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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated, Appellants,

v.

Clay Killian, in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, Aiken County, City of Aiken, Aiken Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken, Respondents.

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INTRODUCTION

South Carolina law permits its counties to charge their citizens only ad valorem property taxes, uniform service charges, and/or service or user fees. *See* S.C. Code Ann. § 6-1-310; S.C. Code Ann. § 4-9-30(5)(a); S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body ... is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (" 'Service or user fee' also includes 'uniform service charges'."). Aiken County may only charge additional taxes or fees where specifically authorized by statute. *See Burns v. Greenville County Council*, 433 S.C. 583, 586 (2011). The City of Aiken stopped charging its Road Maintenance Fee in response to *Burns* as an implicit admission that the fee is illegal. The Road Maintenance Fees charged by Respondent City of Aiken and Aiken County Respondents are not authorized by statute and are therefore illegal.

This case arises out of two ordinances passed by City and County Respondents which imposed two all-but-identical Road Maintenance Fees to the one invalidated by the Supreme Court in *Burns v. Greenville County Council*, 433 S.C. 583 (2021). Aiken County Respondents have ignored an express directive from the South Carolina Supreme Court by continuing to collect and retain monies pursuant to an illegal "uniform service charge." (Resp. Initial Br., p.1). Respondent City of Aiken has "rescinded or repealed their road maintenance fee as of July 21, 2021," but has failed to refund any of the illegally collected fees that belong to the citizens. (Resp. Initial Br., p.2). Respondents are hoarding millions in illegally collected Road Maintenance Fees, and Respondents refuse to return these fees paid by their citizens, which in law and equity belong to the citizens.

As demonstrated in Appellants' initial brief and in the foregoing, the lower court's dismissal of this action was an error, and nothing in Respondents' brief or the record demands any finding to the contrary.

STATEMENT OF THE FACTS

Appellants rest upon the statement of the facts set forth in their initial brief.

ARGUMENT

Overall, Respondents' arguments suffer from the fatal flaw of ignoring the standard on which the lower court dismissed this action. Importantly, Respondents balk when forced to own up to their improper use of the Revenue Procedures Act as a sword and a shield. There is no dispute that Respondents imposed the illegal Road Maintenance Fees pursuant to Title 6 of the South Carolina Code of Laws. (Resp. Initial Br., p. 17) ("the road maintenance fees at issue were enacted, rightly or wrongly, under S.C. Code Ann. § 6-1-300(6) as a 'service or user fee.' "). By imposing these charges as "fees" pursuant to Title 6, Respondents avoided various statutory limitations and political implications that would have applied to these "fees" had they been imposed as "taxes." Now, faced with this challenge, Defendants cower behind the Revenue Procedures Act seeking its protection when arguing these fees are "taxes." This cannot stand.

I. Whether taxes or fees, the characterization of Respondents' fees is a factual dispute that should have been construed in favor of Plaintiffs/Appellants.

The lower court erred by failing to construe factual disputes in favor of Plaintiffs/Appellants. (Appellants' Initial Br., p. 17, n.5.)[1] Respondents are silent on this issue.

[1] The lower court acknowledges the "many assertions of fact concerning the differences between [Respondents'] ordinances and Greenville's." (R._____) Order on Plaintiffs' Motion to Alter or Amend as to County Defendants (March 9, 2023) at p.5.

Yet throughout their brief, Respondents make a number of arguments urging this Court to affirm the lower court's decision based on its finding that the fees are taxes. (Resp. Initial Br., pp.8, 9, 11, 17, 28). It was error for the lower court to hold that these fees were taxes, given that factual disputes should be construed in favor of the plaintiffs at the motion to dismiss stage. *See Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). Respondents arguments fail, and the lower court erred by dismissing this action on a finding that the Road Maintenance Fees are taxes.

II. Respondents are silent as to the application of the legislative intent in S.C. Code Ann. § 12-60-20 to this dispute.

Respondents make the sweeping argument that "an action for wrongful collection of taxes falls within the scope of the RPA." (Resp. Initial Br., p.6). Respondents cite to various sections throughout the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et seq. ("RPA"), which they argue sets forth the "exclusive remedy for any action by a taxpayer alleging the wrongful collection of taxes." (Resp. Initial Br., pp.6-7) (citing S.C. Code Ann. § 12-60-80; S.C. Code Ann. § 12-60-3390). These arguments are broad, imprecise, and ignore the legislative intent and definitions of "tax" and "property tax" explicitly set out in the Revenue Procedures Act.

Most importantly, Respondents are silent as to the application of the legislative intent in S.C. Code Ann. § 12-60-20 to this dispute. As discussed in Appellant's Initial Brief, the legislative intent controls the scope of the RPA and applies to (1) disputes with the South Carolina Department of Revenue ("SCDOR"), and (2) disputes concerning property taxes. *See* S.C. Code Ann. § 12-60-20. This action is neither a dispute with the SCDOR, nor does it concern property taxes. Respondents' silence speaks volumes, and this action does not fall within the Legislative Intent of the RPA.

A. The lower court and Respondents ignore the definition of "tax" in the Revenue Procedures Act.

Respondents argue the fees at issue are "taxes" which brings this dispute under the RPA. yet ignore that the fees at issue do not fit the definition of taxes in section 12-60-30(27) of the RPA.[2] (Resp. Initial Br., p.11). The RPA defines "tax" or "taxes" to mean "taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, **imposed by this title**, or **subject to assessment or collection by the department**." S.C. Code Ann. § 12-60-30(27) (emphasis supplied). There is no dispute that the fees are imposed *not* through Title 12, but Title 6. (Resp. Initial Br., p.17). Still, despite not meeting the definitions of "tax," the lower court held that the RPA and section 12-60-80 applies and bars this action, and Respondents encourage the court to affirm that decision. This is error.

B. The lower court and Respondents ignore the definition of "property tax" in the Revenue Procedures Act.

Respondents argue the fees at issue are property taxes, and therefore fall within the RPA's scope, simply because they are "assessed based on the ownership of a motor vehicle and [are] collected in connection with other property taxes." (Resp. Initial Br., p.8). Respondents ignore the definition of "property tax" in the RPA. The RPA defines property tax to mean "ad valorem taxes on real and personal property." S.C. Code Ann. § 12-60-30(18). It is undisputed that the fees at issue are flat fees and do not involve any ad valorem tax, as the value of the vehicle has no bearing on the amount of fee. *See e.g.*, (Resp. Initial Br., p.1) (fifteen dollar fee); (R.____)

[2] While vehemently arguing that the fees are taxes throughout their brief, Respondents also state: "[t]he definition of tax in the RPA uses the word 'fee,' as stated in the prior order." (Resp. Initial Br., p.9). But even if a "fee," the road maintenance fee must be "imposed by this title, or subject to assessment or collection by the department." S.C. Code Ann. § 12-60-30(27). Appellants have not sued SCDOR, and there is no dispute that these fees were imposed through Title 6 not Title 12. (Resp. Initial Br., p.17). This argument, too, must fail.

Order on Plaintiffs' Motion to Alter of Amend as to City of Aiken Defendants at p.2 (February 23, 2023) ("It is undisputed that the road maintenance fee was assessed based on the ownership of an item of personal property – a vehicle."); *Burns*, 433 S.C. at 586, 861 S.E.2d at 32 ("Except for value-based property taxes, a county may not impose a new tax ... unless specifically authorized by the General Assembly."). Respondents cannot rely on Title 6 when adopting these fees only to then rely on Title 12 when it comes to defending them. The flat fees at issue are not property taxes as defined in the RPA. This argument fails.

Respondents also argue that the fees are property taxes because they are collected with other property taxes on the same tax bill. *See* (Resp. Initial Br., p.8) (citing S.C. Code Ann. § 12-45-430). Just because the fees may have been collected with other payments that happened to be property taxes does not make the fees at issue property taxes by association. Respondents' new argument is the classic logical fallacy of association. As such, this argument is unsupported and must fail.

C. Reliance in *Aiken v. South Carolina Department of Revenue* regarding the scope of the Revenue Procedures Act is misplaced.

Respondents and the lower court err in relying on *Aiken v. South Carolina Department of Revenue,* 429 S.C. 414, 839 S.E.2d 96 (2020) to support a finding that the RPA applies to this dispute. (Resp. Initial Br., pp.10-11). The fees at issue in *Aiken* were "taxes" under the RPA, and the "Department" was named. The Supreme Court in *Aiken* found that the RPA applied, as those facts are precisely the scenario for which the RPA should apply. *See Aiken*, 429 S.C. at p.422. The lower court acknowledged this distinction, noting that the presence of the South Carolina Department of Revenue in *Aiken* clearly brought that action under the RPA. (R._____) Order Granting Motion to Dismiss by Defendants City of Aiken and Aiken City Council at p.4, n.4. (August 8, 2022); (R._____) Order Granting Defendants' Motion to Dismiss as to Aiken County

Defendants at p.5, n.4 (August 5, 2022). There is simply no connection to the RPA in this case as the South Carolina Department of Revenue is not named nor involved in this case, and the fees at issue are not property taxes.

Respondents also cite cases to support their argument that *Aiken* and section 12-60-80 bar this suit but cannot explain away that these cases, too, fall squarely within the legislative intent set out in the RPA. *See B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007) (dispute over property taxes); *Brackenbrook North Charleston LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (dispute over property taxes); *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) (SCDOR named defendant). These cases are not applicable, and Respondents' arguments fail.

D. Reliance on *Aiken v. South Carolina Department of Revenue* regarding the application of S.C. Code Ann. § 12-60-80(C) is misplaced.

Respondents insist that *Aiken* demands a sweeping application of the class action bar in S.C. Code Ann. § 12-60-80(C) to any action against political subdivisions or their instrumentalities even if the action does not fall within the purview of the RPA. (Resp. Initial Br., pp.12-13). But the *Aiken* Court's holding was specific: "the plain language of subsection 12-60-80(C) prohibits **the instant action** from proceeding as a class action." *Aiken*, 429 S.C. at 417, 839 S.E.2d at 97 (emphasis supplied). Even so, Respondents are unable to cite any other support for their position outside of *Aiken*, and conveniently ignore the legislative intent and *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555, 560 (2017), despite cherry-picking one quotation from *Lightner* to serve their argument. (Resp. Initial Br., p.12). *Lightner* holds:

> The plain language of the statute, including the repetition of the terms "a dispute" after the term "and," indicates the General Assembly intended to distinguish "a dispute with the Department of Revenue" from "a dispute concerning property taxes.". . . By recognizing that the General Assembly intended to distinguish between "a dispute with the Department of Revenue" and "a dispute concerning

> property taxes," we clarify that the Act applies to disputes with the SCDOR, which may not concern property taxes, and to disputes concerning property taxes, which may involve the SCDOR or a county or municipality.

Lightner, 419 S.C. at 365.

Applying *Lightner* and the Legislative intent in the RPA mandate a finding that the RPA does not apply to this dispute, and therefore neither does S.C. Code Ann. § 12-60-80(C). *See* S.C. Code Ann. § 12-60-20 ("Legislative Intent"); *see also Lightner*, 419 S.C. at 365.There are only so many ways to explain that this action does not fall within the scope of the RPA. The General Assembly and the South Carolina Supreme Court have spoken, and the RPA does not apply to this action. The lower court erred by holding to the contrary.

III. Appellants adequately pleaded a cause of action pursuant to S.C. Code Ann. § 8-21-30.

Appellants have pleaded a cause of action pursuant to S.C. Code Ann. § 8-21-30. Under South Carolina law, a fee is illegally charged unless it is authorized by statute. *See* S.C. Code Ann. § 8-21-15(A). Appellants have more than adequately alleged the fees at issue were not authorized by law, e.g., (R.____) Compl. ¶¶ 1, 8, 46, 91(c), and the recourse for addressing such an illegal fee is found in S.C. Code Ann. § 8-21-30:

> Liability for ten times fee illegally charged. If any officer herein named shall charge any other fee or fees for any services herein mentioned, such officer shall be liable to forfeit ten times the amount so improperly charged, to be recovered by suit in the court of common pleas, by attachment or by sale when the penalty does not exceed twenty dollars.

There is no dispute that Treasurer Goings is an "officer herein named." (Resp. Initial Br., p.16); (R._____) Order on Motion to Alter or Amend Regarding County Defendants p.11, n.8 (March 9, 2023). Appellants have adequately alleged that Treasurer Goings charged the illegal road maintenance fee. The lower court holding to the contrary was error.

Respondents suggest five reasons why S.C. Code Ann. § 8-21-30 purportedly does not apply to this action. None of these reasons are persuasive. The first three reasons argue that the fees at issue are not explicitly enumerated in the chapters referenced in S.C. Code Ann. § 8-1-30. Respondents provide no source to support these arguments and fail to acknowledge Appellants' arguments and examples. (Appellants' Initial Br., pp.23, 26-27) (citing The Honorable Glenn G. Reese, 2011 WL 5304079 (S.C.A.G Oct. 11, 2011); S.C. Code Ann. § 8-21-15(A)). Respondents once again make the "fee" versus "tax" argument. (Resp. Initial Br., p.17). As stated previously, this argument is unpersuasive and does not impact the fact that Appellants have adequately pleaded a violation of this statute.

Finally, Respondents make the technical distinction argument that Treasurer Goings did not "charge" the fees at issue. (*Id.* at p.18). This technical distinction is of no moment. Semantics and synonyms aside, Respondent Treasurer Goings charged the illegal fee at issue pursuant to the County ordinance. Appellants brought suit in the lower court for ten times the amount illegally charged. (R.____) Compl. This is the exact scenario for which S.C. Code Ann. § 8-21-30 applies, and Appellants have certainly pleaded a cause of action for a violation of this statute. The lower court erred in holding otherwise.

IV. Appellants' equitable claim of unjust enrichment is not barred by sovereign immunity.

The General Assembly's waiver of sovereign immunity applies to **tort** claims under the South Carolina Tort Claims Act (the "SCTCA"). *See e.g.*, S.C. Code Ann. § 15-78-20(b) ("The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, **immunity from liability and suit for**

any tort except as waived by this chapter")[3] (emphasis supplied); S.C. Code Ann. § 15-78-30(b) (defining the word "claim" to mean "any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, **caused by the tort** of any employee of the State or a political subdivision while acting within the scope of his official duty.") (emphasis supplied); *Wright v. Smallwood,* 308 S.C. 471, 473, 419 S.E.2d 219, 220 (1992) ("It is made clear in its title that the Act applies only to the *torts* of a governmental entity.") (emphasis in original) (citing *e.g.*, § 15-78-20(b), § 15-78-40 (Cum.Supp.1991)); *Hawkins v. City of Greenville*, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004) ("These exceptions significantly limit the tort liability of government entities.").

The lower court holds, and Respondents reiterate, that the "contract carveout" in section 15-78-20(d) "demonstrates that the General Assembly considered the impact on other remedies, including equitable remedies, in making its determination to reestablish sovereign immunity," yet cite to no authority supporting as such. (Resp. Initial Br., p.20). **The SCTCA applies to torts**. It does not apply to equitable claims like unjust enrichment. *See Wright*, 308 S.C. at 473, 419 S.E.2d at 220 ("It is made clear in its title that the Act applies only to the *torts* of a governmental entity.") (emphasis in original); *Hawkins*, 358 S.C. at 293, 594 S.E.2d at 564 ("These exceptions significantly limit the tort liability of government entities.").

Respondents cite to no South Carolina authority which compels a different result. Respondents' efforts to distinguish South Carolina precedent cited by Appellants are unavailing. (Resp. Initial Br., p.22). These cases, like this action, do not assert causes of action in tort asserted against any governmental entity. *See Bishop v. City of Columbia,* 401 S.C. 651, 738 S.E.2d 255

[3] The cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the General Assembly. *See Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222 (Ct. App. 2005).

(Ct. App. 2013) (plaintiffs alleging causes of action for breach of contract, promissory and equitable estoppel, violation of the South Carolina Unfair Trade Practices Act, and declaratory judgment against City of Columbia); *Charleston Cnty. v. Nat'l Advert. Co.*, 292 S.C. 416, 417, 357 S.E.2d 9, 10 (1987) (action to remove a billboard constructed in violation of a County Zoning ordinance); *Landing Dev. Corp. v. City of Myrtle Beach*, 285 S.C. 216, 329 S.E.2d 423 (1985) (action for injunction); *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 492, 257 S.E.2d 716, 717 (1979) (action to obtain building permit). Appellants have not asserted causes of action against Respondents which would bring this suit within the SCTCA. Therefore, sovereign immunity does not bar Appellants' equitable claims against Respondents.

Sovereign immunity is a question of South Carolina law, and the General Assembly is clear that the SCTCA applies to tort claims. *See e.g.*, S.C. Code Ann. § 15-78-20(b); S.C. Code Ann. § 15-78-30(b). Respondents cannot cite a single source in South Carolina's laws and jurisprudence which states that the SCTCA bars equitable claims. Instead, Respondents cite only to caselaw outside of South Carolina, not the least of which mirrors the South Carolina Constitution, laws, and jurisprudence. This reliance is unpersuasive and misplaced. The SCTCA does not address equitable claims whatsoever. The General Assembly has not passed any subsequent law that has "granted" or "reinstated" sovereign immunity as to equitable claims. The lower court erred in holding that the SCTCA and sovereign immunity bar Appellants' equitable claims from proceeding against Respondents.

V. Appellants properly plead a violation of due process.

A. This issue was raised and ruled upon by the lower court.

On Defendants/Respondents' motions to dismiss, Plaintiffs/Appellants raised the mischaracterization of their due process claims in their response. (R._____) (Plaintiffs' Omnibus

Response in Opposition to Defendants' Motions to Dismiss – filed April 12, 2022 at p.19). The lower court heard this argument. (Tr. - April 20, 2022 at 53:16-19). Then, the lower court dismissed the Complaint in two orders, on Plaintiffs/Appellants motions for reconsideration, the lower court re-affirmed the rulings, and later amended those orders to dismiss Plaintiffs/Appellants complaint in its entirety. (R._____) Order Granting Defendants' Motion to Dismiss (August 5, 2022); (R._____) Order Granting Motion to Dismiss by Defendants City of Aiken and Aiken City Council, (August 8, 2022); (R._____) Order on Motion to Alter or Amend Filed by Plaintiffs (January 3, 2023); (R._____) Order on Motion to Alter or Amend Filed by Plaintiffs (January 4, 2023); (R._____) Order on Plaintiffs' Motion to Alter or Amend as to City of Aiken Defendants (February 23, 2023); (R._____) Order on Motion to Alter or Amend Regarding County Defendants (March 9, 2023). The argument that Appellants have not preserved this issue for appeal pursuant to a Rule 59(e), SCRCP motion lacks merit. The issue was raised, heard, and ruled upon by the lower court twice prior to dismissal of Appellants entire Complaint.

B. Appellants have sufficiently pleaded a cause of action for Respondents' deprivation of their due process claim.

Respondents mischaracterize Appellants' due process claim once again and further raise the additional argument that the legislative process provided all that the process due to Appellants and the class. (Resp. Initial Br., p.28). These arguments must fail.

"The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). "It is within the appellate court's discretion whether to address any additional sustaining grounds." *Id.* However, the South Carolina Supreme Court has stated that "…all parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling."

Id. "Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." *Id.*

The lower court's dismissal of this cause of action was error as discussed in Appellants' initial brief. (Appellants' Initial Br., p.31). Respondents now raise the argument that the legislative process of passing the ordinances imposing the fees at issue provided all process that was due. Respondents make this blanket statement without any support as to the process that was actually provided when these ordinances were passed, nor provide any exhibits or attachments showing the same. It would be manifestly unfair to affirm the lower court's dismissal of this cause of action, first in light of the factual error which the order relies on, and second, on a new sustaining ground without an opportunity for discovery into the merits. Further, Respondents again ignore the standard of review. Appellants have adequately pleaded a cause of action for the deprivation of their due process rights at the motion to dismiss stage of this action. (Appellants' Initial Br., p.31); (R. ____) Compl.

Respondents cite *Atkins v. Parker*, a Supreme Court decision which took up the issue of whether notice of Congress's substantive change in the scope of the food stamps program was adequate. 472 U.S. 115 (1985). But *Atkins* and this case are not the same. Congress's adjustment of benefits under the food stamps program and notice of the adjustment stands in stark contrast to Respondents' collection and retention of fees pursuant to illegal ordinances. Similarly, Respondents cite *Bauer v. Summey* in which the Federal District Court denied the plaintiffs' motions for preliminary injunctions. The standard of which requires a "clear showing of likelihood of success on their procedural due process claims." 568 F.Supp.3d 573 (D.S.C. 2021). On Respondents' Rule 12(b)(6) or 12(b)(1), SCRCP motions, Plaintiffs/Appellants do not have to prove their claims, nor make a clear showing of the likelihood of success of the same of their

claims. *Id.* at 585. The lower court erred by dismissing Appellants' due process cause of action and Respondents' additional sustaining ground fails.

VI. Appellants have sufficiently pleaded a violation of S.C. Code Ann. § 6-1-300, and Respondents' argument of presumptive validity is premature.

Respondents argue, as and additional sustaining ground, that the illegal ordinances imposing the Road Maintenance Fees are presumptively legal and valid, and therefore Appellants are not entitled to any refund prior to the *Burns* decision. (Resp. Initial Br., p.28). When the time to do so arises, Respondents may make their presumptive validity argument, but at the motion to dismiss stage, this argument is premature and must fail.

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. *Brazell v. Windsor,* 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009).

Respondents implicitly acknowledge that this is not the proper time to argue this issue when introducing this new argument as contingent on a finding that "Appellants have stated a claim to seek a refund in the Circuit Court." (Resp. Initial Br., p.28). Respondents are welcome to raise and argue presumptive validity when the time to do so arises. However, this argument is raised prematurely, and therefore must fail.

Plaintiffs/Appellants have satisfied their burden of alleging a violation of S.C. Code Ann. § 6-1-300. Appellants have cited to language in *Burns* invalidating an almost identical provision for failing to comply with S.C. Code Ann. § 6-1-300. Appellants plead that County Respondents continue to collect these illegal fees while the City Respondent stopped collecting these fees in response to the *Burns* decision in an implicit admission that the fee is illegal. (R._____) Compl.

Appellants' Complaint states a valid claim for relief from Respondents' violation of S.C. Code Ann. § 6-1-300. Therefore, Respondents' additional sustaining ground, too, fails.

CONCLUSION

For the foregoing reasons in addition to those stated in Appellants' Initial brief, the lower court erred when it dismissed Appellants' complaint. Nothing in Respondents' brief changes that. The lower court had jurisdiction over this matter and incorrectly dismissed Appellants' complaint in its entirety. For the foregoing reasons, the decision of the lower court should be REVERSED and REMANDED.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served Appellants Mark Gregory Thompson and Jane Page Thompson's Initial Reply Brief on the Respondents via e-mail upon their respective attorneys of record as addressed below:

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