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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Case No. 2023-001491

On Writ of Certiorari
to the South Carolina Court of Appeals

John Doe, ... **Petitioner,**

v.

Diocese of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity, ... **Respondents.**

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

The respondents offer two additional sustaining grounds — the statute of limitations and collateral estoppel.

The respondents made a number of separate motions for summary judgment, each one confined either to a particular cause of action alleged in the complaint or to one of the several defenses asserted in the answer. One of these motions presented the defense of charitable immunity; another presented the defense of the statute of limitations; another presented the defense of collateral estoppel; and several others presented defenses to particular causes of action alleged in the complaint. The immunity, limitations, and estoppel motions for summary judgment — but not the others — appeared in succession on Judge Price's motions roster for the term. The respondents were permitted to argue these three motions at the same term.

His Honor chose to rule upon only one of the three motions appearing on his docket — the motion for summary judgment on the ground of charitable immunity.

The respondents now ask this Supreme Court to sit as a court of first impression, adjudicating two of their several unadjudicated motions for summary judgment.

This Court may affirm the circuit court's judgment on any ground appearing of record. Rule 220(c), SCACR. The only reason why any material relating to two of the unadjudicated motions appears in the Record on Appeal is that parties to the appeal may include in the appellate record anything they wish, and the respondents did so.[1] The respondents could equally well have asked this Court to affirm on the basis of any

[1] Rule 210(b), SCACR. The previous practice of "settling the record" by the trial judge, whose duty it was to exclude irrelevant matter, was superseded by the grant of authority to each party to designate what they wish, restrained only by a "certificate of relevance." Rule 210(c), SCACR. Long practice has shown that this certification often fails in its purpose.

of the other unadjudicated summary judgment motions which they filed.[2]

In *I'on, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 526 S.E.2d 716 (2000), the Court explained the evolution of the office of the "additional sustaining ground" into what is now Rule 220(c)**:**

> In raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one *primarily* relied upon by the lower court. **. . . .**

338 S.C. at 417 (emphasis added), quoted with approval in *Sims v. Amisub of South Carolina, Inc.,* 408 S.C. 202, 758 S.E.2d 187, 194 (2014).

Respondents' other defenses to this action are not additional reasons why the circuit court could have granted summary judgment on the sole issue ruled upon by it — charitable immunity. The motions raising two of these assorted issues were mooted when the circuit court chose to adjudicate only the immunity issue. The complex issues raised by the two unadjudicated motions in question — and the others — may be renewed in the court of first impression upon remand. This Supreme Court is "a court of review, not of first view . . . ." *Cutter v. Wilkinson,* 544 U.S. 709, 718 (2005).

[2] *See* the list of these motions found in Respondents' Brief at 3 n.4.

CONCLUSION

For the reasons given in our principal brief, this Court's *Jeffcoat* opinion should be vindicated, reversing the decision of the court of appeals and remanding the case.

Respectfully submitted,

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July 5, 2024.