' Complaint fails to state any facts that constitute a cause of action against the Appellant. Despite not being stated in the Respondents' Complaint, the Appellant's Trust has been defined as a Defendant by the Court.

The motion hearings were heard on March 23, 2023 for the Respondents' Motions to Dismiss the Counterclaim Complaint and Strike Other Matters and to Strike and the Appellant's Motions for Judgment on the Pleadings and Summary Judgment. On March 24, 2023, the Court granted the Respondents' Motions to Dismiss the Counterclaim and Strike Other Matters and denied the Appellant's Motions for Judgment on the Pleadings and Summary Judgment. The Appellant received notice by telephone on the morning before the hearing that the scheduled Trial Court judge was replaced. On April 12, 2023, the Appellant filed a Notice of Appeal for the granting of the Respondents' Motion to dismiss the Counterclaim Complaint and Motion to Strike and denying the Motions for Judgment on the Pleadings and Summary Judgment.

FACTS

1. The Respondents, for the express purpose of injuring the Appellant and Appellant's property, organized and combined to interfere with the rezoning process and instituted a legal action after having failed to stop the approval and adoption of Ordinances 21-24 and 21-25. See (R. Vol. I pp. 11-134).

2. The Respondents engaged in a civil conspiracy, conspiracy against rights and an effort at deprivation of rights under the color of law for the rezoning to medium density residential, 10,000 Square Feet Residential (R-10). See (R. Vol. I pp. 11-134) (R. Vol. I pp. 336-365) (R. Vol. I pp. 99-100) (R. Vol. I pp. 104-110) (R. Vol. I pp. 366-369).
3. The Respondents' lawyer and Respondents are or were members of Keep It Green, Inc. whose organizational mission is to contest the approval and adoption of rezoning to higher density on the Waccamaw Neck. See (R. Vol. I pp. 13-16, paras. 5-18) (R. Vol. I pp. 73-76).
4. There are no stated genuine issues of material facts to be tried against the Appellant in the Respondents' Complaint or have been determined by the Trial Court. See (R. Vol. I pp. 19-43) (R. Vol. II pp. 3-10) (R. Vol. I pp. 3-10).
5. Pursuant to Rule 19(a)(2), SCRCP, 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. There are no stated facts, claims or allegations in the Respondents' Complaint that constituted a "fairly read" cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCP. See (R. Vol. I pp. 19-43).
7. There is no requirement for a "burden of proving the need" justification to be submitted with the rezoning application. See (R. Vol. I pp. 77-80) (R. Vol. I p. 371) (R. Vol. I pp. 89-90).
8. All allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed by stipulation. See (R. Vol. I pp. 19-43) (R. Vol. II pp. 258-259).

9. None of the Respondents have a particularized or imminent injury-in-fact from the ordinances to create standing or a justiciable controversy for judicial intervention. See (R. Vol. I p. 18, paras. 28-30) (R. Vol. I pp. 46-76).
10. The Stipulation of Dismissal between the Respondents' and Respondent's lawyers dismissed any and all claims against the County Council and elected members. See (R. Vol. II pp. 258-259).
11. The Respondents' and Respondent's lawyers, resolution of the Motion to Dismiss, the claims against the County Council and elected members in the Respondents' Complaint, was a concession to legislative immunity that deters judicial intervention. See (R. Vol. II pp. 263-264).
12. The Appellant's application to rezone the property, Case Number REZ-21-28323, to the Georgetown County Planning Department met all requirements of Planning Department, Planning Commission and County Council and it resulted in the approval and adoption of Ordinances 21-24 and 21-25. See (R. Vol. I p. 371).
13. Ordinances 21-24 and 21-25, passed in accordance with the South Carolina Association of Counties Model Rules of Parliamentary Procedure for South Carolina Counties, third edition, at the Third Reading Meeting on October 26, 2021 without any procedural objections. See (R. Vol. II pp. 298-299).
14. At November 9, 2021 County Council meeting, in accordance with Robert's Rules of Order Newly Revised, 9th Edition, Councilman Ernest Carolina changed his vote from "abstained" to "in favor" for Ordinances 21-24 and 21-25 without procedural objections and the minutes were unanimously approved at the next meeting. See (R. Vol. II pp. 302-303). (R. Vol. II p. 309).

15. The Respondents' Complaint did not allege constitutional violations, if any, in the procedural approval of the Appellant's Ordinances 21-24 and 21-25 and the ordinances did not violate the constitutional rights of the Respondents. See (R. Vol. I pp. 19-43).
16. In an email, 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 pp. 331-332).
17. In a letter, 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).
18. 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).

19. In the Transcript of Record on March 23, 2023, subject, Middleton v. Georgetown County, 2022-CP-2200-032, the Respondents' lawyer stated: "The issues really involve Georgetown County". See (R. Vol. I p. 320, Line 18).

20. The Benjamin F. Goff 2004 Revocable Trust is not designated as a Defendant in the Respondents' Complaint. See (R. Vol. I pp. 11-17).

21. Respondents' positions taken in pleadings and filings are inconsistent with admissions and conflict with statements made in the Transcripts of Record. See Facts No. 16-19. (R. Vol. I pp. 175-178) (R. Vol. I pp. 19-43) (R. Vol. I pp. 251-260) (R. Vol. II p. 276, Lines 10-15) (R. Vol. I p. 320, Line 18) (R. Vol. II pp. 227-239) (R. Vol. II p. 240-253) (R. Vol. II pp. 254-255) (R. Vol. II pp. 258-259) (R. Vol. II pp. 260-261) (R. Vol. II p. 331) (R. Vol. II p. 333).

ARGUMENTS

I. BECAUSE THE TRIAL COURT ORDER DATED MARCH 24, 2023 DISMISSED THE COUNTERCLAIM COMPLAINT DESPITE SUFFICIENT FACTS AND EVIDENCE FOR A CAUSE OF ACTION AGAINST THE RESPONDENTS.

Standard of Review:

"The question [on a motion to dismiss a counterclaim] is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief." See Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001).

If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. See Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); and Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." See Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

A motion to dismiss a counterclaim must be based solely on the allegations set forth in the counterclaim. See Rule 12(b)(6), SCRCP; See Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [complainant] to any relief on any theory of the case." See Stiles v. Onorato, 318 S.C.

297, 300, 457 S.E.2d 601, 602-3 (1995). The question is whether in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief. See Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987):

In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. See Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Id.

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. See Brazell v. Windsor, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Id. "The trial court and this [C]ourt on appeal must presume all well pled facts to be true." See Morrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988). "[P]leadings in a case should be construed liberally so that substantial justice is done between the parties."

Further, a judgment on the pleadings is considered to be a drastic procedure by our courts." See Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted). The court should not dismiss the complaint merely because there exists doubt that the plaintiff will prevail in the action. See Doe, 373 S.C. at 395, 645 S.E.2d at 248.

Discussion: The Counterclaim Complaint stated sufficient facts to constitute a cause of action for civil conspiracy, conspiracy against rights and an effort at the deprivation of rights under the color of law through the litigation to injure and harm the Appellant and Appellant's property by members of the Respondents. See (R. Vol. I pp. 150-174). Respondents' lawsuit is an overt action in furtherance the civil conspiracy. The Respondents' Complaint, itself, is conspiratorial evidence of a cause of action against the Respondents and members of the Keep It Green organization to undermine the approval and adoption of the Appellant's ordinances. See (R. Vol. I pp. 150-174) (R. Vol. I pp. 187-204) (R. Vol. I pp. 295-309).

A court may consider exhibits attached to a pleading when deciding a motion to dismiss. See Rule 10(c), SCRCP ("A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."); See Lee v. Kelley, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989) ("[B]y virtue of Rule 10(c), SCRCP, the attachment became a part and parcel of the complaint.").

Having failed to stop the County Council from rezoning the Appellant's property, the Respondents instituted an overt legal action in furtherance of the civil conspiracy under the Uniform Declaratory Judgment Act (UDJA). Instead of complying Section 15-53-80, and designating the Appellant as a party-in-interest, the Respondents named the Appellant as a defendant, despite admittances of no claims against the Appellant in the Complaint. See (R. Vol. II p. 331) (R. Vol. II p. 333).

It was stated and perceived by some members of Keep It Green organization and a Council member that the Appellant's motive for rezoning to higher density was for undeserving profits from a sale of the property. Consequently, the civil conspiracy was to financially injure the Appellant's property market value and the Appellant personally through legal fees. Through the Keep It Green webpage members, the general public was solicited and prompted to send opposition letters and emails, signed the submitted 1000 plus signature petition and attend the County Council in large numbers to object to the rezoning of the Appellant's property. In order to establish an injury-in-fact, the Respondents with lot contiguous the Appellant's property submitted affidavits attesting that they paid a premium cost based on the contention that the Appellant's property would never be rezoned. The Appellant has suffered actual and special damages as a result of the overt acts committed and the legal action in furtherance of the organized and combined actions of the Respondents in a civil conspiracy to interfere with the

rezoning of the Appellant's property. The willful civil conspiracy engaged in by the Respondents have created special damages by negatively impacting the marketability and market value of the Appellant property. See (R. Vol. I pp. 366-369).

The facts and inferences reasonably deducible therefrom alleged in Counterclaim Complaint would entitle the Appellant to relief on the theory of a civil conspiracy based on sufficient facts for a cause of action against the Respondents pursuant to Rule 12(b)(6), SCRCP. Another cause of action exists in the Counterclaim for a declaratory judgment as to whether with deliberate intent to harm and injure, the Appellant was designated as a defendant as opposed to a party-in-interest. The filing of the lawsuit to render the ordinances null and void through judicial intervention is furtherance of the conspiracy against rights and an attempted deprivation of rights under the color of law.

In the first order on appeal, June 3, 2022, the trial court stated that a fairly read, unspecified, cause of action against the Appellant existed in the Respondents' Complaint where the Respondents admitted there were no claims against the Appellant; whereas, in the Appellant's Counterclaim Complaint, the trial court portends there is no cause of action against the Respondents on any theory of the case in the second order on appeal, March 24, 2023, where evidence of a civil conspiracy is presented in the Respondents' Complaint. Consequently, both decisions by the trial court is tantamount to bias on behalf of the Respondents and the denial of equal justice to the Appellant.

If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. See Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); and Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in

the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." See Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. See Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." See Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003); and Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); and Baird, 333 S.C. at 527, 511 S.E.2d at 73 (declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (concluding a motion to dismiss cannot be sustained if the facts alleged in complaint and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case). In the Counterclaim Complaint, the Appellant seeks, a declaratory judgment on the justiciable controversy of being named a defendant as opposed to a party-in-interest or involuntary plaintiff. Also, through injunctive relief to enjoin the Respondents and Keep It Green and its members or sympathizers from further efforts to undermine, and injure and harm the Appellant and Appellant's property.

In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See Gentry, 337 S.C. at 5, 522 S.E.2d at 139; see Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (explaining that looking at facts in light most

favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

A judgment on the pleadings against a plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment . . . When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that a plaintiff is entitled to any relief whatsoever. The courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. See Russell, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted).

The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. See Tatum v. Medical Univ. of S.C., 346 S.C. 194, 552 S.E.2d 18 (2001); see also Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case). In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. See Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App. 2001). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. See Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "Dismissal of an action pursuant to Rule 12(b)(6) is appealable." See Williams, 347 S.C. at 233, 553 S.E.2d at 500. Upon review of a dismissal of an action

pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. Id.

When deciding a motion to dismiss for failure to state a claim, "[t]he question is whether, in the light most favorable to the [nonmoving party], and with every doubt resolved in his behalf, the [pleading] states any valid claim for relief." See Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

II. BECAUSE APPELLANT WAS MADE A DEFENDANT AS OPPOSED TO A PARTY-IN-INTEREST UNDER THE UNIFORM DECLARATORY JUDGMENT ACT OR AN INVOLUTARY PLAINTIFF PURSUANT RULE 19(a)(2), SCRCP.

Standard of Review:

S.C. Code Ann. § 15-53-80 The Uniform Declaratory Judgment Act (UDJA), 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."

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (1976). "Any person . . . whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30 (1976); see also Rule 57, SCRCP.

Despite the Act's broad language, it has its limits. An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. See Power v. McNair, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970); City of Columbia v. Sanders, 231 S.C. 61, 68, 97 3; and Sunset Cay, LLC v. City of Folly Beach 357 S.C. 414 (S.C. 2004) S.E.2d 210, 213 (1957). A declaratory judgment should not address moot or abstract matters. See Waller v. Waller, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951). To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. See Power v. McNair, supra at 553.

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."

Discussion: The Appellant's Motion to Dismiss 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 entire case even though there were insufficient facts for a cause of action against the Appellant and County Council. See (R. Vol. II pp. 194-218). A Motion to Dismiss the Respondents' Complaint in its entirety was made by the County Council on April 11, 2022 and not heard by the court because it was resolved by a Stipulation of Dismissal filed on May 5, 2022. See (R. Vol. II pp. 254-255). In this legal action, the Appellant should be a party-in-interest, pursuant to S.C. Code Ann. § 15-53-80, or an involuntary plaintiff pursuant to Rule 19(a)(2), SCRCP, not a defendant as requested in the Motion to Dismiss that was denied and sanctioning the Appellant with a phantom fairly read cause of action.

"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." See Black's law Dictionary, 4th Edition. The Respondents cannot obtain relief or recovery from the Appellant or Appellant's property and their properties have not been financially harmed by the rezoning.

In the Court Docket, the Appellant's Trust is designated as a defendant. The Appellant, the sole trustee of the Appellant's Trust, for all legal purposes is the owner of all assets held. In

accordance with Fed.R.Civ.P. 17(a), the trustee, as the legal title holder of the trust's property, is generally the real party-in-interest. Under Federal Rule of Civil Procedure 17(b), the capacity of a trust to sue or be sued is determined by the laws of the state where the court is located. See Fed.R.Civ.P. 17(a) and (b). The overwhelming weight of authority holds that a trust, under state law, does not have the capacity to sue or be sued in its own name. See Coverdell v. Mid–South Farm Equipment Ass'n, 335 F.2d 9, 12–13 (6th Cir.1964) and IV Scott, Trusts § 280 (1989).

The designation of the Appellant and Appellant's Trust as defendants is a justiciable controversy. Also, there exists a cause of action and justiciable controversy to be decided by the court in the Counterclaim Complaint. The Appellant was entitled under the federal and state laws to submit a rezoning application without becoming a defendant in a declaratory judgment lawsuit rather than a person-in-interest or involuntary plaintiff pursuant to Rule 19(a)(2), SCRCP.

III. BECAUSE RESPONDENTS HAVE ENGAGED IN A CIVIL CONSPIRACY TO INJURE AND HARM THE APPELLANT AND APPELLANT'S PROPERTY.

Standard of Review:

In Paradis v. Charleston County School District, the South Carolina Supreme Court has opined that "In light of our decision today, we are returning to our long-standing precedent pre-Todd and for clarification specifically state a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." See Paradis v. Charleston County School District, 433 S.C. 562. 574, 861 S.E.2d 774 (SC Sup. Ct. 2021); Charles II, 199 S.C. at 176, 18 S.E.2d at 727; Charles I, 192 S.C. at 101, 5 S.E.2d at 472; see also 16 Am. Jur. 2d Conspiracy § 53 (2020) (enumerating the prevailing elements of a claim for civil conspiracy recognized in most jurisdictions); 15A C.J.S. Conspiracy § 4 (2012) (same). Alleging special damages in the complaint to avoid surprise to the other party is no longer required. See Sheek v. Lee, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986).

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. See McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. See LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore,

the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. See Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." See Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004).

Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. See McMillan, 367 S.C. at 564, 626 S.E.2d at 886. The gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. Pye, 369 S.C. at 568, 633 S.E.2d at 511.

In South Carolina, "[a] civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage." See Robertson v. First Union Nat. Bank, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002) (citing Island Car Wash, Inc. v. Norris, 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct. App. 1987)). "A civil conspiracy may, of course, be furthered by an unlawful act. ... [but] an unlawful act is not a necessary element of the tort. An action for conspiracy may lie even though no unlawful means are used and no independently unlawful acts are committed." See Lee v. Chesterfield General Hosp., 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct. App. 1986). "A conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action." See Future Group, II v. Nationsbank, 324 S.C. 89, 100, 478 S.E.2d 45, 51 (1996) (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981)).

An action for conspiracy may lie even though no unlawful means are used and no independently unlawful acts are committed." See Lee v. Chesterfield General Hosp., 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct. App. 1986). "A conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action." See Future Group, II v. Nationsbank, 324 S.C. 89, 100, 478 S.E.2d 45, 51 (1996) (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981)).

A civil conspiracy consists of a combination of two or more parties joined for the purpose of injuring the plaintiff thereby causing him special damage. See Future Group, II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996). Concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence. Id. In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. Id. A conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action. Civil conspiracy is an act which is, by its very nature, covert and clandestine and usually not susceptible of proof by direct evidence. See Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct.App.1987).

> The gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. See Pye, 369 S.C. at 568, 633 S.E.2d at 511.

Discussion: The Respondents' Complaint is the culmination of the combined and organized effort by the members of the Keep It Green organization to injure and harm the Appellant. In the Complaint, the allegations and exhibits along with the legal action proved all elements of the civil conspiracy to injure and harm the Appellant and Appellant's property. The Appellant need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. See (R. Vol. I pp. 11-134) (R. Vol. I pp. 336-365) (R. Vol. I pp. 86-88) (R. Vol. I pp. 150-174).

The Respondents lawsuit, to render Ordinances 21-24 and 21-25 null and void, is a blatant effort to sabotage the market value and prevent perceived undeserve profits. In this Complaint, the Respondents want to cause financial injury and harm to the Appellant. The 1000 plus signature petition demonstrates a combination or agreement of two or more persons to commit an unlawful act or a lawful act by unlawful means; whereas, the litigation proves the commission of an overt act in furtherance of the agreement; with proximate damages resulting to the Appellant and Appellant's property by undermining the market value for development. See (R. Vol. I pp. 99-100) (R. Vol. I p. 371) (R. Vol. I pp. 104-110).

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." See McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. See LaMotte v. Punch Line of Columbia,

Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. See Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." See Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). "Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence." See McMillan, 367 S.C. at 564, 626 S.E.2d at 886. See (R. Vol. I pp. 336-365). Therefore, the primary inquiry in a civil conspiracy is whether the Respondents' principal purpose of the combination was to injure the Appellant. The answer is validated herein and in the public record and hearings. See (R. Vol. I pp. 366-368).

Proof of unlawful means or independently unlawful acts in order to establish a civil conspiracy is no longer required by South Carolina Courts. A cause of action may arise from an act two or more people committed even where no cause of action would arise if an individual committed the same act. Under South Carolina law, lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another.

Conspiracies may be concluded from the very nature of the acts done, the relationship of the parties, the motives of the alleged conspirators, and other circumstances. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. The significance of a civil conspiracy claim is the damage resulting to the Appellant from the overt acts taken in furtherance of the combination by the Respondents conspirators in filing this civil action for judicial intervention. See (R. Vol. I pp. 104-110) (R. Vol. I p. 369).

Although, a conspiracy scheme is generally covert and clandestine, the Respondents and others did not conceal their combined and collectively action to injure the Appellant by attacking the property rezoning from low density to medium density. The multiple postings from Respondent's Keep It Green's website and attributable comments in local newspapers clearly establishes the existence of a civil conspiracy in combination or agreement of two or more persons to injure the Appellant. See (R. Vol. I pp. 366-368).

The obvious intent of the collective action was to injure the Appellant's property 1) by preventing the rezoning of the property; 2) by committing lawful acts with unlawful means through combined and coordinated efforts; 3) together initiate the commission of an overt act in furtherance of the agreement to injure through judicial intervention; and 4) with resultant proximate damages to the Appellant's property market value and marketability. Further, the Respondents' affidavits are uniform in content with the premise that they acquired their properties with the expectation that the Appellant's property would never be rezoned and paid a stated premium to acquire their lots; therefore, they were retroactively injured by the Appellant's ordinances. See (R. Vol. I pp. 46-76).

The Appellant need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. Therefore, the primary inquiry in civil conspiracy is whether the Respondents' principal purpose of the combination was to injure the Appellant. The answer is validated herein and the lawsuit, motion hearings and the organization's website. An action for conspiracy may lie even though no unlawful means are used and no independently unlawful acts are committed." See Lee v. Chesterfield General Hosp., 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct. App. 1986). "A conspiracy is actionable only if overt acts pursuant to the common design proximately cause

damage to the party bringing the action." See Future Group, II v. Nationsbank, 324 S.C. 89, 100, 478 S.E.2d 45, 51 (1996) (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981)). Respondents' Complaint is an overt civil action.

Conspiracies may be concluded from the very nature of the acts done, the relationship of the parties, the motives of the alleged conspirators, and other circumstances. Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence. The significance of a civil conspiracy claim is the damage resulting to the Appellant from the overt acts taken in furtherance of the combination by the Respondents conspirators in filing the civil action for judicial intervention.

Several paragraphs and exhibits in the Respondents' Complaint demonstrate the extent of the combined effort to influence the County Council vote by orchestrating "force of numbers" in opposition correspondence and verbal threats during the County Council reading meetings. See (R. Vol. I pp. 26-29, paras. 65-78). Including a petition containing more than one thousand (1,000) signatures of residents opposing the Appellant rezoning of the Appellant's property. See (R. Vol. I pp. 336-365).

A conspiracy scheme generally involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence; however, the Counterclaim-Defendants and others did not conceal their combined and collectively action to injure Counterclaim-Plaintiffs' property and prevent the perceived undeserved profits from rezoning from low density to medium density. The postings from Keep It Green's website clearly establishes the existence of a civil conspiracy in combination or agreement of two or more persons. See (R. Vol. I pp. 366-369).

The obvious intent of the collective action was to injure the Appellants' property 1) by preventing the rezoning of the property; 2) by committing lawful acts with unlawful means through combined and coordinated efforts; 3) together initiate the commission of an overt act in furtherance of the agreement to injure through judicial intervention; and 4) with resultant proximate damages to the Appellant's property market value and marketability. Further, the Respondents' affidavits are uniform in content with the premise that they acquired their properties with the expectation that the Appellant's property would never be rezoned; therefore, they were retroactively injured by Ordinances 21-24 and 21-25. The Appellant has suffered actual and special damages as a result of the overt acts committed pursuant to the combined actions of Respondents in improperly and unjustifiably conspiring to interfere with a successful rezoning of the Appellant's property.

The Counterclaim Complaint contains sufficient facts for a cause of action against the Respondents for civil conspiracy. As stated herein, the Respondents membership in the Keep It Green organization, signatures on the 1000 plus petition, questionable affidavits of financial injury, opposition correspondence and the lawsuit clearly proves an organized and combined civil conspiracy claim has been established: 1) the combination or agreement of two or more persons 2) to commit an unlawful act or a lawful act by unlawful means; 3) together with the commission of an overt act in furtherance of the agreement; and 4) damages proximately resulting to the Appellant.

IV. BECAUSE RESPONDENTS HAVE ENGAGED IN A CONSPIRACY AGAINST RIGHTS AND FILED A LEGAL ACTION FOR THE DEPRIVATION OF RIGHTS UNDER THE COLOR OF LAW TO INJURE AND HARM THE APPELLANT AND APPELLANT'S PROPERTY.

Standard of Review:

Under Title 18, U.S.C., Section 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the

free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States.

Under Title 18, U.S.C., Section 242, it is a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. Private persons, jointly engaged with state officials in the prohibited action, are acting under color of law for purposes of the statute. To act under color of law does not require that the accused be an officer of the State.

It is enough that she/he is a willful participant in joint activity with the State or its agents. See United States v. Price, 383 U.S. 787, 794, n. 7, 86 S.Ct. 1152, 1157 n.7, 16 L.Ed.2d 267 (1966). The U.S. Supreme Court has held that the private party's joint participation with a state official in a conspiracy to discriminate would constitute both state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights and action under color of law for purposes of the statute. See Adickes v. S. H. Kress & Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970).

42 U.S. Code § 1983 – Civil Action for Deprivation of Rights – "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

State courts may now entertain Section 1983 actions if a plaintiff chooses a state court over the federal forum that is always available as a matter of right. See Martinez v. California, 444 U.S. 277, 283, and n. 7, 100 S.Ct. 553, 558, and n. 7, 62 L.Ed.2d 481 (1980). Section 1983 creates no substantive law. It merely provides one vehicle by which certain provisions of the Constitution and other federal laws may be judicially enforced. See Patsy v. Board of Regents of Florida, 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982) (quoting Mitchum v. Foster, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972)) (emphasis added). State as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, which creates a remedy for violations of federal rights committed by persons acting under color of state law.

Discussion: Under the South Carolina Planning and Enabling Act, the Georgetown County Rezoning Regulation and County Council Rules of Procedure, the Appellant submitted an application for rezoning a parcel of land. As would be expected, there was opposition and support from the residents. After an unsuccessful combined and organized effort to prevent the

approval and adoption of the ordinances, the adjoining landowners who are members of an organization that opposed the rezoning, collectively filed a lawsuit against the County Council and the Appellant. See (R. Vol. I pp. 11-134).

Consequently, the Appellant and Appellant's property was subjected to a civil conspiracy, conspiracy against rights and the deprivation of rights under the color of law for the rezoning to medium density residential, 10,000 Square Feet Residential (R-10). The Appellant, who should be an interested party under the S.C. Uniform Declaratory Judgment Act (UDJA), was arbitrarily and capriciously or with deliberate intent made a defendant under the UDJA in violation of the legislative intent of the law. See (R. Vol. I pp. 150-174) (R. Vol. I pp. 11-43). The organization, Keep It Green and its members and associated individuals and organizations, engaged in conspiratorial misconduct as documented through the various correspondences, website postings and attributable comments in local news articles; thereby, violating the Appellant's South Carolina and United States constitutional laws.

V. BECAUSE THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT WAS NOT OPPOSED WITH ADMISSIBLE EVIDENCE OR AFFIDAVITS AND THERE ARE NO GENUINE ISSUES OF MATERIAL FACTS TO BE TRIED AGAINST THE APPELLANT AND HE IS ENTITLED TO JUDGMENT IN HIS FAVOR AS A MATTER OF LAW.

Standard of Review:

Rule 56, SCRCP provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. See Rule 56(a), SCRCP. The trial court must grant the motion "if the pleadings, answers to interrogatories, admissions and exhibits on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Id. Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact or any claims to be tried." See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

Ordinarily, the denial of summary judgment is not appealable. See Holloman v. McAllister, 289 S.C. 183, 345 S.E.2d 728 (1986). The appellate courts have discretion,

however, to consider an unappealable order if an appealable issue is before the court and a ruling on appeal will avoid unnecessary litigation. See Hite v. Thomas & Howard Co. of Florence, Inc., 305 S.C. 358, 409 S.E.2d 340 (1991).

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Rule 56(c), SCRCP; also, Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

"With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"-- that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case.'" See Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)). The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. See *Id.* (quoting Celotex, 477 U.S. at 323); and Richardson v. State-Record Co., 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). Once the moving party carries its initial burden, the opposing party must come forward with admissible evidence that show there is a genuine issue of fact remaining for trial. See Baughman, 306 S.C. at 115, 410 S.E.2d at 545.

Discussion: The trial court's decision on the Appellant's Motion to Dismiss Benjamin F. Goff, Trustee as a defendant insinuated that a fair reading of the pleadings established a cause of action as against this Defendant. However, there are no stated facts, claims or allegations in the Respondents' Complaint that constituted a "fairly read" cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCP. See (R. Vol. I pp. 19-43). Also, there are no genuine issues of material facts to be tried stated against the Appellant in the Respondents' Complaint or have been determined by the Court. See (R. Vol. I pp. 205-235) (R. Vol. I pp. 261-294).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). In the grant of a summary judgment motion, the Court applies the standard under Rule 56(c), SCRCP: "summary judgment is proper when 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.'" See Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991). In determining

whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. See Id. at 115, 410 S.E.2d at 545. However, the nonmoving party must demonstrate the likelihood that a trial will uncover additional relevant evidence.'" See Id. at 112, 410 S.E.2d at 544. The Respondents did not state any genuine issues of material facts to be tried against the Appellant in their opposition filings, the hearing transcript or the Order authored by the Respondents' lawyer. See (R. Vol. I pp. 253-260) (R. Vol. I p. 320, Line 18) (R. Vol. I pp. 6-10).

The Respondents' Complaint does not contain any claims against the Appellant and they have made admissions of no claims against the Appellant. In the Appellant's motion dismiss hearing, the judge derived an unspecified fairly read cause of action that has prolonged the Appellant as a defendant. There are no material facts to be tried against the Appellant and the judge denied the Motion for Summary Judgment without specifying any material facts to be tried. 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 Respondents' Complaint and admissions which were made in unsolicited written communications and in the motion hearing transcripts. 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).

According to Black's law Dictionary, 4th Edition, "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 the Appellant. All allegations in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members and have been dismissed. Id.

The Stipulation of Dismissal between the Respondents' and Respondent lawyers dismissed any and all claims against the County Council and elected members. The Appellant was not a signatory to the stipulation, in violation of Rule 41(1)(B), SCRCP. The resolution of the Motion to Dismiss was a concession to legislative immunity that deters judicial intervention. The Complaint did not allege constitutional violations, if any, in the procedural approval of the Appellant's Ordinances 21-24 and 21-25 and there cannot be remaining claims. See (R. Vol. II p. 258-259).

Additionally, the Respondents do not have a particularized or imminent injury-in-fact from the ordinances, now or in the future, to create standing and/or a justiciable controversy for judicial intervention. See (R. Vol. I pp. 46-76). The Appellant only submitted an application to rezone an unimproved parcel of land to the Georgetown County Planning Department and it resulted in the approval and adoption of Ordinances Number 21-24 and 21-25 by the County Council and elected members. Neither the Court nor Respondents provided any genuine material facts to be tried against the Appellant in denying and opposing the motion for summary judgment. There is no fairly read cause of action or 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.

In that the County Council members have been dismissed from the case, a review of the record before the Court compels a finding that summary judgment should be granted for the

Appellant. See Humana Hosp.-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law."). Despite being bound to review the record in a light most favorable to plaintiffs, "[a] court 'cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.'" See Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000).

The Respondents' lawyer did not state or present any claims, if any, against the Appellant that established a genuine issue of material fact for trial. In fact, the Respondents' lawyer has stated in written communications and at the motion hearing that there are no claims against the Appellant. A plaintiff is not permitted to simply rest on the allegations in their complaint, especially where, as here, the factual allegations are conclusory in nature and directed at the County Council and elected members. Rule 56(e), SCRCP states that an adverse party may not rest upon the mere allegations or denials of his pleading, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Respondents failed to set forth any genuine issues material facts to be tried or to be obtained through further discovery or develop from at trial against the Appellant.

Under the circumstances of this case, the Court should appropriately grant summary judgment to the Appellant. See Middleborough Horiz. Property Regime Council of Co-Owners v. Montedison *S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where appellants "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the

motion for summary judgment"). With the admissions of no claims against the Appellant, a trial will not to create any genuine issue of material fact against the Appellant. See Baughman, 306 S.C. at 112, S.E.2d at 544 (nonmoving party must demonstrate that further discovery will likely uncover additional relevant evidence); and George v. Fabri, 345 S.C. at 452, 548 S.E.2d at 874 (purpose of summary judgment is to dispose of cases which do not require a fact finder).

All allegations and claims in the Respondents' Complaint are directed at the Georgetown County Council and elected Council members along with a request to nullify and void Ordinances 21-24 and 21-25. Having stipulated to dismiss any and all claims against the County Council and elected members, the Appellant has been left as the only opposing party. On April 11, 2022, the lawyer for the County Council and elected members filed a Motion to Dismiss the Complaint based on legislative immunity related to the enacting the challenged ordinances and the lack of power of the court to compel the County Council to take legislative action with respect to the challenged ordinances. See (R. Vol. II pp. 254-255).

A Letter to Court, dated May 4, 2022, implied an agreement between the lawyers which resulted in a Stipulation of Dismissal, filed of May 5, 2022, to dismiss the all claims against the County Council and elected members from the Respondents' Complaint. With the real Defendants exonerated and protected by legislative immunity, this left the Appellant as the sole accused Defendant in a legal action in which he did nothing wrong. See (R. Vol. II p. 263-264) (R. Vol. I p. 320, Line 18).

VI. BECAUSE THE TRIAL COURT SHOULD HAVE GRANTED THE MOTION FOR JUDGMENT ON THE PLEADINGS BECAUSE THE RESPONDENTS ADMITTED IN WRITTEN DOCUMENTS AND THE TRANSCRIPTS THAT THERE ARE NO CLAIMS AGAINST THE APPELLANT IN THE COMPLAINT.

Standard for Review:

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.

Rule 56, SCRCP provides that a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. See Rule 56(a), SCRCP. The trial court must grant the motion "if the pleadings, answers to interrogatories, admissions and exhibits on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Id. Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact or any claims to be tried." See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

"With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"-- that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case.'" See Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

Discussion: There are no stated facts or claims in the Respondents' Complaint that constitutes a "fairly read", unknown and unspecified, cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCP and/or under any South Carolina Statues, Laws or Rules of Civil Procedure. The Respondents have not offered any evidence to demonstrate any genuine material facts to be tried against the Appellant and have made admissions of no claims against the Appellant. See (R. Vol. I pp. 11-134) (R. Vol. I pp. 175-178) (R. Vol. I pp. 281-294) (R. Vol. I pp. 251-252) (R. Vol. I pp. 310-317).

Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. See Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990).

Respondents' Complaint fails 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. Despite the admissions of no claims and/or wrongdoing by the Appellant, the Respondents are promulgating the complaint against the Appellant. The Respondents have admitted in filings and in the Court that they have no claims against the Appellant. See (R. Vol. II p. 331) (R. Vol. II p. 333) (R. Vol. II pp. 276, Lines 10-15) (R. Vol. I p. 320, Line 18).

Directing the Court's attention to the Defendant'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. See King v. Gemini Food Services, Inc., 438 F. Supp. 964, 966 (D.Va.1976), aff'd 562 F.2d 297 (4th Cir. 1977).

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRCP. See Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRCP); See Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). When considering a motion for judgment on the pleadings under Rule 12(c), SCRCP, the court must regard all properly pleaded factual allegations as admitted. See Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

In Falk v. Sadler, "Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP."; *Id.* (stating that when considering a motion for judgment on the pleadings, "the

court must regard all properly pleaded factual allegations as admitted"); See Pope v. Wilson, 427 S.C. 377, 384, 831 S.E.2d 442, 445-46 (Ct. App. 2019) ("In evaluating a Rule 12(c) motion, the court must consider that 'a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever." (quoting Falk, 341 S.C. at 287, 533 S.E.2d at 353); and ("stating appellate courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties" (quoting Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991).

The Respondents did not present any claims or facts in opposition to the motions for judgment on the pleadings and/or summary judgment. In fact, there were no allegations or claims in the Complaint against the Appellant and they had admitted such in the filed court documents. The trial court judge who heard the Appellant's motion to dismiss Appellant as defendant proclaimed a fairly read, unspecified and undefined, cause of action against the Appellant. Any stated claims and/or genuine material facts to be tried against the Appellant would have been inconsistent with the Respondents' admissions.

The trial court did not make findings as to whether genuine material facts to be tried existed. The Respondents reply to the Appellant's Motion for Judgment on the Pleadings stated that "Inasmuch as the pleadings are not closed, this Motion for Judgment on the Pleadings is not proper and should be stricken pursuant to Rule 12(f), SCRCP." See (R. Vol. I pp. 251-252) (R. Vol. I pp. 310-317).

VII. BECAUSE THE TRIAL COURT ORDER, DATED JUNE 3, 2022, DENYING THE MOTION TO DISMISS THE APPELLANT AS A DEFENDANT AND FINDING A FAIRLY READ CAUSE OF ACTION WAS AN ABUSE OF DISCRETION.

Standard of Review:

Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-80. Parties. 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) states in part: 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."

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.

Under Rule 12(b)(6), SCRCP, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. See Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. See Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001).

In accordance with 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.

Discussion: In the Order, dated June 3, 2022, the Appellant contends that the motion hearing judge abused his discretion in deciding that he should remain a defendant with a "fairly read" cause of action in the Respondents' Complaint. The Lower Court decision stated that:

> "The Motion to Dismiss is denied. A fair reading of the pleadings establishes a cause of action as against this Defendant. This is based solely on the contents of the pleadings as required by a motion under 12(b)(6). This is not a ruling by the Court as to the viability or sustainability of the action as against this Defendant. That remains to be decided. Defendant Goff is free to file a Motion for Summary Judgment at any stage, should he believe that is warranted. Attorney Persons, please draft a proposed order based on the above and e-file it to Judge John's attention." See (R. Vol. II pp. 9-10).

This Order, an abuse of discretion, was appealed and dismiss on motion as interlocutory. However, it involved the merits in the action an in effect has determined the outcome of the action, will prevent an appeal of a final judgment. 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...." Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer.

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

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

Under S.C. Code Ann. § 14-3-330(2), an order which affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken is immediately appealable. An intermediate/interlocutory order is immediately appealable only if it involves the merits of the case or affects a substantial right. S.C. Code Ann. § 14-3-330 (1976). Such orders are reviewable after final judgment. See Pendergrass v. Martin, 275 S.C. 413, 272 S.E. (2d) 172 (1980). 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). This Order effected the merits of the case and has resulted in judgments being rendered in the action from which an appeal might not be possible because the Trial Court views the Appellant as a culpable defendant.

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 the appeal, the Appellant was challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Complaint. Effectively, the 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. Consequently, the Appellant is being sued for having submitted a rezoning application that was accepted by the Planning Department, recommended by the Planning Commission and approved and adopted into ordinances by the County Council and elected members. See (R. Vol. II pp. 258-259).

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, stating that her clients have no claims against the Appellant. See (R. Vol. I pp. 11-134) (R. Vol. II pp. 194-218) (R. Vol. II p. 331) (R. Vol. II p. 333) (R. Vol. II p. 276, Lines 10-15).

Respondents' lawyer stated 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.

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. 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. The Respondents' lawyer, in authoring the Order on appeal, capitulated to the Trial Court's guidance 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 unspecified and undefined statement. In viewing the Appellant as a defendant, the Trial Court abused its discretion with regards to the S.C. Code Ann. § 15-53-80 and the Respondents' Complaint.

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. However, there was an exception for similar rezoning ordinances adopted concurrently with the Appellant's ordinances. 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.

This interlocutory order involves the merits of the case and has affected the substantial rights of the Appellant in this litigation and in effect will determine the outcome and prevent a judgment from which an appeal might be taken. It is obvious from statements in the unheard County Council's Motion to Dismiss that there is a tacit agreement between the Respondent and Respondents' lawyers to continue the litigation that does not inure to the benefit of the Appellant. Given that County Council has legislative immunity that prevents arbitrary judicial intervention, this case should be terminated by the Court of Appeals.

With all allegations and claims in the Respondents' Complaint directed at the County Council and elected members having been dismissed, there are no remaining claims to litigate. It is counterintuitive to suggest any remaining claims against the approval and adoption of Ordinances 21-24 and 21-25 after dismissal of any and all claims against the County Council and elected members. The Appellant cannot defend against a phantom "fairly read" cause of action that is unstated and without a factual evidentiary basis. See (R. Vol. I 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 was likely the basis for the Trial Court denial on March 24, 2023 of Appellant's Motions for Summary Judgment and Judgment on the Pleadings. Also, it has proven itself to be tantamount to an unfavorable final judgment against the Appellant and Appellant's property.

This Interlocutory Order denying the Appellant's motion to dismiss him as a defendant and finding a fairly read unstated cause of action should be reviewed as an abuse of discretion.

See Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." See Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85-86 (2008). In accordance with the plain language of the Uniform Declaratory Judgment Act, S.C. Code Ann. § 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) (citation omitted).

"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. See 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 Court's alleged "fairly read cause of action" is unstated and undefined, and does not exist in the Respondents' Complaint. The appeal filed on June 10, 2022, for the denial of the Motion to Dismiss Benjamin F. Goff, Sr., Trustee as a Defendant, should be heard and reversed. See (R. Vol. II pp. 9-10) (R. Vol. II pp. 3-8) (R. Vol. II pp. 335-393).

VIII. BECAUSE THE TRIAL COURT GRANTED THE RESPONDENTS' JOINT MOTION TO DISMISS THE COUNTERCLAIM COMPLAINT AND MOTION TO STRIKE OTHER MATTERS IN THE APPELLANT'S ANSWER AND AFFIRMATIVE DEFENSES IN THE ORDER DATED MARCH 24, 2023.

Standard of Review:

In accordance with 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.

12(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e).

Discussion: The Respondents' Motion to Strike Other Matters (answers and defenses) under Rule 12(f) was submitted jointly with the Motion to dismiss the Counterclaim Complaint. However, it involved the merits in the action an in effect has determined the outcome of the action and will prevent an appeal of a final judgment. 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). See (R. Vol. I pp. 179-186) (R. Vol. I pp. 187-204).

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...." Subsection (2)(c) permits the direct appeal of orders which affect a substantial right by striking out an answer. The granting of the Motion to Strike answers and affirmative defenses affects the substantial of the Appellant; therefore, is directly appealable.

Rule 12(f) Motion to Strike, states: Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e). The Respondents wanted the Trial Court to strike the affirmatives defenses they arbitrarily and capriciously disagree without pointing out defects, if any, or requesting a more definite statement. The affirmative defenses purported in the Motion to Strike are the most indefensible violations of laws by the Respondents.

The allegations and defenses the Respondents wanted to strike from the Appellant's Answer include, but limited to, the lack of facts to constitute a cause of action, lack of standing, lack of a justiciable controversy and the following affirmative defenses: 1) Forth Defense: Civil Conspiracy, Respondents combined actions with opposing individuals, groups and organizations for the expressed purpose of injuring the property of the owner which caused special damages resulting in a civil conspiracy; 2) Fifth Defense: Conspiracy Against Rights, Respondents

coordinated actions with opposing individuals, groups and organizations can be construed as an effort to injure, oppress, threaten, or intimidate a property owner and deprive a person of rights secure by the United States Constitution and the laws of the United States; 3) Sixth Defense: Deprivation of Rights Under Color of Law, Plaintiffs acting under color of law sought to willfully deprive or cause to be deprived from the property owner those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States; 4) Seventh Defense: Misrepresentation, Respondents knowingly and/or deliberately misrepresented material facts to the Court and concealed material facts from Appellant, and therefore are not entitled to a declaratory judgment; 5) Tenth Defense: Estoppel, Respondents, by their own conspiratorial misconduct, are estopped to seek the relief, if any, demanded by their Complaint; and 6) Eleventh Defense: Unclean Hands, Respondents' claims for relief are barred by the equitable doctrine of unclean hands, as Respondents seek to invoke the equitable jurisdiction of this Court in aid of their wrongful conspiratorial conduct.

The Motion to Strike Other Matters was an effort to avoid the consequences of their bias and unsavory actions against the Appellant. Therefore, the Order on appeal should be heard by the Court of Appeals and reversed. The Trial Court abused its discretion in granting the motion. See Tataro v. Turner, 273 S.C. 134, 254 S.E..2d 800, 801 (SC Sup. Ct 1979) (citations omitted).

IX. BECAUSE THE COUNTY COUNCIL'S LEGISLATIVE IMMUNITY AND THE STIPULATION OF DISMISSAL BETWEEN ALL RESPONDENTS RENDERED THE RESPONDENTS' COMPLAINT NULL AND VOID.

Standard for Review:

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).

"[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution." See City of Rock Hill v. Harris, 391 S.C. 149, 152, 154, 705 S.E.2d 53, 54, 55 (2011). "[T]he power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations." See Rush v. City of Greenville, 246 S.C. 268, 276, 143 S.E.2d 527, 531 (1965).

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

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

The 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. Pursuant to Rule 41(1)(B), SCRCP, the Appellant

was not a party to the agreement or informed regarding the Respondents and Respondent lawyers' Stipulation of Dismissal and was not requested to sign the Stipulation of Dismissal at any time. However, it was exculpatory with respect to the Appellant and Ordinances 21-24 and 21-25. See (R. Vol. II pp. 258-259). The Respondents' Complaint failed to state any facts to constitute a cause of action against the Appellant and should have been dismissed pursuant to Rule 12(b)(6), SCRCP. In removing the County Council and elected members from the Respondents' Complaint through stipulation, the Respondents violated Rule 19(a)(2), SCRCP, failure to join necessary parties.

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

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

With respect to judicial review of zoning ordinances, the S.C. Supreme Court has noted that there is a strong presumption in favor of validity of municipal zoning ordinances and validity of their application. See Bob Jones University, Inc. v. City of Greenville, 243 S.C. 351, 133 S.E.2d 843 (1963). The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon the party attacking it to show through clear and convincing evidence the arbitrary and capricious nature of the ordinance. See Town of Scranton v. Willoughby, 306 S.C. 421, 412 S.E.2d 424 (1992). The Court has concluded that the action of a municipality regarding the rezoning of property will not be overturned by a court as long as the decision is "fairly debatable". See Rushing v. City of Greenville, 265 S.C. 285, 217 S.E.2d 797 (1975). The S.C. Supreme Court has cautioned that, "[i]t is not the role of the courts to substitute their judgment for that of local legislative bodies, which are better qualified to act upon local zoning matters." See Smith v. Georgetown County Council, 292 S.C. 235, 355 S.E.2d 864 (Ct.App.1987). Id. 355 S.E.2d at 866. The Court Record in this case contains such evidence as to preclude finding that the zoning ordinances are arbitrary and capricious.

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. See 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." See Id. at 561, 654 S.E.2d at 97.

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

As stated in the Motion to Dismiss for Georgetown County, 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.")".

The S.C. Supreme Court has opined that county ordinances are not challengeable unless they are arbitrary and capricious. Also, the appellate courts have stated that controversies that are "fairly debatable" are not ripe for judicial intervention. The agreed "Stipulation to Dismissal", between the Respondents' attorney and the Respondent's attorney, submitted to the Court on May 5, 2022, essentially invalidated the Respondents' Complaint pursuant to Rule 41, SCRCP. This is an admittance of the lack of a justiciable controversy pursuant to SC Code Ann. Sec. 15-53-70 of the Uniform Declaratory Judgment Act.

Pursuant to SCRCP Rule 19(a), the dismissal of the Georgetown County Council and Council members ("County Council"), at whom the allegations in the Compliant are directed,

demands a dismissal of the complaint against the Appellant and/or Respondents' Complaint in its entirety. The Appellant should not be burdened with or have to account for the dismissed allegations against the County Council and Council members and face a trial on an unstated and undefined fairly read cause of action.

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).

The Respondents' Complaint summarily alleges, without evidence, that the County Council specifically violated the South Carolina Comprehensive Planning Enabling Act, the Comprehensive Land Use Plan and the County Council Rules and Procedures in the approval and adoption of the Appellant's Ordinances 21-24 and 21-25. The Appellant only submitted an application to rezone an unimproved parcel of land, Case Number REZ-21-28323, to the Georgetown County Planning Department and it resulted in the approval and adoption of Ordinances Number 21-24 and 21-25. Respondents' Complaint does not state any wrongdoing by the Appellant in the procedural approval and adoption of the abovementioned Ordinances.

The Respondents' Complaint asks the Court to inquire into individual city council members' motives behind their legislative acts. See Whaley v. Dorchester County Zoning Bd. of

Appeals, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999) ("A municipal ordinance is a legislative enactment ..."). This is a fundamentally inappropriate inquiry for a court. See Pressley v. Lancaster County, 343 S.C. 696, 542 S.E.2d 366 (2001) ("Judicial inquiry into legislative motivation is to be avoided") (citation omitted); See Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377, 379 (1924) ("The court cannot speculate as to the intention, much less as to the motives, of the Legislature"); See Douglas v. City Council of Greenville, 92 S.C. 374, 75 S.E. 687, 689 (1912) (discussing improper motives for passing an ordinance, "[w]e cannot inquire into the motives which induce legislative action"); See State v. Cardozo, 5 S.C. 297 (1874) ("So far as it implies any wrong or improper motive on the part of the Legislature in the particular enactment, it is beyond the control of the judicial department."). "

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. A municipal ordinance is a legislative enactment and is presumed to be constitutional." See Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999).

CONCLUSION

For the reasons stated herein, this Court of Appeals should reverse the judgments of the Circuit Court. The Appellant's Counterclaim Complaint contains sufficient facts for a cause of

action and meets the requirements to establish a civil conspiracy. There are no material facts to be tried against the Appellant. 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 or fairly read cause of action against the Appellant. The Appellant should not have been named as a Defendant as opposed to an Involuntary Plaintiff or Party-in-Interest. The dismissal of the Counterclaim Complaint and denial of the Appellant's Motions for Judgment on the Pleadings and Summary Judgment are an abuse of discretion by the Trial Court and an error in interpreting the statues and laws. The Appellant should not be a Defendant with a fairly read and unstated cause of action in this litigation. Both the interlocutory Order and the current Order on appeal should be reversed by the Court of Appeals and the Respondents' Complaint dismissed in its entirety.

Respectfully Submitted,
The Appellant

Date: July 28, 2023

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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.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of Appellant complies with Rule 211(b), SCACR.

July 28, 2023

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