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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, LLC, ... Appellant,

v.

Charleston Animal Society, Ellen Harley, and
Charleston Carriage Horse Advocates, LLC. . . . . Respondents.

RESPONDENT CHARLESTON ANIMAL SOCIETY'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the lower court correctly grant summary judgment on the defamation claim where:

   A. Appellant is a limited purpose public figure and failed to show actual malice; and
   B. the speech at issue is related to a matter of public concern and protected by the First Amendment; and
   C. the speech at issue is substantially true?

II. Did the lower court correctly grant summary judgment on the civil conspiracy claim where Appellant failed to present a scintilla of evidence of any intent to harm, of an agreement amongst Respondents, or of any overt act in furtherance of an agreement?

III. Did the lower court correctly grant summary judgment on the "Tortious Interference with Business Relations" cause of action where Appellant conceded that no contract was breached?

IV. Did the lower court correctly grant summary judgment on the "Violation of Plaintiff's Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness" cause of action where no private right of action exists, Appellant failed to present evidence of any state action, and Appellant failed to present evidence of the deprivation of any right?

V. Did the lower court abuse its discretion in denying Appellant's Motion to Amend Complaint?

VI. Did the lower court abuse its discretion in denying Appellant's Motion for Amended Scheduling Order?

STATEMENT OF THE CASE

Appellant Charleston Carriage Works owns and operates one of the carriage horse touring companies in downtown Charleston. On April 19, 2017, in the midst of years of public debate concerning Charleston's carriage horse operations, one of Appellant's horses, Big John, fell during a tour. Respondent Charleston Animal Society ("CAS") posted a video[1] on its YouTube channel comprised of footage of the incident sent to it by bystanders and added in the following subtitles:

> *Why were eyewitnesses intimidated to stop taking video when a horse collapsed?*
>
> *Was Big John exhausted or did he just "trip"?*
>
> *By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.*
>
> *Big John could not get up on his own. A team of people had to try and pull him up.*
>
> *After several minutes of trying, finally some good news for Big John!*
>
> *Charleston Animal Society and several local and national animal welfare groups want an independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane.*
>
> *Is this too much to ask for Big John and other working horses?*

The video was reposted by Respondent Charleston Carriage Horse Advocates ("CCHA"), a local advocacy group founded by Respondent Ellen Harley ("Harley"), on its social media sites. Appellant alleges that the video went "viral", resulting in significant public backlash.

On August 17, 2018, Appellant filed its Complaint, alleging that the video of Big John, and specifically, the subtitle asserting that the horse "collapsed", are defamatory and imply Appellant abuses its animals and is inhumane. Appellant's Complaint also includes causes of action for civil

[1] https://www.youtube.com/watch?v=WLXdlMsxBZM (last accessed 4/13/23).

conspiracy, "Violation of Appellant's Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness", and tortious interference with business relations.

By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020 (R. p. 75). Mediation was completed but was not successful.

Appellant filed a Motion to Amend Complaint on April 6, 2020. (R. pp. 242-243). Respondents CCHA and Harley filed Motions for Summary Judgment on September 11, 2020. (R. pp. 329-333). Appellant submitted a Motion for Amended Scheduling Order on October 20, 2020. (R. pp. 336-337). Respondent CAS filed a Motion for Summary Judgment on November 16, 2020. (R. p. 2028-2029). On May 27, 2021, the parties consented to an order of reference that referred to the following motions to the Master-in-Equity:

1. Plaintiff's Motion to Amend Complaint filed 4/20/20
2. Plaintiff's Motion for Sanctions against Defendants Charleston Carriage Horse Advocates and Ellen Harley filed 10/2/20
3. Plaintiff's Motion for Amended Scheduling Order filed 10/20/20
4. Defendant Charleston Carriage Horse Advocates' Motion to Quash Plaintiff's Subpoena to South State Bank filed 8/19/20
5. Defendant Charleston Carriage Horse Advocates' Motion to Compel Discovery Responses from Plaintiff filed 8/17/20
6. Defendant Charleston Carriage Horse Advocates' Motion for Summary Judgment filed 9/11/20
7. Defendant Ellen Harley's Motion for Summary Judgment filed 9/11/20
8. Defendant Charleston Animal Society's Motion for Summary Judgment filed 11/16/20

(R. pp. 58-64).

On September 29, 2021, the Master-in-Equity, Mikell R. Scarborough, heard Appellant's

Motion to Amend the Complaint, Motion for Amended Scheduling Order, and Motion for Sanctions. During this same hearing, the Master addressed Respondents' respective Motions for Summary Judgment.

The Master denied Appellant's Motion for Sanctions on May 5, 2022. (R. pp. 51-57). The Master denied Appellant's Motion to Amend its Complaint and Motion for Amended Scheduling Order on May 12, 2022. (R. pp. 40-50). That same day, the Master granted Respondents' respective Motions for Summary Judgment, finding, in part, that the speech at issue was protected by the First Amendment and that no issue of material fact existed as to remaining causes of action. (R. pp. 4-39).

On May 12, 2022, Appellant submitted a Motion to Reconsider the Order denying sanctions. (R. pp. 339-340). On May 20, 2022, Appellant submitted a Motion for Reconsideration of the court's orders concerning the motion to amend, the motion to amend the scheduling order, and summary judgment. (R. pp. 341-342). Appellant makes multiple new arguments in his Rule 59(e) motions, and these are not preserved for appellate review. First Citizens Bank & Tr. Co., Inc. v. Taylor, 431 S.C. 149, 162, 847 S.E.2d 249, 255–56 (Ct. App. 2020). The Master denied the Motions for Reconsideration on August 2, 2022. (R. pp. 1-3). Appellant filed its Notice of Appeal to this Court on August 11, 2022. (R. pp. 345-348).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this Court applies the same standard that governs the trial court 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. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citations omitted).

A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." Id. (quoting Small v. Pioneer Mach., Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997)); Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("Our appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be those which would be admissible in evidence."); id. at 175–76, 561 S.E.2d at 657 (hearsay inadmissible to refute a motion for summary judgment).

Furthermore, "where the federal standard applies or where a heightened burden of proof is required, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "[T]he summary judgment device occupies a position of great importance in libel actions as compared with other civil actions, due to the possible chilling effect which can result from the defense of defamation claims." Peeler v. Spartanburg Herald-Journal Div. of The New York Times Co., 681 F. Supp. 1144, 1146 (D.S.C. 1988).

ARGUMENT

I. The lower court properly granted summary judgment as to Appellant's defamation claim.

Appellant alleges it was defamed by CAS's publication of a video showing Appellant's horse, Big John, and describing the horse as having "collapsed" (the content of the video will be discussed in more detail below).

In order to prove defamation, a party must show: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). Several presumptions accompany these elements. First, common law generally presumes that the statement is false. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 519, 506 S.E.2d 497, 506 (1998). Additionally, when a statement is actionable *per se*, the Respondent is presumed to have acted with common law malice, and general damages are presumed. Erickson, supra. As the Supreme Court of South Carolina has explained, "libel is a written defamation" and "essentially all libel is actionable *per se*." Id. Therefore, in a defamation suit involving libel in which the plaintiff is a private figure, both common law malice and general damages are typically presumed.

However, although a party might be able to prove all of the elements of South Carolina common law defamation, the First Amendment places limitations on tort liability for defamation. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 531 S.E.2d 518 (2000) (when confronted with First Amendment issues, South Carolina courts are guided by precedence from the United States Supreme Court); see also Holtzscheiter, 332 S.C. at 508, 506 S.E.2d at 501 ("[T]his area of the law is constantly evolving, and consequently all prior decisions must be read

in the context of the current state of the law.").

The First Amendment limitations differ based upon: 1) whether the defamed individual is a public figure, public official, or private figure; and 2) whether the subject matter of the alleged defamatory statement is a matter of public or private concern. See, e.g., New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (concluding that the First Amendment prevents a "public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not"); Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 776–77 (1986) (holding that when a plaintiff is a private figure and the speech is a matter of public concern, the First Amendment requires the Appellant to prove falsity of the statement). The lower court's granting of summary judgment on the defamation cause of action should be affirmed for any one of the following reasons:

1) Appellant is a limited purpose public figure and has failed to show actual malice;
2) The speech at issue is protected by the First Amendment;
3) Appellant failed to present a scintilla of evidence of common law malice or falsity; and
4) The speech at issue is either not actionable or substantially true.

A. The lower court properly determined that Appellant is a limited-purpose public figure and that it failed to present any evidence of actual malice.

"[A]n important initial step in analyzing any defamation case is determining whether a particular plaintiff is a public official, public figure, or private figure." Erickson, 368 S.C. at 468, 629 S.E.2d at 666. This determination is a matter of law which must be decided by the Court on a case-by-case basis after careful examination of the facts and circumstances. Id. Even a limited purpose public figure must show, by clear and convincing evidence, that defamatory statements were made with actual malice in publishing a false and defamatory statement about the plaintiff.

Id. at 467, 629 S.E.2d at 665; George v. Fabri, 345 S.C. 440, 456, 548 S.E.2d 868, 876 (2001). Actual malice exists when a statement is made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, 376 U.S. at 279–80; see also George, 345 S.C. at 456, 548 S.E.2d at 876 (actual malice is governed by a subjective standard which tests the defendant's good faith belief in the truth of her statements).

At the summary judgment phase, the appropriate standard "on the issue of constitutional actual malice is the clear and convincing standard." George, at 454, 548 S.E.2d at 875. Clear and convincing evidence is that "degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 374 n. 2, 496 S.E.2d 17, 18 n. 2 (1998). "Unless the [circuit] court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant." McClain v. Arnold, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980).

1) Appellant is a limited-purpose public figure.

The U.S. Supreme Court generally has defined a public figure as follows: "For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment." Gertz v. Welch, 418 U.S. 323, 345 (1974); George, supra (plaintiff political candidate's engineering firm was a limited

public figure under Gertz test in defamation action arising from statements candidate made during political campaign). In determining whether a claimant is a private or public figure, the court must focus on the "nature and extent of an individual's participation in the particular controversy giving rise to the defamation." Gertz, 418 U.S. at 352; Parker v. Evening Post Pub. Co., 317 S.C. 236, 243 n. 3, 452 S.E.2d 640, 644 n. 3 (Ct. App. 1994) (automobile dealer invited public's attention through extensive media advertising and, as to statements regarding his dealership, was a public figure).

A limited public figure, the type more commonly found, is an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions." Gertz, 418 U.S. at 351. The U.S. Supreme Court has also identified a third category of involuntary public figures who become public figures through no purposeful action of their own. Erickson, 368 S.C. at 473, 629 S.E.2d at 668.

All three types of public figures, just as public officials, must meet the New York Times standard of actual malice in order to recover damages for defamation. Erickson, 368 S.C. at 473, 629 S.E.2d at 668. Public figures are entitled to less protection from defamation than private figures because they enjoy greater media access and are less vulnerable to injury from defamatory statements due to their ability to publicly rebut such statements. Id.

To determine whether a plaintiff is a public figure for the limited purpose of comment on a particular public controversy, the Court considers whether: (1) the plaintiff has access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and

(5) the plaintiff retained public-figure status at the time of the alleged defamation. Id. at 474, 629 S.E.2d at 669.

Appellant argues that "the defendants drug the plaintiff into the public arena against his will" and that its only "participation in the particular controversy" was operating a lawful business and taking steps to mitigate "his" damages. The evidence presented by Appellant, through the affidavits of its owner, Broderick Christoff, as to his public participation in this controversy suggests otherwise. (R. p. 351) ("For the past two decades, [Harley] and I frequently opposed one another at Tourism Commission meetings…"); (R. p. 364) ("Because I stood up to them at Tourism Commission meetings, Harley and Elmore identified me as the impediment to their plan to shut down the carriage tours because our frequent conflict, my science background, and my long history with horses prepared me to challenge their unscientific assertions to the City."); (R. p. 374) ("As I said above, in [Harley's] frequent appearances before City Council and the Tourism Commission, I often challenged her, pointing out that her information was not correct. I did the same thing with Charleston Animal Society.").

Moreover, Respondents presented evidence that Appellant, through the actions of its owner, Mr. Christoff, injected itself into the debate over the operations of the carriage industry in Charleston and that it did so prior to the Respondents' publication of the Big John video. In the years leading up to the Big John incident, Mr. Christoff, who was routinely identified as being affiliated with and/or owning Appellant, spoke at a number of City meetings concerning various carriage-related issues, including the March 14, 2017, City Council meeting and the November 23, 2015, February 4, 2016, and August 25, 2016 meetings of the City's Tourism Subcommittee. (R. pp. 664-713; 643-663).

Additionally, Appellant has also appeared in, and through Mr. Christoff, has been quoted

by the media. An article published by the Post & Courier on August 23, 2016, concerning the carriage horse temperature ordinance, reports the following:

> Broderick Christoff, owner of Charleston Carriage Works, said carriage companies take horses' temperatures after every tour. If they are too high, the animals are allowed to rest.
>
> He also said that he thinks the media and the Charleston Animal Society have misled the public about the treatment of carriage horses. The tour companies take good care of them, he said.

(R. pp. 714-715). Mr. Christoff testified that he made these statements, although he believes he did so at a City Council committee or subcommittee meeting. (R. pp. 734-735).

A December 14, 2016, article titled "Charleston Panel Backs Lower Temperature Limits for Carriage Tours" reported on the study being proposed by Respondent CAS and states: "But Broderick Christoff of Charleston Carriage Works said the industry would be wary of participating in any study backed by an animal rights group." (R. pp. 743-745). Mr. Christoff testified that he believed he made these comments while speaking at a city meeting. (R. p. 271 [depo. pp. 78:17-79:7]).

A February 20, 2017, article, titled "Carriage Company Owner Responds After Minor Incident Over the Weekend", reported an incident in which one of Appellant's horses was spooked by a parade and included the following:

> We spoke with the owner of Charleston Carriage Works, Broderick Christoff, about the incident. He said a failure to follow city policy is what caused the minor incident with his carriage at the corner of King and Queen Streets.

(R. pp. 740-743). Mr. Christoff confirmed in his deposition that he made these comments. (R. p. 2026, l. 17-25).

Finally, a February 21, 2017, article published by the Post & Courier on the same incident reported as follows:

> "The parade gets louder and louder," Charleston Carriage Works owner Broderick Christoff said Tuesday. "The driver is basically just sitting there watching the fuse burn, and it gets to the point where the people on the carriage are trying to get the police officer's attention to just move so they can go.
>
> "At that point, the driver tells the people on the carriage, 'Hold on, because we've done everything we can do and it's going to be what it's going to be at this point.'"

(R. pp. 2095-2098). In both the article and in his deposition, Mr. Christoff stated that his intent was to make "an issue of" the incident to keep it from happening again, an incident he testified was caused by the intersection being blocked by Charleston police. (R. p. 2026 [depo. pp. 81:24-84:14]).

All of these articles, and the meetings and incidents reported therein, occurred prior to the Big John incident. See Atlanta Humane Soc. v. Mills, 274 Ga.App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005) ("Even a single interview given to the media may be sufficient to establish a defamation plaintiff as a limited-purpose public figure.").

Mr. Christoff has also appeared in at least two online videos designed to affect the public controversy and in which he is identified as being the owner of Appellant.[2] The first is an interview by Quintin Washington posted on June 17, 2017, the second is an interview posted on October 10, 2017, by Charleston C.A.R.E.S. Appellant, along with two other carriage companies, founded Charleston C.A.R.E.S. (Carriage Association for Responsible Equine Safety), representing on its website that Appellant and the other founding companies are "committed to being advocates and educators for the often misunderstood and misrepresented horse carriage industry." Additionally, Appellant has published on its Facebook page a number of position statements addressing the various issues that are debated in relation to the carriage industry. While these events took place after the Big John video was published, they evidence Appellant's access to channels of

[2] https://www.youtube.com/watch?v=foIbs_6JmLA; https://www.youtube.com/watch?v=K7KWEiAFZsw.

communication and its attempts to assert influence in the controversy surrounding Charleston's carriage horse industry.

In sum, Appellant has access to channels of effective communication, it has voluntarily assumed a role of prominence in the controversy concerning Charleston's carriage horse industry, and it has sought to influence the outcome of that controversy, which existed prior to the publication of the Big John video. At a minimum, Appellant chose a course of conduct, both before and after the Big John incident, that invited public attention. See Reuber v. Food Chemical News, Inc., 925 F.2d 702, 709 (4th Cir. 1991) ("Even 'involuntary' participants can be public figures when they choose a course of conduct that invites public attention.").

The lower court correctly determined that both before and at the time the Big John video was published, Appellant had attained the status of a limited-purpose public figure in the context of the public debate surrounding the Charleston carriage horse industry.

2) Appellant failed to present any evidence, let alone clear and convincing evidence, that Respondent acted with actual malice.

A limited-purpose public figure must prove by clear and convincing evidence that the defendant acted with actual malice in publishing a false and defamatory statement about the plaintiff to survive summary judgment. Erickson, 368 S.C. at 467–68, 629 S.E.2d at 665–66 (citations omitted). Actual malice exists when a statement is made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, 376 U.S. at 279–80; see also George, 345 S.C. at 456, 548 S.E.2d at 876 (actual malice is governed by a subjective standard which tests the defendant's good faith belief in the truth of her statements).

"[W]here the factual dispute concerns actual malice . . . the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has

not." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255–56 (1986); McClain, 275 S.C. at 284, 270 S.E.2d at 125 ("Unless the trial court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant.").

"Actual malice under the New York Times standard should not be confused with the concept of [common law] malice as an evil intent or a motive arising from spite or ill will." Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 510 (1991). It is black-letter law that failure to investigate does not constitute malice. St. Amant v. Thompson, 390 U. S. 727, 731 (1968). "The mere fact that a defamation defendant knows that the public figure has denied harmful allegations or offered an alternative explanation of events is not evidence that the defendant doubted the allegations. As the United States Supreme Court has noted, 'such denials are so commonplace in the world of polemical charge and countercharge that, in themselves, they hardly alert the conscientious reporter to the likelihood of error.'" Carr v. Forbes, Inc., 121 F. Supp. 2d 485, 495 (D.S.C. 2000), aff'd, 259 F.3d 273 (4th Cir. 2001) (quoting Harte–Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 692 n. 37 (1989)).

When the First Amendment requires a plaintiff to prove actual malice, he must prove "that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement." Bose Corp. v. Consumers Union of United States, Inc., 466 U. S. 485, 511 n. 30 (1984); accord, Peeler, 681 F. Supp. at 1147. Thus, as long as the defendant believed in good faith that what he said was true, it does not matter whether he acted out of spite or ill will toward the plaintiff. See Scott v. McCain, 272 S. C. 198, 201-02, 250 S.E.2d 118, 120-21 (1978).

Moreover, recklessness under the constitutional standard is measured not by whether a reasonably prudent man would have published or investigated further before publishing, but rather

by evidence that the defendant actually had "serious doubts" in his mind as to the truth of the publication at the time it was published. St. Amant, 390 U. S. at 731. When a person makes a statement based on information received from elsewhere, recklessness may be found only "where there are obvious reasons to doubt the veracity of the informant or the accuracy of [its] reports." Horne v. WTVR, LLC, 893 F.3d 201, 211 (4th Cir. 2018), cert. denied, 139 S. Ct. 823 (2019); see also Church of Scientology Int'l v. Daniels, 992 F.2d 1329, 1333 (4th Cir. 1993) (indicating that "deliberate misrepresentation," "knowing fabrication," or "purposeful avoidance of the truth" are required to show actual malice). "Establishing actual malice is no easy task, because the defamation plaintiff bears the burden of proof by clear and convincing evidence." Carr, 259 F.3d at 282.

The question of whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law. Harte-Hanks Commc'ns, 491 U.S. at 685. Central to that determination is the recognition of "the importance of the actual malice standard to a wide-open and vigorous discussion of critical public issues." CACI Premier Tech., Inc. v. Rhodes, 536 F.3d 280, 294 (4th Cir. 2008).

Appellant has not presented evidence sufficient to create a question of fact on the issue of actual malice. It presented no admissible evidence tending to show that CAS knew that any statements made were false or that they subjectively entertained serious doubt as to the truth of any statement. In its brief, Appellant lists, often without any citation to admissible, competent evidence, "facts" which it contends evidence malice. Not a single one of those "facts", even if true and supported by admissible evidence (as opposed to hearsay or pure speculation), are relevant to CAS's knowledge at the time the video was published.

CAS submitted the affidavit of Joe Elmore, its CEO, in which he states that, on April 19,

2017, CAS was contacted by members of the public who reported that a horse, which was identified as Big John, had collapsed to the pavement during a carriage tour and was unable to get up without assistance. (R. p. 1775, ¶ 8). At Mr. Elmore's direction, CAS took videos of Big John provided by eyewitnesses, added subtitles, and published the resulting video on CAS's social media sites and website. (R. p. 1775, ¶ 9). At the time Mr. Elmore instructed that the video be published, he was not in possession of any information that would call into question the veracity of using the term "collapse" to describe what occurred that left Big John lying there on the pavement. (R. p. 1775, ¶ 10). Mr. Elmore testified that even as of May 27, 2020, the date he signed his affidavit, he was still not in possession of any such information. (R. p. 1775, ¶ 10). In fact, one of the eyewitnesses who sent CAS footage that was used in the Big John video testified in her deposition that she believed at the time of the incident, and continues to believe to this day, that what she witnessed was a horse that had "collapsed". (R. pp. 1815-1820).

Mr. Elmore further explained that he directed that the video be published for the purpose of bringing awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. (R. p. 1775, ¶ 11). Mr. Elmore confirmed that in no way was it his intent to harm Appellant or injure its business. (R. p. 1775, ¶ 11). See Dongguk Univ. v. Yale Univ., 734 F.3d 113, 123 (2d Cir. 2013) ("When there are multiple actors involved in an organizational defendant's publication of a defamatory statement, the plaintiff must identify the individual responsible for publication of a statement, and it is that individual the plaintiff must prove acted with actual malice.") (citing New York Times, 376 U.S. at 287 ("[T]he state of mind required for actual malice would have to be brought home to the persons in the [defendant's] organization having responsibility for the publication of the [statement].")).

Appellant has not presented any evidence to the contrary that would create a question of fact on this issue. While Appellant submitted affidavits in which it baldly claimed that Respondents knew that the statements in the Big John video were false, those claims are not supported by admissible evidence and are conclusory at best. They are insufficient to create a question of fact. See Whitner v. Duke Power Co., 277 S.C. 397, 288 S.E.2d 389 (1982) (a conclusory statement in an affidavit as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment); Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (holding one may not create a genuine issue of material fact by speculation or an "inferential leap"). The lower court properly granted summary judgment to Respondents because Appellant failed to present any evidence of actual malice.

B. The lower court's determination that the speech at issue relates to a matter of public concern and is protected by the First Amendment should be affirmed.

At the heart of the First Amendment's protection is speech on matters of public concern. Garrard v. Charleston Cty. Sch. Dist., 429 S.C. 170, 195, 838 S.E.2d 698, 711 (Ct. App. 2019), cert. granted (Mar. 15, 2022) (citing Snyder v. Phelps, 562 U.S. 443, 451–52 (2011)). "The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" Id. (quoting Snyder, 562 U.S. at 452; New York Times Co., 376 U.S. at 270 (1964)). Thus, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." Id. (quoting Connick v. Myers, 461 U.S. 138, 145 (1983)) (citations and internal quotation marks omitted). "Every person has the right of fair comment and criticism in a matter of public interest; this stems from the constitutional guaranty of freedom of speech." Hospital Care Corp. v. Commercial Cas. Ins. Co., 194 S.C. 370, 9 S.E.2d 796, 798 (1940).

Whether speech addresses a matter of public concern is a matter of law for the Court. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Garrard, 429 S.C. at 196, 838 S.E.2d at 712 (quoting Snyder, 562 U.S. at 453) (citations and internal quotation marks omitted). "Whether ... speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." Id. (quoting Connick, 461 U.S. at 147–48). "In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said." Id. (quoting Snyder, 562 U.S. at 454); see Connick, 461 U.S. at 148 n.7 ("The inquiry into the protected status of speech is one of law, not fact."); McGill v. Parker, 179 A.D.2d 98, 107, 582 N.Y.S.2d 91, 96 (1992) ("While plaintiffs suggest that defendants are not entitled to the protection of the public concern privilege because of their 'extremist animal rights agenda', it is beyond dispute that it is the subject of the communication, not the particular viewpoint expressed, that determines whether a matter is of public concern.").

The lower court properly found that the speech at issue relates to a matter of public concern. The response to the Big John video alone supports this determination. Broderick Christoff, Appellant's owner, conceded that the carriage industry in Charleston has been a matter of public debate for some time now. (R. p. 733). He testified that to say it is a "very public" issue is an "understatement." (R. pp. 640-641). He further conceded that "people care a lot about animals." (R. p. 732). Dan Riccio, the City's Director of Tourism and Livability, the department charged with overseeing the carriage industry, testified that when he took over that position 10 years ago,

he "learned quickly that [the health and welfare of the animals] was – it was an area of tourism that a lot of passionate people were concerned about" and that he "didn't realize it would be so controversial." (R. pp. 1828-1831). In fact, Mr. Riccio testified that he ensures his department is doing everything they can do to let the public know they are looking out for the animals, and, when there is an incident involving one of the carriage horses, his department is typically first notified by the media. (R. pp. 1830, 1833). In 2016, he recommended that the City created an "Equine Manager" position based in part on "complaints and concerns from the community that the animals aren't being taken care of and treated inhumane[ly]." (R. pp. 1834-1835). Finally, counsel for Appellant conceded during the hearing on the Motions for Summary Judgment that "[t]he carriage tours" are a matter of public concern. (R. p. 1659, l. 20-22).

There can be no serious question that the carriage industry's operations in Charleston is a matter of heated public debate, with devoted advocates on all sides. See Holtzscheiter, 332 S.C. at 531–32, 506 S.E.2d at 513 (Toal, J., concurring in result) ("[M]atters of public concern are those related to the 'unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"). As a matter of public concern, CAS's speech is entitled to the "highest rung of the hierarchy of First Amendment values and is entitled to special protection." Connick, 461 U.S. at 145.

Appellant argues that while Charleston's carriage horse industry may be a matter of public concern, the speech at issue only concerned Appellant's treatment of its animals, which it contends is not a matter of public concern. This is an illusory distinction that does not alter the analysis. The subject matter of the speech at issue is Charleston's carriage horse industry, which Appellant has conceded is a matter of public concern.

1) The lower court correctly found that the speech at issue consists of statements of rhetorical hyperbole and opinion, which are not actionable.

The crux of Appellant's lawsuit is its allegations that the Big John video is defamatory and implies that Appellant abuses its animals. The video, which can be viewed here: https://www.youtube.com/watch?v=WLXdlMsxBZM, was posted in YouTube's "Nonprofits & Activism" category with the following description:

> On April 19, another working horse collapsed in the streets of Charleston. Was the load "Big John" carrying weighed, as it is suppose[d] to be by law? Was he exhausted or did he "trip?" Eyewitnesses documented Big John's ordeal despite those on the scene who wanted them to stop filming. It is time for an independent, scientific, peer-reviewed study to determine if Big John and other horses are truly working in a safe and humane environment. Visit: www.CharlestonAnimalSociety.org/humane-carriage-tours for more information.

In his deposition, Mr. Christoff testified that it was the subtitles added by CAS that rendered the video defamatory. (R. pp. 721-729). The subtitles added by CAS are as follows:

	Time	Statement
1)	0:15	Why were eyewitnesses intimidated to stop taking video when a horse collapsed?
2)	1:15	Was Big John exhausted or did he just "trip"?
3)	1:19	By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.
4)	1:43	Big John could not get up on his own. A team of people had to try and pull him up.
5)	2:26	After several minutes of trying, finally some good news for Big John!
6)	2:45	Charleston Animal Society and several local and national animal welfare groups want an independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane.
7)	3:02	Is this too much to ask for Big John and other working horses?

There are certain statements that cannot reasonably be interpreted as stating actual facts about an individual. Garrard, 429 S.C. at, 199, 838 S.E.2d at 713; (citing Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 50 (1988)). Statements such as opinion, satire, epithets, or rhetorical hyperbole cannot be the subject of liability for defamation. Id. "This provides assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990). "[A] statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection." Id. at 20.

Appellant argues that the Big John video is defamatory in that it implies that Appellant is inhumane to its animals and/or abuses its animals. These are matters of opinion not capable of being proven to be false. Smith v. Humane Society of U.S., 519 S.E.3d 789, 801 (Mo. 2017) (finding that the term "puppy mill", although having a negative connotation, is not action because it was used as "rhetorical hyperbole" and a "lusty and imaginative expression of the contempt" of political advocates and therefore cannot reasonably be interpreted as stating actual facts). Notably, in Smith, the court found:

> Likewise, the general statements that the kennels included in the report had "atrocious violations of basic humane standards," "unconscionable violations of minimal humane care standards," "major continuing problems," and an "undeniable record of flagrant disregard for even the most minimal humane care standards" are not objective facts and do not imply objective facts provable as false. What is an "atrocious," "unconscionable," "major," or "flagrant" violation is purely subjective.

Id. at 802. Here, Appellant's owner even testified that whether or not a practice is humane is a matter of opinion. (R. p. 2094, l. 11-14).

The statements made, and questions posed, by CAS in the Big John video cannot be viewed as anything but opinion and hyperbolic rhetoric. CAS has advocated for the humane treatment of

the carriage horses for years and its position as an advocate in this realm is well-known. In fact, at the end of the video, CAS asks that the study be done. It is clear that this video was published as part of CAS's advocacy for the carriage horses.

2) The lower court correctly found that Respondent CAS is a "media defendant" and that Appellant failed to present evidence of common law malice or that the speech at issue is false.

In a defamation suit involving a private plaintiff on a private matter, both common law malice and general damages are presumed. However, there are three important caveats (the "Erickson caveats") that apply when the allegedly defamatory statement relates to a matter of public concern. First, the presumptions of common law malice and general damages do not apply, and instead the plaintiff must prove both common law malice and actual damages. Erickson, 368 S.C. at 466, 629 S.E.2d at 665 (citing Gertz, 418 U.S. at 346-50. Second, the presumption that the statement is false does not apply, and the plaintiff must prove that the statement is false. Id. Finally, the plaintiff cannot recover punitive damages unless it proves by clear and convincing evidence that the defendant acted with actual malice. Id.

The Erickson court discussed these caveats in the context of cases involving media defendants. In the present matter, the lower court correctly found that CAS is a media defendant.

While CAS's primary function is not as a traditional newspaper, the U.S. Supreme Court has recognized that the "press" is not limited to "traditional" media. In explaining the purpose and scope of freedom of the press, the Court stated:

> Freedom of the press is a 'fundamental personal right' which 'is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. The informative function asserted by representatives of the organized press in the present cases is also performed by lecturers, political pollsters, novelists, academic researchers, and dramatists.

Branzburg v. Hayes, 408 U.S. 665, 704–05 (1972) (internal citations omitted); see also Glik v.

Cunniffe, 655 F.3d 78, 84 (1st Cir. 2011) ("changes in technology and society have made the lines between private citizen and journalist exceedingly difficult to draw. The proliferation of electronic devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper. Such developments make clear why the news-gathering protections of the First Amendment cannot turn on professional credentials or status.").

The blurring of the line between traditional media and non-media defendants in the age of the internet is particularly evident when looking at CAS.

CAS presented evidence of the numerous forms of communication it uses to educate and inform the public about animal welfare, relevant legislative developments, its advocacy efforts, animal cruelty and its prevention, opportunities for community involvement, current events, and the services it provides, amongst other things. It has approximately 250,000 "followers" on its Facebook page, with most of its posts garnering hundreds, if not thousands, of "likes", "shares", and "comments." (R. p. 1849, ¶ 4). The subjects covered by CAS range from those related to its various advocacy efforts, to current news, to local events, to legislative initiatives, to requests for assistant and support, and more. (R. p. 1849, ¶ 4). Some posts, such as those concerning the carriage horse industry, often spark spirited debates by commentors. (R. p. 1849, ¶ 4). It publishes a quarterly newsletter, *Carolina Tails*, that has a circulation of approximately 25,000-30,000 per issue and is the largest pet magazine in South Carolina. (R. p. 1850, ¶ 5). Additionally, CAS maintains an email list with approximately 60,000 users, it maintains a blog of current events, it maintains three websites to which it posts articles on a weekly basis, and it has a YouTube channel with over 1200 subscribers. (R. p. 1850, ¶¶ 6-8).

Appellant argues in its brief that CAS cannot be a "media defendant" because it is a not-for-profit organization. Organizations such as PBS and NPR illustrate the fallacy of this argument. Appellant also contends that the "General Assembly defines 'media defendants' a 'a person, company, or entity engaged in or that has been engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, radio, television, news or wire service or other medium…", citing S.C. Code Ann. § 19-11-100. (App. Brief, p. 20). However, S.C. Code Ann. § 19-11-100 does not define "media defendant". Rather, it provides news media with a qualified privilege against disclosure. It also evidences our Legislature's acknowledgement that there is a large range of activities and entities that qualify as "news media".

CAS is a "media defendant", even when viewed through a more traditional lens of what constitutes media. As such, Erickson required that Appellant present evidence that CAS acted with common law malice and that the speech at issue was false.

i. Appellant failed to present evidence that Respondent CAS acted with common law malice.

Common law malice means that "the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference towards plaintiff's rights." Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 134, 492 S.E.2d 103, 107 (1997) (quotation omitted). Accordingly, to survive summary judgment, Appellant was required to demonstrate that a jury could find that CAS published the statements at issue "in an improper and unjustified manner." Tharp v. Media Gen., Inc., 987 F. Supp. 2d 673, 688 (D.S.C. 2013) (quoting Hainer, 492 S.E.2d at 107). Appellant failed to do so.

Appellant failed to produce even a scintilla of evidence that CAS published the Big John video, or any of the statements made therein, for the purpose of injuring Appellant. Likewise,

Appellant failed to show that CAS was reckless or that it showed a conscious indifference towards Appellant's rights.

As to the Big John video, the uncontroverted evidence shows that on April 19, 2017, CAS was contacted by members of the public who reported that a horse, which was identified as Big John, had collapsed to the pavement during a carriage tour and was unable to get up without assistance. (R. p. 1775, ¶ 8). At Mr. Elmore's direction, CAS took videos of the Big John provided by eyewitnesses, added subtitles, and published the resulting video on CAS's social media sites and website. (R. p. 1775, ¶ 9). At the time Mr. Elmore instructed that the video be published, he was not in possession of any information that would call into question the veracity of using the term "collapse" to describe what occurred that left Big John lying there on the pavement. (R. p. 1775, ¶ 10). Mr. Elmore testified that even as of May 27, 2020, the date he signed his affidavit, he was still not in possession of any such information. (R. p. 1775, ¶ 10). In fact, Elizabeth Fort, an eyewitness who sent CAS some of the footage of the Big John video, testified repeatedly in her deposition that she believed then, and continues to believe, that what she witnessed was a horse that had "collapsed". (R. pp. 1815-1820).

Mr. Elmore further explained in his affidavit that he directed that the video be published by CAS for the purpose of bringing further awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. (R. p. 1775, ¶ 11). Mr. Elmore confirmed that in no way was it his intent to harm Appellant or injure its business. (R. p. 1775, ¶ 8).

Appellant presented no competent, admissible evidence to the contrary, and the lower court properly granted summary judgment. See Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) ("To survive summary judgment, the evidence

presented must amount to more than mere speculation and conjecture.”).

ii. The lower court correctly held that Appellant failed to present evidence that the speech at issue was false.

Appellant was required to present competent, admissible evidence that the speech at issue was false, and it failed to do so. See Erickson, 368 S.C. at 466, 629 S.E.2d at 665 (the presumption that the statement is false does not apply, and the plaintiff must prove that the statement is false).

As to the use of the word “collapse”, Appellant cannot prove that Big John *didn't* collapse. Mr. Christoff testified that Big John didn't “collapse”, but that he “tripped over his feet.” (R. p. 633, l. 17-25). However, he also testified that he did not witness the incident, that the person that told him about it did not witness it, that he did not talk to the driver of the carriage, that he never talked to anyone that said they saw him trip, and that he is not aware of anyone that can say he/she saw Big John trip over his own feet. (R. pp. 632-636). Rather, Mr. Christoff testified that the vet, Dr. Nikki Byrd Little, “would know whether the horse collapsed or not” and that she told him Big John tripped and did not collapse. (R. pp. 638-639). However, when Dr. Little was later deposed, her testimony did not corroborate Mr. Christoff's representations. Dr. Little testified that she was not asked to opine as to why Big John fell, that she wasn't there to try to diagnose the cause of the fall, that she did not observe the fall, and that she was told by someone else that he slipped while he was in the harness, which is what she wrote in her report. (R. pp. 1842-1844). Importantly, Dr. Little agreed that the definition of “collapse” as it relates to equines is “partial or complete loss of posture that can occur either at rest and/or at exercise” and that tripping and falling would classify as collapsing. (R. pp. 1847-1848). Thus, rather than support Appellant's position (which was not based on personal knowledge) that Big John did not collapse, Dr. Little established that he did, in fact, collapse.

At best, the cause of Big John's fall remains unknown and is incapable of being established

with any certainty. A statement not subject to objective verification is not likely to assert actual facts. Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1093 (4th Cir. 1993). "Where readers know that an author represents one side in a controversy, they are properly warned to expect that the opinions expressed may rest on passion rather than factual foundation." Milkovich, 497 U.S., at 21 n.8.

Because Appellant failed to present evidence sufficient to create a question of fact as to the falsity of the speech at issue, the lower court should be affirmed.

3) The lower court correctly found that, even if Respondent CAS was not a "media defendant", that the media v. non-media defendant distinction is irrelevant where, as here, the speech at issue relates to a matter of public concern.

It does not appear that South Carolina courts or the U.S. Supreme Court have had the opportunity to consider whether the "Erickson caveats", which eliminate the common law presumption of common law malice and falsity and are rooted in the First Amendment of the U.S. Constitution, apply to cases involving non-media defendants in defamation actions. However, our federal courts have, and the U.S. Supreme Court has repeatedly held that it is the content of speech, not the identity of the speaker, that matters. See Anderson v. The Augusta Chronicle, 355 S.C. 461, 472, 585 S.E.2d 506, 512 (Ct. App. 2003) ("Although defamation is substantively a matter of our state common law, the federal Constitution 'may reshape the common-law landscape to conform to the First Amendment.'") (quoting Philadelphia Newspapers, Inc., 475 U.S. at 775).

In Snyder v. Phelps, 580 F.3d 206 (4th Cir. 2009) aff'd, 562 U.S. 443 (2011), the Fourth Circuit found any distinction between media and non-media defendants to be meaningless in affording First Amendment protections to statements on matters of public concern that fail to contain a "provably false factual connotation":

Neither the Supreme Court nor this Court has specifically addressed the question

> of whether the constitutional protections afforded to statements not provably false should apply with equal force to both media and nonmedia defendants. See Milkovich, 497 U.S. at 20 n. 6, 110 S.Ct. 2695. The Second and Eighth Circuits, however, have rejected any media/nonmedia distinction. See Flamm v. Am. Ass'n of Univ. Women, 201 F.3d 144, 149 (2d Cir. 2000); In re IBP Confidential Bus. Documents Litig., 797 F.2d 632, 642 (8th Cir. 1986); see also Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1563 n. 39 (4th Cir. 1994) (implying in dicta that Milkovich applies equally to media and nonmedia defendants). Like those two circuits, we believe that the First Amendment protects nonmedia speech on matters of public concern that does not contain provably false factual assertions. Any effort to justify a media/nonmedia distinction rests on unstable ground, given the difficulty of defining with precision who belongs to the "media." And, more importantly, the Supreme Court has concluded that the "inherent worth of speech ... does not depend upon the identity of its source, whether corporation, association, union, or individual." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 777, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Thus, for our purposes, the status of the Defendants as media or nonmedia is immaterial.

Snyder, 580 F.3d at 219, n. 13; see also McGlothlin v. Hennelly, No. 9:18-CV-00246-DCN, 2020 WL 1876275, *10 (D.S.C. April 15, 2020) (relying on Snyder and finding that the Erickson caveats apply to non-media defendant in defamation actions); aff'd 2021 WL 2935372, *2 (4th Cir. July 13, 2021) (noting that although Erickson drew a distinction between the publishing of a statement by media and nonmedia defendants, the Fourth Circuit has since held that distinction to be immaterial).

The U.S. Supreme Court emphasized the point in Citizens United v. Federal Election Commission: "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." 558 U.S. 310, 352 (2010) (internal quotations omitted). In construing the constitutionality of campaign finance statutes, the Citizens United Court cited with approval the position of five Justices in Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., that "in the context of defamation law, the rights of the institutional media are no greater and no less than those enjoyed by other individuals engaged in the same activities." 472 U.S. 749, 784 (1985) (Brennan, J., dissenting); id. at 773 (White, J., concurring in

the judgment) ("[T]he First Amendment gives no more protection to the press in defamation suits than it does to others exercising their freedom of speech."). In its Citizens United decision, the Court warned that any distinction in the context of the First Amendment between the traditional media and other speakers is impractical: "With the advent of the Internet and the decline of print and broadcast media…the line between the media and others who wish to comment on political and social issues becomes far more blurred." Id. at 352. The Fourth Circuit is joined by the other circuits that have considered this issue. See Flamm, 201 F.3d at 149 (holding that "a distinction drawn according to whether the defendant is a member of the media or not is untenable"); In re IBP Confidential Bus. Documents Litig., 797 F.2d at 642; Garcia v. Bd. of Educ., 777 F.2d 1403, 1410 (10th Cir. 1985); Avins v. White, 627 F.2d 637, 649 (3d Cir. 1980); Davis v. Schuchat, 510 F.2d 731, 734 n. 3 (D.C. Cir. 1975); Obsidian Fin. Grp., LLC v. Cox, 740 F.3d 1284, 1290–91 (9th Cir. 2014) ("In defamation cases, the public-figure status of a plaintiff and the public importance of the statement at issue—not the identity of the speaker—provide the First Amendment touchstones.") cert. denied, 572 U.S. 1142 (2014).

Snyder, as well as the guidance from the U.S. Supreme Court, compels the conclusion that the distinction between media and non-media defendants is irrelevant. It is the content of the speech itself, i.e., whether or not it relates to a matter of public concern, that determines the applicability of the Erickson caveats. The lower court correctly determined that, because the speech at issue relates to a matter of public concern, the common law presumptions of common law malice, falsity, and damages, are eliminated even if CAS was not a "media defendant". As such, the lower court's order granting summary judgment as to the defamation cause of action should be affirmed because Appellant failed to demonstrate a question of fact as to common law malice or falsity of the speech at issue.

C. Because all statements made by Respondent CAS were true, or at a minimum, substantially true, the lower court correctly granted summary judgment.

Regardless of the status of the parties or the subject matter of the speech, the truth of the matter published is a complete defense to an action based on defamation. Ross v. Columbia Newspapers, Inc., 266 S.C. 75, 80, 221 S.E.2d 770, 772 (1976). A sufficient defense is made out where the evidence establishes that the statement was substantially true. Id.

To the extent the use of the word "collapse" to describe Big John is the basis of Appellant's defamation claim, that claim must fail because it is a true, or substantially true, statement. Merriam-Webster defines "collapse" as "to fall or shrink together abruptly and completely".[3] In his deposition, Mr. Christoff, Appellant's sole-owner, testified that Big John fell suddenly and completely to the ground. (R. p. 720, l. 13-21). Respondent also presented the testimony of Appellant's vet, Dr. Nikki Byrd Little, who examined Big John shortly after his fall and, according to Mr. Christoff, "would know whether the horse collapsed or not". (R. pp. 638-639). However, she testified that if Big John tripped and fell, which is what Appellant claims, that it would still be accurate to classify the incident as a "collapse." (R. pp. 1843-1846, 1848). Specifically, Dr. Little agreed that the definition of "collapse" as it relates to equines is "partial or complete loss of posture that can occur either at rest and/or at exercise" and that tripping and falling would classify as collapsing. (R. pp. 1847-1848).

Appellant also alleges that Defendants falsely accused it of violating the law. Even if Appellant presented evidence of any such statement(s) published by CAS that are "of and concerning" Appellant, which it failed to do, CAS would still be entitled to summary judgment

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[3] https://www.merriam-webster.com/dictionary/collapse (last accessed 4/13/23).

because the evidence establishes that Appellant has, in fact, violated the law in its operations. Specifically, Dan Riccio, the City of Charleston's Director of Livability and Tourism, testified after viewing video footage of Plaintiff's carriages running stop signs that this practice violated the City's ordinances as well as state law. (R. pp. 1221 [Riccio Depo. pp. 194-195]; R. pp. 736-739 [Christoff Depo.]) (Mr. Christoff was shown videos of Plaintiff's carriages running stop signs and conceded that they were required to stop).

The only other two "factual" statements in the Big John video that could possibly be at issue are as follows:

> *By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.*
>
> *Big John could not get up on his own. A team of people had to try and pull him up.*

As to the first, Mr. Christoff testified that none of his loaded carriages had ever been weighed. (R. p. 726, l. 6-9). As to the second, Mr. Christoff testified that "there were a number of people involved" that "assisted" and "helped" Big John to his feet. (R. pp. 636-637). Additionally, there is no credible evidence that the statement is false, only speculation and conjecture. After all, it was not possible to depose Big John.

II. The lower court correctly determined that Respondent CAS was entitled to summary judgment on the civil conspiracy cause of action because Appellant failed to present even a scintilla of evidence of intent to harm, of an agreement amongst Respondents, or of any overt act in furtherance of an agreement.

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. Paradis v. Charleston Cty. Sch. Dist., 433 S.C. 562,

861 S.E.2d 774 (2021). The Paradis Court emphasized that intent to harm is an integral part of a civil conspiracy claim:

> Since civil conspiracy is an intentional tort, an intent to harm, which has also been discussed in our conspiracy law, remains an inherent part of the analysis. See 16 Am. Jur. 2d Conspiracy § 53 (2020) ("Since one cannot agree, expressly or tacitly, to commit a wrong about which they have no knowledge, in order for civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the beginning of the combination or agreement. Thus, civil conspiracy is an intentional tort requiring a specific intent to accomplish the contemplated wrong." (footnotes omitted)).

Paradis, 433 S.C. at 574, 861 S.E.2d at 780, fn. 9.

At the outset, to the extent Appellant's civil conspiracy claim is based upon speech that is protected by the First Amendment, the claim must fail. See Snyder, 562 U.S. at 460 (liability for civil conspiracy cannot be based on constitutionally protected speech).

Moreover, Respondents presented *admissible* evidence that there was no intent to harm Appellant nor was there any agreement amongst them to commit an unlawful act or a lawful act by unlawful means. As set forth hereinabove, Respondents submitted affidavits, based on personal knowledge, testifying that they published the Big John video not with the intent of harming the Appellant but instead to bring awareness to their push for a scientific study of Charleston's carriage industry, that they are not aware of any occasion in which the Respondents worked together for the purpose of harming Appellant, and that any actions taken by the Respondents, whether or not in concert or individually, have been for the singular purpose of advocating for the carriage animals. (R. pp. 1775-1776, ¶¶ 9, 11, 16, 17 [Elmore Aff.]; R. pp. 430-432, ¶¶ 5, 19, 23 [Harley Aff.]).

It appears that Appellant believes an email, sent by Harley to CAS, is "evidence" of civil conspiracy to harm Appellant. (App. Brief, pp. 26, 33, 41) ("The evidence ignored by the Master-in-Equity includes, but is not limited to, evidence of a deliberate conspiracy to "depress the

carriage company's income…") ("[Respondents] [d]istributed an email on March 30, 2017 coordinating a joint plan to depress income"). The email referenced by Appellant was sent by Harley to individuals at CAS on March 30, 2017, and states: "I am thinking that the only way to defeat this City/Industry cartel is by depressing their income." (R. p. 387). There was no response from CAS and a single, unsolicited email is not evidence of an agreement or a conspiracy to harm Appellant (which isn't even mentioned in the email). Moreover, the lower court did not ignore this email. Rather, it recognized the incompetency of this "evidence" as hearsay. (R. pp. 1655-1656).

Appellant asserts that the Affidavit of Katherine Vaughn "explains how the defendants conspired to suppress truthful information to cast the plaintiff in a false light…" (App. Brief, p. 34). Ms. Vaughn's affidavit does no such thing. Rather, she describes having certain posts she made on CCHA's Facebook page removed/blocked by CCHA in 2020 and 2021 (3-4 years after the Big John video was published). (R. pp. 434-439). It's not even clear whether the posts she references had/have anything to do with Appellant. The lower court did not err in determining that this affidavit failed to provide competent evidence of defamation, malice, conspiracy, or anything else that is at issue.

Appellant alleges (without citation) that Respondents "cobbled together" the Big John vide. (App. Brief, p. 2). This is simply not true and directly contradicted by the Affidavit of Joe Elmore, in which Mr. Elmore explains that it was at his direction that **CAS** took videos of the Big John incident, received from members of the public, and created the "Big John" video and that "neither [Harley] nor [CCHA] had anything to do with the subtitles and narrative that CAS added to the Big John video published by [CAS]." (R. pp. 1775-1776, ⁋⁋ 9, 16).

It would be nearly impossible to respond to each and every false and unsupported allegation made by Appellant, and also unnecessary. There is some modicum of irony in a defamation

plaintiff basing its claim on false and unsupported allegations. The burden was on Appellant, and Appellant failed to produce any admissible evidence, as opposed to inferential leaps, wild speculation, unauthenticated hearsay, and total fabrications, that Respondents combined or had an agreement to commit an unlawful act or a lawful act by unlawful means. Appellant has also failed to produce any admissible evidence that Respondents, either individually or collectively, intended to harm it. It is telling that the overwhelming majority of allegedly "factual" statements made in Appellant's brief are without citation.

The lower court's granting of summary judgment as to the civil conspiracy claim should be affirmed.

III. The lower court correctly determined that Respondent CAS was entitled to summary judgment on the "Tortious Interference with Business Relations" cause of action because Appellant failed to present any evidence that any contract was breached.

In order to prevail on a claim for intentional interference with a contractual relationship, a party must prove: (1) the contract; (2) the wrongdoer's knowledge of the contract; (3) its intentional procurement of the breach; (4) absence of justification; and (5) resulting damages. Todd v. South Carolina Farm Bureau Mut. Ins. Co., 287 S.C. 190, 336 S.E.2d 472, 473 (1985). Appellant's Complaint alleges that it has a contractual franchise relationship with the City of Charleston and that the "defendants have frequently and intentionally attempted to procure a breach of that franchise contract by publishing false and defamatory information about the plaintiff." (R. p. 83, ¶ 24). However, Mr. Christoff testified as follows:

> Q. Has any -- have you ever received any type of notice from anyone acting on behalf of the City of Charleston that your franchise contract was in jeopardy or anything related to your franchise contract?
>
> A. No.

Q. Okay. So this is all hypothetical or potential that my franchise contract might someday in the future might be --

A. Correct.

Q. Okay. So just to clarify, no threats to your franchise contract currently by the City?

A. Not that I'm aware of.

(R. pp. 730-731; R. p. 642, l. 20-23) (testifying that at no time has Appellant's franchise contract ever been terminated).

There has been no breach of the franchise contract, the subject of Appellant's "Tortious Interference with Business Relations" cause of action. See First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994) (interference with a contract is not enough, without a breach of the underlying contract, there can be no recovery). The lower court's order should be affirmed.

IV. The lower court correctly determined that Respondents were entitled to summary judgment on Appellant's cause of action for "Violation of Plaintiff's Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness".

Appellant alleges that CAS, acting under color of state law, knowingly published false information and, in so doing, deprived Appellant of its constitutionally guaranteed rights to conduct a lawful business and be free from threats of harm. (R. p. 82, ¶¶ 15-17). It further argues that, because Respondents acted in conjunction with one another in doing so, all Respondents are liable for violating Appellant's civil rights. (R. p. 82, ¶¶ 15-17). Appellant seeks monetary damages for this alleged deprivation. (R. p. 82, ¶¶ 18-19).

A. Because South Carolina does not recognize a cause of action for monetary damages for constitutional violations, the lower court's order should be affirmed.

Because the South Carolina Constitution does not provide for a private cause of action for state constitutional violations and because the General Assembly has not enacted a statute enabling this type of action, Appellant's claim seeking monetary damages for alleged violations of Article I, § 3 of the South Carolina Constitution fails. See Palmer v. State, 427 S.C. 36, 829 S.E.2d 255 (Ct. App. 2019), reh'g denied, (July 12, 2019) and cert. denied, (S.C. May 28, 2021) (holding the S.C. Constitution does not provide for monetary damages for civil rights violations).

B. Because Appellant failed to show any deprivation of a cognizable liberty or property interest, the lower court's order should be affirmed.

In order to demonstrate a due process violation, Appellant must first show it was deprived of a constitutionally protected liberty or property interest. Am. Whitewater v. Tidwell, 959 F. Supp. 2d 839, 865 (D.S.C. 2013), aff'd, 770 F.3d 1108 (4th Cir. 2014); see also Tigrett v. Rector & Visitors of Univ. of Virginia, 290 F.3d 620, 628 (4th Cir. 2002) ("Whether a deprivation of constitutional rights has occurred is not dependent upon the subjective feelings or beliefs of a plaintiff. In order to properly maintain a due process claim, a plaintiff must have been, in fact, deprived of a constitutionally protected liberty or property interest.").

The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause. Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474 (1959)). The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment. Id.

Appellant produced no evidence that it was deprived of its liberty interest to practice its

chosen profession or of its property interest in any specific employment.

C. Because Respondent CAS is not a governmental entity and, even if a quasi-governmental entity, was not acting under the color of state law in making any of the statements at issue, the lower court's order should be affirmed.

Alternatively, Respondents were entitled to summary judgment on this claim because Appellant presented no evidence of any state action. Appellant alleges that CAS is a "quasi-governmental entity as Charleston County taxpayers' money subsidizes its operations." (R. p. 82, ¶ 16). CAS is a private, charitable 501(c)(3) organization. (R. p. 1774, ¶ 4). For many years, Charleston County has contracted with CAS to provide certain animal-related services. (R. pp. 1775-1776, ¶ 14). The contract between the county and CAS provides that CAS "shall receive and provide for the humane disposition of dogs and cats running at-large, and such other animals as delivered into its custody…". (R. pp. 1783-1790).

Even if CAS were a "quasi-governmental entity", the lower court properly granted summary judgment on this claim because Appellant failed to produce evidence that the government was substantially, or even minimally, involved in the challenged activity (i.e., Respondents' advocacy for the carriage horses and publication of the allegedly defamatory statements). Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (1974) ("the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself"); Brentwood Academy v. Tennessee Secondary Sch. Athletic. Ass'n., 531 U.S. 288, 295 (2001) (state action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself); New York City Jaycees, Inc. V. U.S. Jaycees, Inc., 512 F.2d 856, 858 (2nd Cir. 1975) ("The mere existence of government ties to a private organization is not sufficient to support a finding of state

action…the state must be involved not simply with some activity of the institution alleged to have inflicted injury upon a plaintiff but with the activity that caused the injury") (internal citations omitted); Blum v. Yaretsky, 457 U.S. 991, 997 (1982) (whether there is state action is an issue of law). The requisite connection between government and the actions complained of has not been shown. Appellant's constitutional challenge was addressed solely to the advocacy and speech of Respondents as it relates to the carriage industry, yet Appellant made no showing that the government is substantially, or even minimally, involved in these activities.

V. The lower court did not abuse its discretion in denying Appellant's Motion to Amend its Complaint.

Appellant filed a Motion to Amend on April 6, 2020, seeking to amend its Complaint to: 1) add Broderick Christoff, the sole member/owner of Plaintiff, and his wife, Amber Christoff, as plaintiffs; 2) add Catherine Poag, Elizabeth Fort, Elizabeth Slagsvol[4], Domangue Consulting, and Digital Solutions, Inc.[5], as defendants; and 3) add four additional causes of action, titled "Fraud/Slander/Libel Defamation Per Se", "Fraud/Piercing the Corporate Veil", "Slander per se/Outrage", and "Outrage". The lower court properly denied this motion, determining that Rule 15, SCRCP, did not allow the addition of new parties, that the amendments were untimely and would prejudice the Respondents, and that the amendment would be futile because the claims sought to be added were untimely.

A motion to amend pleadings is addressed to the sound discretion of the trial judge, whose decision will not be disturbed unless there is shown an abuse of discretion. Anders v. Nash, 256 S.C. 102, 180 S.E.2d 878 (1971). An abuse of discretion occurs when a court's order is controlled by an error of law or there is no evidentiary support for the court's factual conclusions. Fairchild

[4] These individuals are alleged to be affiliated with CCHA.
[5] These entities are alleged to be CCHA's "media companies".

v. S.C. Dep't of Transp., 398 S.C. 90, 727 S.E.2d 407 (2012).

Appellant moved to amend pursuant to Rule 15, SCRCP. (R. pp. 242-243) The lower court correctly determined that Rule 15, SCRCP, does not permit the additional of additional persons/entities as plaintiffs and defendants. See Valentine v. Davis, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct. App. 1995) (finding that Rule 15, SCRCP, does not allow existing parties to add additional parties).

Additionally, there was ample evidentiary support for the lower court's determination that the amendments were untimely and would prejudice the Respondents. As to the addition of Mr. and Mrs. Christoff as plaintiffs, CAS presented evidence that Appellant, as well as Mr. and Mrs. Christoff, were aware of the claims and damages they sought to assert in an amended complaint as early as late April 2017. (R. pp. 799-800, 814-817). Appellant failed to provide an adequate explanation for its delay in seeking to amend the Complaint when the action had been pending for over three years, discovery had concluded in February 2020, and the facts giving rise to the claims sought to be asserted were known over four years before the Motion to Amend was filed.

Additionally, Respondents would be prejudiced by virtue of the additional discovery and depositions that would have to be taken, and in some cases, re-taken due to the addition of new parties and four additional causes of action. Although arising out of the same incident, the additional causes of action had elements distinct from those of the original Complaint and thus would require additional discovery. For example, Appellant sought to add a claim for fraud. Fraud had not previously been alleged and would require completely different evidence (and discovery) to defend. See Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended

action). Likewise, numerous depositions were taken, but the scope of those depositions were limited to the claims/parties in the original Complaint. The proposed amendments would have required many of those depositions to be re-taken and additional depositions to be taken as well. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014) reh'g denied (amendment seeking to add claims against defendant following conclusion of discovery would have been prejudicial to defendant, where plaintiff had all knowledge necessary to alert him as to the claim prior to the close of discovery, and the new claim would have required defendant to conduct additional discovery).

Finally, the lower court did not abuse its discretion in determining that the amendment would be futile. Health Promotion Specialists, L.L.C. v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812–13 (2013) (affirming the circuit court's denial of a party's motion to amend its complaint when the amendment would be futile). It has long been recognized that an amendment adding a claim barred by the applicable statute of limitations is futile and should be denied. See Coral Gables v. Palmetto Brick Co., 183 S.C. 478, 191 S.E. 337, 341 (1937) ("The court will not do a useless and a futile thing, by allowing an opportunity for setting up a new cause of action by amendment, which is barred by the statute of limitations."). All of the claims sought to be added by Appellant's Motion to Amend arose out of the Big John video, which was published in April 2017. Moreover, there is no "relation back" argument available to Appellant and its attempt to add additional parties, even if Rule 15 was applicable. See Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 29 (Ct. App. 2004) (relation back to original pleadings applies only when an existing party is changed, not when a new party is added to a complaint, emphasizing that "under South Carolina law, the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations"); Gause v. Smithers,

384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009) (police officer's naming of son, in amended complaint, as actual driver of vehicle he stopped when officer was hit by second vehicle, amounted to the addition of a defendant and not the change of a party within meaning of relation back rule, and as such, the addition of son, while keeping father in case, did not relate back to original complaint filed against father as owner and erroneously assumed driver of the stopped vehicle, for statute of limitations purposes.); Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) ("The language of Rule 15(c) clearly speaks to a change in party, not the addition of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of party.").

The lower court properly exercised its discretion in determining that the proposed amendments were untimely and would prejudice Respondents. The Order denying the Motion to Amend should be affirmed.

VI. The lower court did not abuse its discretion in denying Appellant's Motion for Amended Scheduling Order.

Appellant filed a Motion for Amended Scheduling Order on October 20, 2020, requesting additional time to conduct discovery. (R. pp. 336-337). The lower court denied the motion, correctly determining that Appellant failed to show good cause why additional discovery should be permitted. (R. pp. 40-43).

The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. Evening Post Pub. Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 85, 708 S.E.2d 745, 750 (2011). An abuse of discretion occurs when there is no evidence to support the trial judge's factual conclusion or when the ruling is based upon an error of law. Id.

Appellant filed its Complaint on August 17, 2018, and the parties began engaging in

discovery almost immediately. By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020.

Appellant's Motion for Amended Scheduling Order was based on three grounds: (1) that Appellant's counsel suffered a heart attack in April 2019, followed by open heart surgery in August 2019 which Appellant asserts caused its counsel to "miss[] about half the year"; (2) that COVID has made "the efficient practice of law more difficult than usual"; and (3) that Respondents CCHA and Ellen Harley have engaged in dilatory tactics that have delayed discovery. (R. pp. 336-337).

While sympathetic to Appellant's counsel's very serious health issues, the lower court did not abuse its discretion in finding that those issues did not prevent Appellant from participating in discovery or from moving this case forward. Rather, on May 3, 2019, a month after his heart attack, Appellant's counsel took the deposition of Elizabeth Fort, a fact witness. (R. p. 1814). In fact, apart from the deposition of Appellant's sole member/owner (Broderick Christoff) which was taken on December 7, 2018, and March 28, 2019, the remaining (eight) depositions in this case were taken in the year following counsel's heart attack.[6] (R. p. 749). Notably, the discovery deadline of February 7, 2020, was agreed to by Appellant with knowledge that its counsel would be undergoing a surgical procedure.

As for COVID, it is disingenuous for Appellant to claim that it was prevented from conducting any discovery. In fact, mediation was completed in this matter via Zoom in September

[6] Amber Christoff (Mr. Christoff's wife) was taken 12/11/19; Katie Clarey, CPA (Appellant's accountant) was taken 1/9/20; Elizabeth Fort (fact witness) was taken 5/3/19; CCHA's 30(b)(6) deposition was taken 1/31/20; Tyler Jones (Appellant's consultant) was taken 5/17/19; Tara Little, DVM (Appellant's former veterinarian) was taken 10/30/19; Justin Miller, DVM (Appellant's current veterinarian) was taken 2/11/20; and Dan Riccio (Director of the City of Charleston's Department of Livability and Tourism) was taken 12/18/19 and completed on 3/11/20.

2020, and hearings on discovery motions were held remotely in this matter in both May and June 2020. Most importantly, the discovery deadline in the original scheduled order passed in February 2020, before COVID began shutting the world down.

Additionally, the lower court did not abuse its discretion in finding meritless Appellant's allegations that Respondents CCHA and Harley have engaged in dilatory tactics. Moreover, Appellant has not articulated why any such alleged tactics on the part of CAS's co-defendants prevented it from conducting discovery as to CAS or how the additional discovery sought was necessary for Appellant's prosecution of this case.

Finally, although the discovery deadline was February 7, 2020, Appellant inexplicably waited until October 20, 2020, to file its Motion for Amended Scheduling Order, months after Respondents filed Motions for Summary Judgment. Given that the case had been pending for over three years, that Appellant failed to show good cause justifying the extension of the scheduling order, and that permitting additional discovery would prejudice Respondents, the denial of Appellant's Motion for Amended Scheduling Order should be affirmed.

CONCLUSION

On April 19, 2017, a carriage horse collapsed in the streets of Charleston and remained sprawled out on the asphalt for over ten minutes. The public's response was intense because the issues surrounding Charleston's carriage horse industry are matters of public concern. The speech at issue here is the very type of speech that is protected by the First Amendment to promote and allow robust debate on matters of public concern. Appellant's lawsuit is nothing more than an attempt to silence the advocacy efforts of Charleston Animal Society. This Court should affirm the Orders of the lower court.

Respectfully Submitted,

/s/ Elizabeth J. Palmer________________

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, LLC, ... Appellant,

v.

Charleston Animal Society, Ellen Harley, and
Charleston Carriage Horse Advocates, LLC. . . . . ……….. Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that ***Respondent Charleston Animal Society's Final Brief*** complies with Rule 211(b), SCACR.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2018-CP-10-4083
Appellate Case No.: 2022-001114

Charleston Carriage Works, LLC, ... Appellant,

v.

Charleston Animal Society, Ellen Harley, and
Charleston Carriage Horse Advocates, LLC. . . . . Respondents.

PROOF OF SERVICE

I do hereby certify that on August 10, 2023, I have served all counsel in this action with a copy of the ***Respondent Charleston Animal Society's Final Brief*** via email to the following email addresses:

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