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**Nov 16 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Roger M. Young, Sr., Circuit Court Judge

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Appellate Court Case No. 2023-000951  
Circuit Court Case No. 2017CP1800138

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Mitch Randall Yawn and Juanita Mae Stanley,  
d/b/a Flowertown Bee Farm and Supplies,..... Appellants,

v.

Dorchester County,..... Respondent.

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INITIAL REPLY BRIEF

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## ARGUMENT

I. **S.C. Code Ann. § 15-78-60(4) (Supp. 2000) does not provide immunity from the duty created by Respondent's practice of warning beekeepers in Dorchester County before pesticide spraying.**

The Respondent County, in its brief, does not make a strong argument that the established practice of its employee, Scott Gaskins, of creating and maintaining a list of beekeepers in Dorchester County and notifying them prior to spraying does not at least create question of fact as to whether a duty arose under Restatement (Second) of Torts Section 323. Respondent's Brief, pages 27-43.

The Respondents argue, instead, that the trial court was correct in finding that even if a duty arose from the County's practice of notification, S.C. Code Ann. § 15-78-60(4) (Supp. 2000) provides immunity to the County under the Tort Claims Act.

As outlined in Appellant's Brief, however, there is no law in SC that applies the immunity under Section (4) to a tort duty that arose by voluntary assumption under Restatement 323.

That duty in tort is simply not a law, by any definition, including those provided in the statute or in the federal trial court opinion cited by the Respondents.

In fact, there are cases in South Carolina against government defendants in which this defense might have been raised but was not. For example, in *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) the Plaintiff alleged, under Restatement 323, that once police officers took control of a situation and preempted individuals already attempting to aid the obviously injured and intoxicated decedent, those officers incurred a duty to follow through and finish what was begun. The court found those allegations alleged facts sufficient to state a cause of action. See also, *Doe v. The Citadel*, 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017) (a duty under Section 323 was not enforceable where the assumption of a duty did not increase the risk of harm).

The trial court here simply erred in applying Section (4) to this duty assumed by the County, and this Court should reverse its finding on that basis.

**II. The aerial spraying of the Appellant's property resulting in the death of their bee hives was an intentional act of trespass.**

In its brief, the Respondent repeats the error made by the trial court in arguing that the County did not intend to kill the Appellant's bees. Respondent's Brief, pages 32-33. That is likely true, but that is not the issue.

Rather, the issue is whether the County (through its agent, the crop duster pilot) intentionally flew over and dropped pesticides on the Appellants' property. The Respondent's citation to the flight maps that extend over the Appellants' property confirm the County's intent. Respondent's Brief, page 32. The harm caused by the intentional trespass need not itself be intentional, as the *Snow* decision indicates. *Snow v. Columbia*, 305 S.C. 544, 552-53, 409 S.E.2d 797, 802 (Ct. App. 1991) ("the plaintiff need not prove the defendant was willful or negligent to recover damages; "unintentional" means the defendant did not intend the damage flowing from the entry on the land, not that the entry itself was an unintentional act.)

This Court should reverse the grant of summary judgment on the trespass cause of action, on this basis as well.

**CONCLUSION**

Appellants respectfully request an order reversing the decision of the Circuit Court. The Tort Claims Act does not provide immunity to the County where the County's legal duty to the Plaintiffs arose not from an adopted law or policy of the County, but from duties voluntarily assumed through its actions. Further, the Circuit Court erred in dismissing the trespass cause of action of the Plaintiffs where the County clearly intended to trespass on the Plaintiffs' property by flying over and spraying

toxic chemicals on its property even though the County may not have intended the consequences: the death of the Plaintiffs' bees. The Circuit Court's order granting the Defendant's Motion for Summary Judgement should be reversed and the case remanded for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Reply Brief has been served upon opposing counsel by emailing a copy on November 16, 2023, to:

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