

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

Nov 07 2023

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2022-001114

(Case No. 2018-CP-10-4083)

Charleston Carriage Works, LLC,Appellant,

v.

Charleston Animal Society, Ellen Harley, and

Charleston Carriage Horse Advocates, LLCRespondents.

RESPONDENTS’ JOINT MOTION FOR EXTENSION OF TIME
AND MEMORANDUM IN SUPPORT

Per Rule 240(a), Charleston Animal Society, Ellen Harley, and Charleston Carriage Horse Advocates, LLC (Respondents) ask this Court to extend the timeline for submitting a Return to Appellant’s Motion to Substitute Parties. Rule 240(a), SCACR (“This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time....”). The basis of Appellant’s Motion is the sale of its business. Per Appellant, “[S]ome entity must be substituted to maintain the action, and *the two members* of the winding up L.L.C. are appropriate persons to be substituted.” Appellant’s Motion to Substitute, p. 1 (emphasis added). Several questions arise from this statement and argument. Most immediately, Broderick Christoff

has previously represented that he is the principal of Appellant, and that Appellant is a “*single member limited liability company*”. Exhibit A, Affidavit of Broderick Christoff (dated February 24, 2020) (emphasis added). Respondents have communicated (through counsel) with the attorney (Kevin Crain) who handled the sale of Appellant’s business. Respondents hope to obtain documents that provide details about the sale, without which an assessment of the propriety of Appellant’s Motion cannot be done. See e.g., Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 170, 485 S.E.2d 371, 373 (1997) (“[T]his Court has recognized that the failure to raise the issue of ‘real party in interest’ results in waiver.”); Lennon v. S.C. Coastal Council, 330 S.C. 414, 330 S.C. 414, 417–18, 498 S.E.2d 906, 908 (Ct. App. 1998) (“South Carolina courts...require a justiciable case or controversy before any decision on the merits can be reached.”). Accordingly, Respondents request a 60-day extension of the period within which to file a Return to Appellant’s Motion to Substitute Parties.

[Signature block on next page]

Respectfully submitted,

s/Kevin Maroney

Kevin Maroney (102545)

Jenkins M. Mann (9986)

Shaun C. Blake (76349)

ROGERS LEWIS JACKSON MANN & QUINN, LLC

1901 Main Street, Suite 1200

Columbia, SC 29201

803-978-2832

803-256-1268

jmann@rogerslewis.com

sblake@rogerslewis.com

ATTORNEYS FOR RESPONDENTS

Elizabeth J. Palmer (SC Bar #73680)

Saxton & Stump, LLC

151 Meeting St., Suite 400

Charleston, SC 29401

(843) 414-5080

ep@saxtonstump.com

Attorneys for Respondent Charleston Animal Society

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2018-CP-10-04083

Charleston Carriage Works, L.L.C.,)
)
Plaintiff,)

AFFIDAVIT OF BRODERICK CHRISTOFF

vs.)

Charleston Animal Society, Ellen)
Harley and Charleston Carriage)
Horse Advocates, Inc.,)
)
Defendants.)

RECEIVED

Nov 07 2023

SC Court of Appeals

Personally, appeared before me, Broderick Christoff, who being duly sworn, does depose and say:

I am the principal of Charleston Carriage Works, L.L.C. This is a single member limited liability company operated by my wife, Amber, and me. We usually have about 20 employees, and we provide horse drawn tours as allowed by the City of Charleston. We own 15 draft horses, 2 of which are retired and a pony. I have a degree in Biology and have worked in scientific labs in the past, but I abandoned the inside work of a laboratory for the outside work of running a carriage company because Amber and I love horses. We purchase them usually from the same Amish farmer and then carefully train them to be carriage horses in Charleston. I cannot begin to describe the horrors that befall the horses that no one purchases for carriage work. When Amber and I have retired a horse, such as Big John, we have always kept him or her with us or found a suitable home with someone who will love and cherish them. I have been around the carriage horses now for 25 years, and while there have been accidents and mishaps over the years, no one

has ever been seriously injured in an accident involving a horse. The most serious incidents I am aware of involve animal activists (a lady dressed up like a dinosaur) or City negligence (refusing to let a horse pass when a bagpipe band was approaching).

I cannot hope to capture in this affidavit the harm and terror inflicted on my wife and me by the defendants, Ellen Harley and Charleston Carriage Horse Advocates. Ellen Harley is a well-known animal rights person, and since she moved to Charleston, she has spent an incredible amount of time and resources to put us out of business. She draws on her considerable experience as a successful Republican politician, and she puts her considerable political skills¹ and unlimited wealth to make sure that Amber and I lose our business.

At first, Ms. Harley limited herself to political efforts. This is something she has every right to do. Because she had been a successful candidate for the Pennsylvania House of Representatives (and an unsuccessful candidate for the United States Congress), her first steps against us were through the legislative process. She ran for Charleston City Council against Henry Fishburne and was defeated. In the early-mid 2000s, she alone spawned a nearly 3-year examination and overhaul of the City's extensive carriage regulations. In response to her lobbying efforts, the City of Charleston created a well-rounded City Committee comprised of, among others, a veterinarian, City officials, and the JASPCA, now known as Charleston Animal Society, during which time, the Committee rejected the same claims her 'organization' is making now after it thoroughly examined, debated, and largely dismissed her allegations.² Despite the Committee's

¹ Her campaign manager, Allen Raymond, wrote a book called *How to Rig an Election* (Simon & Schuster, 2008) in which he describes her as "aside from presenting well, Ellen was politically experienced, pragmatic, and had an aggressive taste for the jugular." Page 50.

² One of the allies of the Carriage Horse Advocates, a wealthy retired lawyer from Boston, proposed to the Tourism Committee that the City of Charleston erect a gate at Calhoun Street through which only vehicles of residents or their "help" could pass. All others would be required to pay for a 24-hour pass.

decisions having been made based on scientific studies and information, Ms. Harley publicly published the lie that the carriage operators “own[ed] the committee.”

Having failed to get elected to City Council, and then after failing in persuading the City’s Committee to bend to her will through the previously described process, she became a fixture at the City of Charleston Tourism Commission and Charleston City Council where she has variously represented herself as Charleston Carriage Horse Advocates and as a Board member speaking on behalf of the Charleston Animal Society. She continued to lobby hard the Tourism Commission, the agency that regulates carriages, for changes to the extensive City regulations governing carriage tours with the view to eliminate us entirely. She pretty much wore out her welcome with City Council and with the Tourism Commission and that is when she stepped up her efforts against me personally. For the past two decades, she and I frequently opposed one another at Tourism Commission meetings, and thus the “Charleston Carriage Horse Advocates” was born, a name selected to be as close to my name as possible to send me a personal message. (This affidavit would be far too long if I attempted to explain the network of Animal Rights organizations and their tactics, but they are so well known, I hope the Court will be aware of them just from the publicity surrounding them, such as the ASPCA v. Feld Entertainment suit, which resulted in a multi-million dollar judgment against the ASPCA for the same kind of tactics being employed against me.)

On April 19, 2017, one of my horses, Big John, tripped on Meeting Street, sat down, and then laid down until we could unhook him from his harness. (Horses are smart. A trained horse knows that if he is on the ground, he cannot stand up until unhooked from the harness. The fact that Big John lay there and did not struggle shows how well-trained he is because a horse off his feet surrounded by a crowd must be comfortable around people to remain calm.) Numerous

witnesses reported the correct sequence of events to responding police officers, and within a few hours the police officers' reports were released to the public.

After Big John slipped, sat down, then laid down, Ms. Harley was on the scene within minutes because she frequently follows tours around Charleston and has harassed drivers and guests. She took a video of Big John lying on the ground and pushed it out through her Facebook Page, posting to viewers that the video was an example of a horse "collapsing" from heat and exhaustion. All her statements were false, and she knew they were false. The horse did not "collapse" any more than when a human being trips and falls is said to have "collapsed." Second, the temperature on April 19th was in the 70's, and Ms. Harley has admitted that it was not hot that day. Third, Ms. Harley understands the City requires we take the temperature of each horse **after every tour** and we maintain that information in our barns for the City to retrieve. (The City also puts a cap on ambient temperature, the number of days worked, mandatory veterinarian examinations, pasture rest, *etc.*)

When Ms. Harley's false statements went out, I do not have the skill to describe fully what it was like. The public was predictably outraged after Ms. Harley led them to believe that I had worked Big John to an exhaustive death. In no time, there were over 12 million views of Big John, and we all became subject to a deluge of death threats, arson threats, and threats of violence. (When I say "we," I mean the threats were directed toward me, toward Amber, and toward our employees.) My reputation was immediately and irreparably damaged. Once you have been smeared on social media, it is impossible to unwind the damage, and as explained below, when commenters would attempt to publish accurate facts, Ms. Harley and her group would delete the post and ban the commentator in order to preserve the smear.

Not all the threats were electronic. Some unknown person found his or her way to our home and fired a gun down our driveway. In the immediate days after, people would stop by my barn and ask about the horse who died on Meeting St.—to which my employees would point to Big John and say “You mean Big John? He’s right there.” People sill ask about it from time to time. More than 2 years later, one angry and agitated person showed up in our barn and told our employee that he had something to take care of her with and would be back. On April 25, 2017, almost immediately following Ms. Harley’s unleashing the violence of social media on us, we wrote her a polite letter, informing her that Big John was fine (he is still fine), not injured, examined by a competent veterinarian immediately following his fall, and cleared for work. (Even though a veterinarian cleared Big John for immediate return to work, Amber and I soon retired him due to the large volume of threats of violence.³ Big John remains a happy part of our family to this day.)

When we requested that Ms. Harley publish the correct information and stop misleading people that Big John “collapsed” from “exhaustion” and was, in fact, fine, she became even more aggressive. I can only assume she did because she felt she made us vulnerable as the result of the violence she whipped up (and we were). Throughout this case, the defendants have taken the position that they are not responsible for what third parties say, but they ignore the fact that they deliberately mislead third parties in order to whip them up to a frenzy and also to solicit contributions from them. In fact, an animal rights/rescue group in New Jersey to whom the Charleston Carriage Horse Advocates sent the video, ran a fictitious campaign to purchase and

³ I have no idea if the Court is interested horse behavior or not, but horses have a hierarchy in their herd. When Big John retired, the other horses pushed him down to the tail end. Amber and I bought a pony to keep him company, and the two are inseparable.

rescue Big John. This rescue organization, who reported less than \$6,000 in donations in 2015, raised over \$100,000 in the 7 days that followed the Big John incident.

Here is an example of how Ms. Harley perpetrates her fraud: She publishes a video of Big John on the ground, and she asserts that he “collapsed” from exhaustion. Almost immediately, a third party would post a comment and correct her by saying, “no, Big John is fine; he was not hurt.” Ms. Harley then responds by deleting that comment and banning that person from further posting. In other words, she carefully controls the narrative to escalate the anger and the viciousness of outraged third parties who she falsely informs they are seeing a video of a horse worked to death. Everyone knows that free speech does not mean we can shout “FIRE!” in a crowded theater, but that is exactly what she does through social media.

The examples of Harley’s and Charleston Carriage Horse Advocates’ published lies could fill up a volume. I will give the Court just a few examples. Here is a typical post from May 20, 2017, Charleston Carriage Horse Advocates Home Page:

Did you know that (despite a mandatory 15-minute break between tours) animals are permitted to work eight consecutive hours connected to wagons⁴ OR ten hours with a ninety-minute break in a 24-hour period? How would you feel pulling that much weight around with limited breaks?⁵

⁴ The choice of the word “wagon” to denote “carriage” is not an accident. It is part of the defendants’ efforts to demonize carriage tours. As for Ms. Harley’s canard about exertion, a healthy Belgian draft horse can pull a fully loaded carriage with little exertion, especially over flat ground with large diameter wheels. (Think of the large sprocket on a 10-speed bicycle.) In fact, the physics works out to less than ½ horsepower to pull a fully loaded carriage. In accordance with the laws of physics, once the wheels are turning, the amount of force necessary to maintain momentum decreases, which is why automobiles get better gas mileage on the highway than in the City. “Horsepower” is a unit of measurement devised by James Watt, the inventor of the steam engine, utilizing horses pulling ropes with weights. When a steam engine could lift the same amount of weight in the same amount of time, that energy measurement became “one horsepower.”

Here is Charleston Carriage Horse Advocates on February 28, 2018, alleging animal “abuse,” which is a crime:

It’s not an option to give up, who will speak for the oppressed and abused if you don’t? Advocates and change makers will always have obstacles they are empowering.

Here is Charleston Carriage Horse Advocates on December 12, 2018 (replying to a comment that the horses “looked so sad and tortured” :

There are so many reasons, where to begin? Safety. Non-compliance of city ordinances, suspicious record keeping, alarming stories from disgruntled employees, animal abuse. Traffic congestion, cozy City Official relationships, Wagons and not carriages, strong arm tactics (so tedious) stench of urine in the streets and more. What do I approve of? Hard to say.

There is a lot of libel in that post, but it is worth pointing out, the alleged “disgruntled employee” canard is a play lifted straight out of the Animal Rights Playbook examined in detail in the Feld Entertainment case, a case that so upset the presiding judge that he imposed severe sanctions against the ASPCA. Here is the Charleston Carriage Horse Advocates on April 5, 2019:

Take a stand with the horses and mules that pull the heaviest loads and in the most extreme temperatures⁶ in the U.S. Together, we can effect change in their inhumane working and living conditions.

In the same repost in which the defendants describe us as “inhumane,” a commenter points out that animal abuse is a crime in South Carolina and asks if the defendants have notified the police. The list goes on and on, but each time someone would post a point of view at variance with the Charleston Carriage Horse Advocates, Ellen Harley deletes it and bans the poster, thereby creating a false narrative to cast me in a false light as an animal abuser, animal torturer, rule

⁶ Temperature is relative. Ms. Harley, a part-time resident of Charleston, who spends time at her home in Edgartown, Massachusetts on Martha’s Vineyard, probably believes summer in Charleston is “extreme.” Likewise, Martha’s Vineyard winter temperatures would feel extreme to me. Charging me with subjecting our horses to inhumane treatment is not relative. She slanders me to encourage donations.

breaker, and to convict me in the court of social media as guilty of animal cruelty. This has, obviously, inflicted serious financial damages on our company.

It is hard to describe what these defendants have done to me because the viciousness and threatened violence came so often for so long. With the Big John video, at regular intervals, other animal right groups and sites share (repost) the Charleston Carriage Horse Advocates' video, typically right before a holiday or busy month. This reposting is done with impunity as the law provides no remedy for me against others republishing false information on social media. It is like shouting "FIRE!" in a crowded theater and then broadcasting it. I usually become aware of the reposting when the hateful comments, threats and bad reviews start pouring in. As the result of the millions and millions and millions of "views" of what the defendants led people to believe was a dead or dying horse, we had to hide Big John, install expensive surveillance, arm ourselves, and be constantly on guard. For many weeks, Amber and I barely slept as one of us was always on guard for what we were sure were attacks coming from Animal Rights adherents. We even considered moving out of our house for some period after someone fired shots down our driveway and commenters had identified, named, and posted about us personally. The violence of animal rights activists is well known. Such violence prompted Congress to pass the Animal Enterprise Terrorism Act. What happened to us is the same thing that happened to Feld Entertainment in that case when the A.S.P.C.A. paid witnesses to lie and manufacture evidence of animal cruelty and what happened to the Gibson's in the Oberlin College case. Following the defendants' creation of the lie that I worked a horse to "collapse" or exhaustive death, I had to block entire countries from our Facebook page due to the volume of threats and attacks. We spent thousands and thousands of dollars on trying to protect our Internet presence due to the harm caused by these defendants, and, of course, Ms. Harley selected her name, "Charleston Carriage Horse Advocates" to be so

close to mine as to cause confusion. Lots of people cancelled tours (the defendants' ultimate intention), and the defendants did a splendid job of painting me as someone who abuses animals, cheats on regulations, and is unfit to provide horse drawn tours.

Let me be clear: I acknowledge and respect the Charleston Carriage Horse Advocates' right to advocate for elimination of horse drawn carriages. They have the same First Amendment right I do. If they had published a video of Big John and informed people it was an example of a horse who tripped and fell on Meeting Street, none of this would be before the Court. And after they published their false narrative, we wrote to them and asked them to please publish a correction. They have every right to lobby the City to tighten up the rules or to eliminate horse drawn carriages entirely, but they do not have a right to publish statements to lead viewers to think that we abuse our horses or treat them cruelly. (It is a hard sell to call for a ban since South Carolina law gives horse drawn carriages the same rights to a roadway as anyone else.) We run a lawful business, and we comply with the extensive City regulations that govern our operation. We love our horses and we take excellent care of them, and we consider them members of our family. At a recent deposition, a veterinarian, Dr. Justin Miller, testified that horses like to work and they like having a routine just like people. He testified about a scientific study that measured the stress (cortisol levels) of carriage horses, and the scientists found that working horses had much less stress than while at rest in pasture.

This case has similarities to the Feld Entertainment and Oberlin College cases. In the Feld case, the A.S.P.C.A. had every right to urge Feld Entertainment to stop using elephants, or pursue regulations, but they went much too far when they paid a "disgruntled employee" to lie about the abuse of elephants that never occurred. Likewise, Oberlin College faculty and students had every right not to shop at Gibson's Bakery if they did not like the way it was run, but when they

distributed fliers calling the Gibson's racists because they called the police on a shoplifter, they went too far as well. The defendants falsely charge me with acts that paint me as a person who mistreats and abuses animals and who is unfit for the exercise of my lawful business. They do it premeditatedly, and they do it with one goal in mind—to stir up so much public hostility for me that I will be forced to go out of business. They know the narrative they are pushing is false, but to them, the end justifies the means. They have defamed me and caused me significant damages in lost profits, loss of growth, and caused me to expend thousands of dollars to blunt the digital effects of their coordinated attacks on me.

There is a lot of evidence in this case, and a lot more to be developed, to show that the defendants have intentionally defamed me, and in refusing to participate in discovery, they display the same arrogance to the judicial system that they display toward me—that they are above and beyond the rules. I have waited 17 months and counting for responses to basic discovery requests despite several letters requesting the same.⁷ While I have had to endure boilerplate objections, I sat for a 13-hour deposition, including 10 hours in one day. When we could not get answers to basic questions in discovery and scheduled a 30(b)(6) deposition of the organization, I had to sit through numerous coaching speaking objections on behalf of the Defendant, Charleston Carriage Horse Advocates. For all these reasons, I respectfully pray that the Court not grant each Defendant's Motion for Summary Judgment and allow me the opportunity to present the evidence I have along with the additional evidence I expect to have after the Defendants are required to play by the rules. Furthermore, all Defendants have long asserted their various claims against me in

⁷ To be fair, I acknowledge that my lawyer's medical issues caused delay in the court addressing these matters.


various forums, and they, too, deserve the opportunity, and have the responsibility, to prove the truthfulness of their assertions.

Further you deponent says not.



Broderiek Christoff

SWORN TO BEFORE ME THIS
24th DAY OF FEBRUARY 2020



Notary Public for South Carolina
My Commission expires: 04-16-2020

