

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable William A. McKinnon  
Presiding Circuit Court Judge

C.A. No.: 2022-CP-46-01509  
Appellate Case No. 2024-000269

Kalishwar Das ..... Appellant,

v.

York County ..... Respondent.

---

**INITIAL BRIEF OF RESPONDENT**

---

Respectfully submitted,

**HOLCOMBE BOMAR, P.A.**

s/ A. Todd Darwin  
A. Todd Darwin, SC Bar #7032  
Post Office Box 1897  
Spartanburg, South Carolina 29304  
(864) 594-5300  
tdarwin@holcombebomar.com

Attorneys for Respondent

October 16, 2024  
Spartanburg, SC

**TABLE OF CONTENTS**

**TABLE OF CONTENTS** .....i

**TABLE OF AUTHORITIES** .....ii

**STATEMENT OF ISSUES ON APPEAL** ..... 1

**STATEMENT OF THE CASE** .....1,2

**STATEMENT OF FACTS** ..... 2

**STANDARD OF REVIEW** ..... 2, 3

**ARGUMENT** ..... 3,4,5

**I. THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT’S SECOND AMENDED COMPLAINT FILED ON JANUARY 25, 2023 FAILED TO ASSERT ANY VIABLE CAUSE OF ACTION AGAINST THE RESPONDENT AND PROPERLY DISMISSED THE APPELLANT’S SECOND AMENDED COMPLAINT WITH PREJUDICE**..... 1

**CONCLUSION** .....6

## TABLE OF AUTHORITIES

### Cases

<i>Baird v. Charleston County</i> , 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) .....	2, 3
<i>Jarrell v. Petoseed Co.</i> , 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998) .....	3
<i>Cole Vision Corp. v. Hobbs</i> , 714 S.E. 2d 537, 539 (S.C. 2011) .....	3
<i>Brown v. Leverette</i> , 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) .....	4
<i>FOC Lawshe Ltd. P'ship v. Int'l Paper Co.</i> , 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002).	4
<i>Plum Creek Development Co. v. Conway</i> , 328 S.C. 347, 491 S.E.2d 692 (Ct. App. 1997).	5
<i>Jimmy Martin Realty Group Inc. v. Fameco Dist.</i> , 300 S.C. 192, 386 S.E.2d 803 (Ct. App. 1989).....	5
<i>Riedman Corp. v. Greenville Steel Structures, Inc.</i> , 308 S.C. 467, 419 S.E.2d 217 (1992).	5
<i>Elam v. S.C. Dep't of Transp.</i> , 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) .....	5

### Statutes

South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, <i>et seq.</i> .....	1, 4
--	------

### Rules

Rule 59, SCRCP .....	2, 4, 5
Rule 12(b)(6), SCRCP .....	3, 4

## **STATEMENT OF ISSUES ON APPEAL**

- I. DID THE CIRCUIT COURT CORRECTLY FIND THAT APPELLANT'S SECOND AMENDED COMPLAINT FILED ON JANUARY 25, 2023 FAILED TO ASSERT ANY VIABLE CAUSE OF ACTION AGAINST THE RESPONDENT AND PROPERLY DISMISS THE APPELLANT'S SECOND AMENDED COMPLAINT WITH PREJUDICE

## **STATEMENT OF THE CASE**

Kalishwar Das ("Appellant") filed his initial Summons and Complaint on May 16, 2022 against Jennifer S. Colton, Magistrate on Duty, Three Court Staffs on Duty, Constable on Duty ("York County Defendants"), and Rawlinson Corner, LLC.<sup>1</sup> The York County Defendants filed an Answer and Motion to Dismiss on June 17, 2022. By Order dated September 27, 2022, the York County Circuit Court granted the York County Defendants' Motion to Dismiss the named individuals as defendants, but allowed the Appellant ten (10) days to file an Amended Complaint naming York County as the Defendant based on the applicable provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.* (September 27, 2022 Order R. at \_\_\_\_). The Appellant filed his Amended Complaint on October 3, 2022 naming York County ("Respondent") as the sole defendant (Amended Complaint, R. at \_\_\_\_). Respondent filed its Answer to Amended Complaint and Motion to Dismiss Amended Complaint on October 18, 2022. By Order dated January 10, 2023, the York County Circuit Court granted the Respondent's Motion to Dismiss, but again allowed the Appellant thirty (30) days to file a Second Amended Complaint. (Form 4 Order of the Honorable William A. McKinnon, R. at \_\_\_\_). Appellant filed his Second Amended Complaint on January 25, 2023. Respondent filed its Answer to

---

<sup>1</sup>Rawlinson Corner, LLC was subsequently voluntarily dismissed from the case and is not a party to this appeal.

Second Amended Complaint and Motion to Dismiss Second Amended Complaint on February 2, 2023. By Order dated March 29, 2023, the York County Circuit Court granted the Respondent's Motion to Dismiss and dismissed the Appellant's Second Amended Complaint with prejudice. Appellant filed a Motion for Rehearing pursuant to SCRCP Rule 59 on March 30, 2023. After a hearing on the Appellant's motion for reconsideration, the York County Circuit Court denied the Appellant's motion by Order filed on February 13, 2024. Appellant filed his Notice of Appeal on February 23, 2024.

### **STATEMENT OF FACTS**

The basis for the allegations against the Respondent in the Appellant's lawsuit in this case stems from Appellant's dissatisfaction with the rulings by the York County Magistrates Court in a commercial eviction initiated by Appellant's landlord, Rawlinson Corner, LLC. The Magistrate Judge ruled in favor of the landlord in that commercial eviction. Plaintiff appealed the Magistrates Court rulings in the commercial eviction action by filing a Notice of Appeal with the Circuit Court on May 2, 2022, bearing Civil Action Number 2022-CP-46-01367. Plaintiff then filed a *Withdrawal of Appeal* in that case on May 12, 2022. He subsequently filed his original Complaint on May 16, 2022. He filed his Amended Complaint on October 3, 2022, and he filed his Second Amended Complaint on January 25, 2023.

### **STANDARD OF REVIEW**

Generally, a ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "Viewing the evidence in favor of the plaintiff, the

motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

### ARGUMENT

**I. THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT'S SECOND AMENDED COMPLAINT FILED ON JANUARY 25, 2023 FAILED TO ASSERT ANY VIABLE CAUSE OF ACTION AGAINST THE RESPONDENT AND PROPERLY DISMISSED THE APPELLANT'S SECOND AMENDED COMPLAINT WITH PREJUDICE**

After considering the Respondent's Motion to Dismiss the Appellant's Second Amended Complaint, and considering the arguments of Appellant and counsel for the Respondent during the motion hearing on March 9, 2023, the Presiding Judge found in favor of the Respondent and dismissed the Appellant's Second Amended Complaint with Prejudice. In the dismissal Order the Court held that the Second Amended Complaint does not state facts sufficient to constitute any viable cause of action against the Respondent, and that it should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP. Pursuant to Rule 12(b)(6), SCRCP, a party may move to dismiss a complaint "when the plaintiff fails to state facts sufficient to constitute a cause of action." *Cole Vision Corp. v. Hobbs*, 714 S.E. 2d 537, 539 (S.C. 2011) (Order Dismissing Plaintiff's Second Amended Complaint, R. at \_\_\_\_). Furthermore, Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that the court dismiss a cause of action if the moving party claims that the non-moving party failed to "state facts sufficient to constitute a cause of action." "The trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint." *Brown v. Leverette*, 291 S.C. 364, 366,

353 S.E.2d 697, 698 (1987). “The motion cannot be sustained if facts in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Id.* “All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings.” *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 413, 574 S.E.2d 228, 230 (Ct. App. 2002).

The Appellant’s Second Amended Complaint attempted to assert six (6) causes of action. As Circuit Court Judge McKinnon properly ruled, none of the asserted causes of action are viable civil causes of action under South Carolina law. Four of the Appellant’s causes of action in his Second Amended Complaint (the first, second, fourth and fifth causes of action) cite to federal criminal statutes. The third cause of action alleges misconduct of the York County Magistrate Judge in denying the Appellant’s motion to reconsider her ruling without conducting a hearing. And the Appellant’s sixth cause of action in his Second Amended Complaint is for attorney’s fees and court costs, (Second Amended Complaint, R. at \_\_\_\_). Not only is the Appellant not an attorney, but the SC Tort Claims Act does not allow for the recovery of attorney’s fees. Therefore, none of the asserted causes of action, even when read in the light most favorable to the Appellant, constitute viable causes of action, and were therefore properly dismissed with prejudice by Judge McKinnon in his March 29, 2023 Order.

Furthermore, the lower Court found Appellant’s allegations in the Second Amended Complaint arose out of the alleged conduct of the Magistrate Court eviction action, and were therefore barred by the doctrine of res judicata since the Appellant had previously voluntarily withdrawn his civil appeal to the Circuit Court from that action. (Order Dismissing Plaintiff’s Second Amended Complaint, R. at \_\_\_\_). “Res judicata bars not only issues

litigated in a prior action, but issues that could have been litigated.” *Plum Creek Development Co. v. Conway*, 328 S.C. 347, 351, 491 S.E.2d 692 (Ct. App. 1997); See also *Jimmy Martin Realty Group Inc. v. Fameco Dist.*, 300 S.C. 192, 386 S.E.2d 803 (Ct. App. 1989). “Res judicata also bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

With regard to Appellant’s motion to reconsider the lower Court’s March 29, 2023 Order Dismissing the Second Amended Complaint, under South Carolina law such a motion is appropriate in two basic situations. First, “[a] party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule in it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, “[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* A party’s dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *Id.* Therefore, since the Appellant’s reconsideration motion was based on neither situation, but was nothing more than another attempt by the Appellant to express his displeasure with the Court’s prior ruling, the Appellant’s motion to reconsider was properly denied by the York County Circuit Court in its February 13, 2024 Order.

**CONCLUSION**

Because the trial Court correctly found that Appellant's Second Amended Complaint contained no viable causes of action against the Respondent, it properly dismissed the Appellant's Second Amended Complaint with prejudice, and this Court should affirm the trial Court's decision in all respects.

Respectfully submitted,

**HOLCOMBE BOMAR, P.A.**

s/ A. Todd Darwin

A. Todd Darwin, SC Bar #7032

Post Office Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

tdarwin@holcombebomar.com

Attorneys for Respondent

Spartanburg, South Carolina  
October 16, 2024