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**Nov 05 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Action No. 2020-CP-43-00734  
**Appellate Case No. 2024-001532**

Ronald L. Jones.....Petitioner,

v.

Gary A. Jones, Sr., Becky J.  
Jones, Ima Lee Jones and  
Shelley Allsbrooks.....Respondents.

**APPENDIX**

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Respectfully submitted this 5<sup>th</sup> day of November, 2024

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November 5, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )  
 )  
Ronald L. Jones, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Gary A. Jones, Sr., Becky J. Jones, )  
Ima Lee Jones, and Shelley Allsbrooks, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

CASE NUMBER: 2020-CP-43-00734

**ORDER**

This matter came before me on January 29, 2024 pursuant to a Notice of Motion and Motion to Amend Complaint filed by the Plaintiff Ronald L. Jones.

The Plaintiff was represented by Richard L. Whitt, Esquire of the Whitt Law Firm, LLC. The Defendants Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks were represented by Marvin E. McMillan, Jr., Esquire and Thomas E. Player, Jr., Esquire of the law firm of Player & McMillan, LLC.

I have reviewed the Court’s file in regard to this matter, considered arguments of counsel, reviewed exhibits filed for use in Motion and memorandums, pleadings and documents presented to the Court by counsel at the hearing and I make the following findings of fact and conclusions of law.

1. That this Court has jurisdiction over the parties hereto and the subject matter herein.
2. That the Plaintiff, in his Motion, attached as Exhibit A a proposed Summons and Complaint which would represent the Plaintiff’s Third Amended Complaint and thus overall fourth Complaint filed in this action.

3. That the Plaintiff seeks to amend by adding a cause of action for unjust enrichment and states in his Motion the basis is that the Plaintiff seeks to add the cause of action for unjust enrichment because the deposition of the Defendant Shelley Allsbrooks, which was taken on March 16, 2021, reveals that the Defendant Shelley Allsbrooks intended to profit by unjust enrichment.

4. That the Plaintiff's proposed Third Amended Complaint also contains almost exact allegations which were stricken by this Court by Order dated September 22, 2021.

5. That the Plaintiff acknowledges in his Motion to Amend that the deposition of Shelley Allsbrooks was taken on March 16, 2021 and subsequent thereto the Plaintiff did amend his Complaint (Second Amended) dated April 23, 2021.

6. That the Plaintiff's Second Amended Complaint and proposed Third Amended Complaint allege that the subject property is owned by Gary A. Jones, Sr., Becky J. Jones and Ima Lee Jones but does not allege that Shelley Allsbrooks is an owner of the subject property.

7. That any allegations of unjust enrichment, as alleged by the Plaintiff, if appropriate, could have been alleged in the Plaintiff's Second Amended Complaint dated April 23, 2021.

8. That after the Plaintiff's filing of the Second Amended Complaint the Defendants Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks moved to strike certain allegations of the Plaintiff's Second Amended Complaint and by Order dated September 22, 2021 this Court specifically ruled that any immaterial, redundant and impertinent allegations of the pleadings should be stricken and that pleadings should contain a short statement of facts showing that the pleader is entitled to relief.

9. That by Order to Strike dated September 22, 2021 this Court specifically ordered the first paragraph numbered 13 as well as paragraphs 30 and 31 of the Plaintiff's Second Amended Complaint be stricken based upon the fact that they appear to allege evidentiary facts.

10. That the Plaintiff, after his Motion to Reconsider my Order dated September 22, 2021 was denied, did appeal the September 22, 2021 Order to the South Carolina Court of Appeals which was dismissed by the Court of Appeals. Further, the Plaintiff then filed a Writ of Certiorari to the South Carolina Supreme Court which was denied and Remittitur from the Court of Appeals was filed with the Clerk of Court for Sumter County on April 26, 2023. It appears that the Plaintiff now seeks to file a Third Amended Complaint alleging unjust enrichment and a proposed Summons and Third Amended Complaint which contains some of the exact language that this Court ordered stricken in its Order to Strike dated September 22, 2021.

11. That the Defendants Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks oppose the Plaintiff's Motion to Amend and the proposed Third Amended Complaint. The Defendants, through counsel, argued in Court that the Plaintiff's Motion and proposed Summons and Complaint are prejudicial due to the lack of basis for the filing of a Third Amended Complaint and the failure to amend for unjust enrichment in the Plaintiff's Second Amended Complaint when filed.

12. That the proposed Third Amended Complaint contains numerous evidentiary facts as opposed to ultimate facts as well as almost identical language in paragraphs 13, 30 and 31 from the Plaintiff's Second Amended Complaint which were stricken by this Court's Order dated September 22, 2021 (as shown in paragraph 12 and paragraph 30 of the proposed Third Amended Complaint). To permit the proposed amendment would sanction the violation of the Court's

previous Order. The Plaintiff's Appeal was dismissed and the Plaintiff is precluded from re-pleading matters previously stricken.

13. That this action was filed by the Plaintiff on May 4, 2020 and to allow the amendment would prejudice the Defendants in that the Defendants would be required to file Motions or take other necessary actions resulting in further and needless delays in regard to this matter.

NOW, THEREFORE, based upon the foregoing, it is

ORDERED that the Plaintiff's Notice of Motion and Motion to Amend is denied.

AND IT IS SO ORDERED!

---

R. Ferrell Cothran, Jr.  
Circuit Court Judge  
Third Judicial Circuit

April \_\_\_\_\_, 2024  
Sumter, South Carolina



Sumter Common Pleas

**Case Caption:** Ronald L Jones VS Gary A Jones Sr , defendant, et al  
**Case Number:** 2020CP4300734  
**Type:** Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF SUMTER	*	TRANSCRIPT OF RECORD
-----	X	
RONALD L. JONES,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Case No. 2020-CP-43-00734
	*	
GARY A. JONES, SR., et al.,	*	
	*	
Defendants.	*	
-----	X	

January 29, 2024

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Presiding Judge

A P P E A R A N C E S:

Richard Whitt, Esq.  
                  Attorney for the Plaintiff

Marvin McMillan, Jr., Esq.  
                  Attorney for the Defendant

Court Reporter: Bobbi Fisher, RPR  
SC Official Court Reporter III

1           And there's no question that that happened. And  
2 I'll give you the reference to where co-counsel said all  
3 of these paragraphs are still viable. And that was in  
4 respondent's reply to appellate's return to motion to  
5 dismiss. That was February the 18th, 2022. It was on  
6 page 5. And I asked my legal assistant to file that  
7 caption and page 5 with the Court.

8           So it's clear that judicial estoppel, Your Honor,  
9 would keep them from saying that, in the appeal -- to win  
10 the appeal, oh, Mr. Whitt's lost nothing, and then if they  
11 come back and object now and say, "Oh, yeah, he can't rely  
12 on those paragraphs anymore. Those are gone." That's  
13 clearly prevented by judicial estoppel, Your Honor, and  
14 we'd ask that you approve our motion to amend because of  
15 the presumption that it should be granted and it should be  
16 liberally granted. That's my initial argument, Your  
17 Honor. Thank you.

18           THE COURT: And your motion to amend is to include  
19 paragraphs 13, 30, and 31 in the complaint to what I have  
20 already struck?

21           MR. WHITT: That's right, Your Honor.

22           THE COURT: So you want to put them back in now?

23           MR. WHITT: That's right. And we actually -- I  
24 think we left one of the three off, and one is  
25 misdescribed, but one is clearly from the original

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) 2020-CP-43-00734  
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Ronald L. Jones ) TRANSCRIPT OF RECORD  
vs. )  
Gary A. Jones, Sr., et. al. )  
) Sumter, South Carolina  
DEFENDANT) July 29, 2024

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR.

A P P E A R A N C E S:

RICHARD L. WHITT, ESQUIRE  
Attorney for the Plaintiff

MARVIN E. MCMILLIAN, JR., ESQUIRE  
Attorney for the Defendant

KESHIA REED  
Official Court Reporter

1 He's not paying anything. None of that has to do with a  
2 right to amend your case.

3 In fact, your Honor I commend hearing transcript  
4 pages nine, 10, 11, 12, 13 and 14, which said that -- I  
5 mean, where they repeatedly argued the merits to this case  
6 to your Honor. And we cited the Sky Dive case for your  
7 Honor on page 182. It says that merit based arguments  
8 have no place in a motion to amend. They tried to  
9 substitute a couple things your Honor. They substituted  
10 the burden on the defendants is -- that should be  
11 prejudice and your Honor excepted their argument. It  
12 appears the burden on the defendants because in your  
13 Honor's order on page 4, it states defendants would be  
14 required to file motions or take other necessary actions,  
15 but that's not the standard if it's a burden on them your  
16 Honor. They also cited as a substitute for prejudice they  
17 cited delay. And your Honor's previous order on page 4  
18 said -- read that quote resumptive in further and needless  
19 delay in regard to this matter, but delay doesn't matter.  
20 And that was on page 4 of your Honor's order. We cited  
21 some case law in each one of these points and counsel  
22 actually cited the delay argument in transcript page 13  
23 your Honor.

24 And the final thing was judicial estoppel which  
25 we covered in our memo and on page 3 I believe. And

1 judicial estoppel was that your Honor we had -- after your  
2 Honor had issued a motion to strike three paragraphs, we  
3 filed an appeal, went to the appellate court and counsel  
4 -- defendant's counsel argued that Mr. Whitt's lost  
5 nothing. Those three paragraphs are still viable and can  
6 be used later, can be brought up later. And then so we  
7 come to in a motion to amend and we reference those three  
8 paragraphs, and this time they say your Honor they  
9 shouldn't be mentioning those three paragraphs that you  
10 struck, so that's what judicial estoppel is.

11 As your Honor knows, it's the same facts. It's  
12 the same parties. And in one setting they say he's fine,  
13 he's lost nothing. And then they came before your Honor  
14 and the motion to amend said it's outrageous that he would  
15 put these in there. So we just wanted to be brief your  
16 Honor. And so that's what we have. But thank you very  
17 much for your time.

18 THE COURT: Thank you, sir.

19 MR. MCMILLAN: This is Mr. Whitt's motion for  
20 reconsideration. This hearing was held before you on  
21 January 29th of 2024, all of these issues were raised. He  
22 filed on Thursday a memorandum in support of his motion  
23 for reconsideration. It's the identical motion other than  
24 change of caption that he filed in his motion to be  
25 allowed to amend. We filed on Friday the defendant's



Braudie v. Richland County, 59 SE 2d 548 (1950). Also, because leave may be freely given when justice requires, a Court's decision allowing amendment will rarely be disturbed on appeal. City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004). **The only test for such amendment is prejudice to the other party, even if objected to by the other party.** The prejudice envisioned by Rule 15(a) is simply a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2003). In the case *sub judice*, there is **no prejudice** because there is **no lack of notice** to the opposing party and there is **no lack of opportunity for the opposing party to refute** the amendment, because (i) discovery has not been completed by the parties and (ii) this case has not appeared on any trial roster.

#### **CONCLUSION**

Based on the foregoing, applicable law and the pleadings in this case, Plaintiff should be granted leave from this Court to amend his Pleading. The Amended Pleading is attached hereto as Exhibit "A".

#### **RULE 11(a) SCRCP CERTIFICATIONS**

The Plaintiff's counsel herein certifies that, as to his Motion herein, consultation with opposing counsel was had, but no response was received from opposing counsel.

/s/Richard L. Whitt  
**Richard L. Whitt**

[Signature Page Follows]

**WHITT LAW FIRM, LLC**

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*All as Counsel for Plaintiff, Ronald L. Jones.*

May 24, 2023

Columbia, South Carolina.

# EXHIBIT “A”

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

IN THE CIRCUIT COURT FOR THE )  
THIRD JUDICIAL CIRCUIT )

Civil Action No.: 2020-CP-43-00734 )

Ronald L. Jones )

Plaintiff, )

v. )

**COMPLAINT**

(Third Amended)

- 1. Civil Conspiracy- Jury Trial
- 2. Unjust Enrichment;
- 3. Oral Gift; and
- 4. Promissory Estoppel.

Gary A. Jones, Sr., Becky J. Jones, )  
Ima Lee Jones and Shelley Allsbrosks, )

Defendants. )

Now Comes the Plaintiff Ronald L. Jones, (hereinafter as, "Plaintiff, Ronald L. Jones", or, "Plaintiff") complaining of the Defendants, Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrosks, (hereinafter sometimes referred to together as, "Defendants"), this Amendment Relates Back to Plaintiff's Complaint, Plaintiff's Complaint (First Amended) and Plaintiff's Complaint (Second Amended). Plaintiff hereby amends his Complaint (Second Amended), as follows.

**PARTIES AND JURISDICTION**

- 1. Plaintiff Mr. Ronald L. Jones is a citizen and resident of Sumter County, South Carolina.
- 2. Upon information and belief, Defendant, Gary A. Jones, Sr. is a citizen and resident of Sumter County, South Carolina.
- 3. Upon information and belief, Defendant, Becky J. Jones, is a citizen and resident of Sumter County, South Carolina.
- 4. Upon information and belief, Defendant, Ima Lee Jones, is a citizen and resident of Sumter County, South Carolina.
- 5. Upon information and belief, Defendant, Shelley Allsbrosks, is a citizen and resident of Sumter County, South Carolina.
- 6. The matters complained about in these pleadings took place in Sumter County, South Carolina and the Property in dispute is located in Sumter County, South Carolina.

7. Therefore, venue and jurisdiction are proper in the Sumter County Court of Common Pleas, for the Third Judicial Circuit.

### **COURSE AND PATTERN OF DEALINGS**

8. Paragraphs one through seven above, are re-alleged, as if set forth verbatim.

9. The Property that is the subject of this action is shown on a Plat prepared by Anderson Land Surveying, showing 6.72 acres and dated February 27, 2020, (hereinafter as, the "Property").

10. This Property is located in Sumter County South Carolina.

11. Plaintiff Ronald L. Jones claims ownership of this Property as is more fully set out hereafter.

12. Plaintiff Ronald L. Jones, as admitted by Defendant, Shelley Allsbrooks, moved onto the property about ten years ago.

13. Plaintiff, Ronald L. Jones completed significant improvements to the Property, including but not limited to, planting a tree orchard, clearing access to the Property, installing a water irrigation system, the installation of thirty raised flower beds, also with a water irrigation system, landscaping, additional electric lighting and constructing his current residence on the Property. Plaintiff, Ronald L. Jones incurred large expenses of his time, labor and money in improving the Property.

14. Plaintiff, Ronald L. Jones, occupied, safeguarded and maintained the Property, which actions enhanced and supported the value of the Property. Accordingly, Plaintiff, Ronald L. Jones has conferred a benefit upon Defendants Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks, (hereinafter together as, "The Applicable Defendants"). The present state of the Property manifests the realization of that benefit to The Applicable Defendants. The Applicable Defendants attempt to prevent Plaintiff, Ronald L. Jones from purchasing the Property under conditions described to make it unjust for The Applicable Defendants to retain the Property without paying its value.

15. Plaintiff, Ronald L. Jones learned in this litigation that The Applicable Defendants, were not going to honor Warren Jones' commitment to convey the Property to Plaintiff, Ronald L. Jones. The Applicable Defendants are attempting to reap a "Windfall" and attempting to be unjustly enriched.

16. The larger tract from which the Property that is the subject of this action was carved out, is currently owned, by virtue of a life estate by Defendant, Ima Lee Jones, the Plaintiff's mother.

17. At the time of the creation of the life estate, the remainder interest was held by Warren E. Jones and Deborah Jones, the brother and sister-in-law of the Plaintiff.

18. During the time he held the remainder interest, Warren E Jones committed to conveying the Property that is the subject of this action to Plaintiff in exchange for the Plaintiff occupying, safeguarding and maintaining the Property.

19. Both Defendant Ima Lee Jones, Defendant Becky J. Jones and Defendant Shelley Allsbrooks were aware of this commitment, and Plaintiff's performance of his obligations, as shown herein and hereinabove.

20. At no time did either Defendant, Ima Lee Jones, Defendant, Becky J. Jones or Defendant Shelley Allsbrooks express any opposition to this arrangement or indicate to Plaintiff that Plaintiff should cease performing the obligations that Plaintiff had undertaken.

21. After the death of Warren E. Jones in 2013, Deborah Jones conveyed her remainder interest to Defendant, Gary A. Jones, Sr. and Defendant Becky J. Jones, the Plaintiff's brother and sister-in-law.

22. Defendant, Gary A. Jones, Sr. repeatedly ratified the promise made to Plaintiff by Warren E. Jones, without objection from Defendant Becky J. Jones or Defendant Shelley Allsbrooks.

23. At no time did any of the previously mentioned family members object to Plaintiff incurring these expenses, or exerting his efforts to improve the Property.

24. The February 27, 2020, Plat, which is incorporated herein by reference, was prepared, at substantial expense to Plaintiff, with the full knowledge of Defendant, Gary A. Jones, Sr. and with a reaffirmation that the Property described in the Plat would be conveyed to Plaintiff.

25. In early April 2020, both Defendant, Ima Lee Jones and Defendant, Gary A. Jones, Sr. agreed in writing to facilitate Plaintiff incurring the expense of enhancing the electric service to the Property. These documents are collectively incorporated by reference.

26. Plaintiff's current address, the Property address, is used for the payment of personal taxes to Sumter County.

27. Plaintiff's current address, the Property address, is used as his registered address for voting.

28. All of Plaintiff's vehicles are registered at his current address, the Property address, and Plaintiff's Driver's License shows his current address as the Property address.

29. Plaintiff does not claim an interest in any part of the parent tract, except as expressly included in the 6.72 acres shown on the February 27, 2020 Plat.

30. Defendant Shelley Allsbrooks gave evidence of their intent to obtain unjust enrichment of the Property by her statement that, "Uncle Ronnie is going to have to like it or [he] gets nothing."

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS**  
**GARY A. JONES AND BECKY J. JONES AND SHELLEY ALLSBROOKS**  
(Civil Conspiracy)

31. Paragraphs one through thirty above, are re-alleged, as if set forth verbatim.

32. Specifically, Defendant, Shelley Allsbrooks discussed the conspiracy against the interests of Plaintiff, Ronald L. Jones, by meeting with Defendant, Gary A. Jones, Sr., in face-to-face meetings and discussions in two separate months.

33. Specifically, the February 27, 2020 Plat, described in more detail hereinabove, was prepared, at substantial expense to Plaintiff, with the full knowledge of Defendant, Gary A. Jones, Sr. and with a reaffirmation that the Property described in the Plat would be conveyed to Plaintiff.

34. Despite Plaintiff's reliance on the good-faith of Defendant, Gary A. Jones, Sr., to convey the Property, Defendant Gary A. Jones, Sr., reneged on his firm commitment to convey the Property to the Plaintiff, acting in concert with Defendant, Becky J. Jones and Defendant, Shelley Allsbrooks.

35. The Defendants, Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks' overt acts in furtherance of the Civil Conspiracy were to combine and act against the economic interests of the Plaintiff in 2020, and agreeing that Defendant, Gary A. Jones, Sr. would refuse to convey the Property to the Plaintiff, causing Special Damages to the Plaintiff of Attorney's fees, the loss of enjoyment of the Property, the cost of the installation of additional electric service as described in more detail herein, and the cost of Plaintiff securing a Plat depicting the Property that Defendant Gary A. Jones, Sr., had agreed to convey to the Plaintiff as is described in more detail herein.

36. Plaintiff, Ronald L. Jones was directly and proximately damaged because of The Applicable Defendants' actions and Plaintiff Ronald L. Jones is entitled to recover Damages as set forth hereinafter.

**SECOND CAUSE OF ACTION**  
(Unjust Enrichment/Quantum Meruit)

37. Paragraphs one through thirty-six above, are re-alleged, as if set forth verbatim.

38. Plaintiff, Ronald L. Jones completed significant improvements to the Property, including but not limited to, planting a tree orchard, clearing access to the Property, installing a water irrigation system, the installation of thirty raised flower beds also with a water irrigation system, landscaping, additional electric lighting and constructing his current residence on the Property. Plaintiff, Ronald L. Jones incurred large expenses of his time, labor and money in improving the Property.

39. Plaintiff, Ronald L. Jones, occupied, safeguarded and maintained the Property, which enhanced and supported the value of the Property. Accordingly, Plaintiff, Ronald L. Jones has conferred a benefit upon The Applicable Defendants. The present state of the Property shows the realization of that benefit by The Applicable Defendants. The Applicable Defendants attempts to prevent Plaintiff, Ronald L. Jones from purchasing the Property under the conditions described, make it unjust for The Applicable Defendants to retain the Property without paying its enhanced value.

40. Plaintiff, Ronald L. Jones learned in this litigation that The Applicable Defendants were not going to honor Warren Jones' commitment to convey the Property to Plaintiff, Ronald L. Jones. The Applicable Defendants are attempting to reap a "Windfall" and The Applicable Defendants are attempting to be unjustly enriched.

41. Plaintiff, Ronald L. Jones was directly and proximately damaged because of The Applicable Defendants' actions and Plaintiff Ronald L. Jones is entitled to recover Damages as set forth hereinafter.

**THIRD CAUSE OF ACTION**

(Oral Gift)

42. Paragraphs one through forty-one above, are re-alleged, as if set forth verbatim.

43. Plaintiff has taken possession of the Property in question, and it is admitted that Plaintiff has occupied the Property for longer than the period required to establish adverse possession.

44. Plaintiff has also taken possession of the Property and made permanent and valuable improvements to the Property.

45. Either of these conditions would be a sufficient basis to establish an oral gift and remove this case from the operation of the Statue of Frauds. See Satcher v. Satcher 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002).

46. Plaintiff, Ronald L. Jones was directly and proximately damaged because of The Applicable Defendants' actions and Plaintiff Ronald L. Jones is entitled to recover Damages as set forth hereinafter.

**FOURTH CAUSE OF ACTION**

(Promissory Estoppel)

47. Paragraphs one through forty-six are re-alleged, as if set forth verbatim.

48. A promise was made to Plaintiff that in exchange for the Plaintiff occupying, safeguarding and maintaining the Property, the Property would be conveyed to Plaintiff.

49. Plaintiff reasonably relied on this promise, made by one of his brothers, Warren Jones and ratified by another brother, Defendant, Gary A. Jones, Sr., , with the support of their mother, Defendant Ima Lee Jones.

50. Plaintiff's reliance on the good-faith of his family was expected and foreseeable to them.

51. Plaintiff would be damaged by the loss of the benefit of his years' worth of expenses and labor improving the Property, as well as the loss of the opportunity to devote those years and dollars to improving some other Property.

52. The Plaintiff's right to ownership of the Property is therefore established under the doctrine of promissory estoppel. See, Woods v. State 314 S.C. 501, 505; 431 S.E. 2d 260, 263 (S.C. App. 1993).

53. Plaintiff is entitled to have this Court confirm Plaintiff's ownership of the 6.72 acres, after the agreed upon payment from Plaintiff in the Property that is the Subject of this action with a dedicated easement for ingress and egress and an Order requiring Defendants to execute a deed to that effect.

54. The August 7, 2020, Order of the Court granted Plaintiff's Motion for a Jury Trial on the Civil Conspiracy charge with the consent of the parties.

55. Plaintiff, Ronald L. Jones was directly and proximately damaged because of The Applicable Defendants' actions and Plaintiff Ronald L. Jones is entitled to recover Damages as set forth hereinafter.

#### **PRAYER FOR DAMAGES**

**WHEREFORE**, Plaintiff Mr. Ronald L. Jones is entitled to receive from this Court:

(A) Confirmation of Plaintiff's ownership of the 6.72 acres, after the agreed upon payment from Plaintiff, in the Property that is the Subject of this action with a dedicated easement for ingress and egress and an Order requiring Defendants to execute a deed to that effect;

(B) An award for Special Damages of (i) Attorney's fees (ii) compensation for the loss of enjoyment of the Property (iii) compensation of the cost of the installation of additional electric service and (iv) compensation of the cost of Plaintiff securing a Plat depicting the Property;

(C) An award for Damages for Civil Conspiracy in an amount to be determined at Trial;

(D) An award for Damages for Unjust Enrichment in an amount to be determined at Trial; and

(E) **FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS NECESSARY AND PROPER.**

**[Signature Page Follows]**

**WHITT LAW FIRM, LLC**

/s/Richard L. Whitt

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*All as Counsel for Plaintiff, Ronald L. Jones.*

\_\_\_\_\_, 2023

Columbia, South Carolina.

**RECEIVED**

**Oct 03 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Action No. 2020-CP-43-00734  
**Appellate Case No. 2024-001532**

Ronald L. Jones.....Appellant,

v.

Gary A. Jones, Sr., Becky J.  
Jones, Ima Lee Jones and Shel-  
ley Allsbrooks.....Respondents.

**MEMORANDUM OF APPELLANT**

Appellant’s Appeal is allowed by S.C. Code Section 14-3-330(2), “Appellate jurisdiction in law cases.” (1976, as amended). S.C. Code Section 14-3-330 (2) reads as follows, “(2) An order affecting a substantial right made in an action when such order...(c) strikes out an answer or any part thereof or any pleading in any action”, because the Lower Court’s Orders (*Addendum pgs. 1-7*), have denied Appellant’s ability to proceed with a substantial right and strikes part of a pleading. Appellant is not appealing the Lower Court’s Orders themselves, Appellant is appealing because of the Orders impact on a substantial right as allowed under the Statute. In essence, the Orders appealed from are Orders striking a part of a pleading rather than an Order denying amendment and therefore is immediately appealable, (*Addendum pgs. 1-7*).

## BACKGROUND

The nexus of this Appeal is not the underlying dispute outlined in Appellant's Complaint, (Second Amended), but instead the nexus is the "three important factual admissions" that Respondent, Shelley Allsbrooks, (hereinafter, "Respondent Allsbrooks") made in deposition<sup>1</sup>, (Addendum pgs. 8-14).

Respondent, Allsbrooks' factual admissions fully supported Appellant's Causes of Action, (Addendum pgs. 8-14). Respondents' Lower Court counsel apparently realized the significance of the "three important factual admissions" after Appellant moved to amend his Complaint to add a Cause of Action for "Unjust Enrichment". Respondents' Lower Court counsel mounted a vigorous campaign to strike the factual admissions "three important factual admissions". Respondents' Lower Court counsel claimed that it was improper for Appellant to support his new Cause of Action for "Unjust Enrichment" with the "three important factual admissions". Respondents' counsel in the Lower Court claimed that the very specific "three important factual admissions" were improper. (July 29, 2024, Hearing Transcript p. 6, LL. 21-25), (Addendum pg. 20).

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<sup>1</sup> At Deposition, Respondent, Allsbrooks, made "three important factual admissions", which admissions directly supported the allegations of Appellant's case. Those three important factual admissions were:

- Appellant had lived on the Property for a little over ten years (Deposition Transcript pg. 14 L. 16 – pg. 15 L. 10), (Addendum pgs. 11-12)
- Respondent Shelley Allsbrooks conspired, *inter alia*, with her father against the economic interests of Appellant, (Deposition Transcript pg. 15 L. 17 – pg. 17 L. 15), (Addendum pgs. 12-14); and
- Respondent Shelley Allsbrooks was the decision maker in the conspiracy with her father. (Deposition Transcript pg. 12 LL. 1-11), (Addendum pg. 10).

The Lower Court struck the “three important factual admissions<sup>2</sup>”, Appellant appealed in Appellate Case Number 2021-001150 and this Court found Appellant’s Appeal to be interlocutory. In order to be successful in the prior Appeal, Respondents’ counsel argued to this Court that Appellant had not lost any substantial right by the Lower Court’s Order<sup>3</sup>, by striking the admissions. Because Respondents’ counsel argued in Appellate Case Number 2021-001150, that Appellant had not lost any substantial right, Respondents’ Lower Court’s counsel was prevented by Judicial Estoppel from arguing that Appellant was not permitted to make further use of the “three important factual admissions”, (July 29, 2024, Hearing Transcript p. 4, L. 24 – p. 5 L.10), (*Addendum pgs. 18-19*). The Lower Court agreed with Respondents’ argument and the “three important factual admissions” were struck. Also see, Footnote “4” herein.

During the Hearing which lead to the Lower Court’s issuance of an Order Denying Re-hearing/Reconsideration, styled as “Order”, dated September 10, 2024 [one of two Orders under Appeal, (*Addendum pg. 6*)], which would have allowed Appellant to amend his Complaint (Second Amended). Respondents’ counsel argued vigorously before the Lower Court, that Appellant’s

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<sup>2</sup> Appellant’s counsel took the Deposition of Respondent, Shelley Allsbrooks on March 16, 2021, wherein she made “three important factual admissions”. Thereafter, Appellant filed his Complaint (Second Amended) containing the “three important factual admissions”, on **April 22, 2021**. Fourteen days later on **May 6, 2021**, Respondents’ counsel, after apparently reviewing the allegations of Appellant’s Complaint (Second Amended), and apparently realizing that the “three important factual admissions”, fully supported Appellant’s Causes of Action for Promissory Estoppel and Civil Conspiracy, filed Respondents’ Motion to Strike the “three important factual admissions” made by Respondent Allsbrooks. The “three important factual admissions” do not fall within the standards of Rule 12(f), of the South Carolina Rules of Civil Procedure. The “three important factual allegations” are not redundant, immaterial, impertinent or scandalous.

<sup>3</sup> See, “Respondents’ Reply to Appellant’s Return to Motion to Dismiss”, dated February 18, 2022, page “5” (*Addendum p.16*).

Motion to Amend should not be granted and that the “three important factual admissions” could not be included in the Complaint that Appellant sought to amend, which the Lower Court denied on September 10, 2024 (Hearing Transcript of July 29, 2024, p.6 L..22; p. 7, L. 12; p. 8 L. 21; p. 9 LL. 17-18,), (*Addendum pgs. 20-23*).

The Lower Court agreed and the “three important factual admissions”, contrary to Respondents’ Appellant counsel’s arguments, have been “lost” by the Appellant. Thereby Appellant has lost a substantial right, which is immediately appealable under S.C. Code Section 14-3-330(2), (1976, as amended) and this appeal follows. See, Footnote “4” herein.

### **ARGUMENT**

This Court instructed Appellant and Respondents to file a Memorandum addressing the issue of appealability. Respondents began their Memorandum on appealability with an inapposite reference to State v. Ledford, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018), which was a criminal case. In State v. Ledford the Court discussed restrictions on the State concerning the applicability of S.C. Code Section 14-3-330(2), (1976, as amended). Obviously, a civil litigant, as in the instant case, is not in the same posture as the State in a criminal prosecution.

Respondents admit in their Memorandum on Appealability that the determination of whether a party may immediately appeal an order issued before or during trial is “...governed primarily by [section 14-3-330 of the South Carolina Code].”, (page “4” of Respondents’ Memorandum). Obviously, the Lower Court’s Order(s) have struck part of a pleading, as shown in paragraph “12” of the Lower Court’s Order of April 9, 2024, see, Footnote “4” herein.

The Lower Court's Order of April 9, 2024, (*Addendum pgs. 1-5*) denying Appellant the right to amend strikes the following, "three important factual admissions" from Appellant's Complaint<sup>4</sup>. If Appellant had not appealed the Lower Court's Orders striking the "three important factual admissions", the striking of the "three important factual admissions" would become the Law of the Case and lost to the Appellant forever.

### CONCLUSION

Based on the foregoing argument and applicable law, this Court should find that Appellant is permitted to proceed with his Appeal based on (i) the loss of a substantial right (ii) S.C. Code Section 14-3-330(2), (1976, as amended). There are no grounds for Appellant's Appeal to be dismissed.

[Signature Page Follows]

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<sup>4</sup>From the Lower Court's Order of April 9, 2024, *see*, paragraph "12", "That the proposed Third Amended Complaint contains numerous evidentiary facts as opposed to ultimate facts as well as almost identical language in paragraphs 13, 30 and 31 from the Plaintiff's Second Amended Complaint which were stricken by this Court's Order dated September 22, 2021 (as shown in paragraph 12 and paragraph 30 of the proposed Third Amended Complaint). To permit the proposed amendment would sanction the violation of the Court's previous Order. The Plaintiff's Appeal was dismissed and the **Plaintiff is precluded from repleading matters previously stricken.**" (emphasis added).

/s/Richard L. Whitt,

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**RECEIVED**

**Sep 25 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr.  
Circuit Court Judge

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Civil Action No. 2020-CP-43-00734

Appellate Case No. 2024-001532

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Ronald L. Jones, Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks, Respondents.

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**MEMORANDUM ON APPEALABILITY<sup>1</sup>**

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This is the second time Appellant Ronald L. Jones (“Appellant”) has sought to improperly appeal an interlocutory order of the circuit court. Appellant rekindles his efforts to transmogrify this litigation into the “stop-and-start enterprise” that has been repeatedly denounced by our appellate courts. *See State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018). Again, just like the first appeal, pursuant to Rule 240 of the South Carolina Appellate Court Rules and the Court’s recent request on the issue of appealability, Respondents Gary A. Jones, Sr., Becky J.

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<sup>1</sup> Respondents had previously drafted this as a Motion to Dismiss but had not filed this Motion prior to receiving the September 24, 2024 correspondence from the Court requesting the parties to brief the issue of appealability. This Memorandum addresses the appealability question raised by the Court and also requests the Court to dismiss the appeal.

Jones, Ima Lee Jones, and Shelley Allsbrooks (collectively, “Respondents”), by and through the undersigned counsel, respectfully move for dismissal so that this case may proceed on the merits.

### **BACKGROUND**

This case involves a family land dispute. On May 4, 2020, Appellant filed this lawsuit against Respondents Gary A. Jones, Sr., Becky J. Jones, and Ima Lee Jones, claiming Appellant was entitled to relief pursuant to an oral gift and the doctrine of promissory estoppel. On June 10, 2020, Appellant filed his First Amended Complaint, adding a cause of action for civil conspiracy directed at Respondents Gary A. Jones, Sr. and Becky J. Jones. The parties subsequently engaged in discovery, including the deposition of Respondent Shelley Allsbrooks on March 16, 2021. Appellant filed his Second Amended Complaint on April 22, 2021, adding Respondent Allsbrooks as a defendant to his claim for civil conspiracy. On May 6, 2021, Respondents filed an Answer to Appellant’s Second Amended Complaint and a Motion to Strike certain improper factual allegations that had been raised in the Second Amended Complaint. The circuit court granted Respondents’ Motion to Strike, and Appellant appealed. This Court granted Respondents’ Motion to Dismiss, holding the circuit court’s order was not immediately appealable (COA App. Case No. 2021-001150), the Court denied Appellant’s request for rehearing (*Id.*), and the South Carolina Supreme Court denied certiorari (Sup. Ct. App. Case No. 2022-000865). Respondents were awarded costs by this Court to be paid by Appellant.<sup>2</sup>

Following the issuance of remittitur to the circuit court, Appellant filed another Motion to Amend his Complaint. Appellant sought leave to submit a fourth iteration of his Complaint to add a cause of action for unjust enrichment. Appellant also included, the “almost exact allegations”

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<sup>2</sup> As of the date of this filing, Appellant has not paid the costs awarded to Respondents in the first appeal.

that were previously stricken by the circuit court in its September 22, 2021 Order. On April 9, 2024, the circuit court denied Appellant's motion. The circuit court reasoned *inter alia*: (1) Appellant's attempt to add the unjust enrichment cause of action was not timely and (2) Appellant's attempt to again include previously stricken allegations was improper. Appellant moved for reconsideration, and the circuit court denied same on September 10, 2024. That same day, Appellant filed his Notice of Appeal. An amended Notice of Appeal was filed on September 11, 2024.

Respondents now file this Memorandum requesting dismissal because Appellant's attempt to appeal the underlying order denying his Motion to Amend is not immediately appealable.

### ARGUMENT

A review of the circuit court's underlying order denying Appellant's Motion to Amend, the governing appealability statute, and many years of precedent from our appellate courts makes certain that Appellant has no foundation to support any argument that this Court should review this interlocutory appeal. To be sure, the circuit court's order denying Appellant's Motion to Amend his Complaint is not immediately appealable, and Appellant's attempt to appeal the same is, quite frankly, another improper attempt to frustrate the ordinary pretrial procedures below. Therefore, this Court should refuse to expand the narrow construction of section 14-3-330 of the South Carolina Code and should dismiss Appellant's appeal, thereby allowing the proper pre-trial procedures to proceed accordingly without any additional disruption or delay.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the

court with nothing to do but enforce the judgment by execution.” *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code].” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. “Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable.” *Id.* Section 14-3-330 is “construed narrowly” with the goal of avoiding “circuitous litigation and needless appeals.” *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, “[p]iecemeal appeals” are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

No specialized statute permits Appellant’s present appeal; therefore, to be immediately appealable, the circuit court’s order must fit neatly into one of the categories set forth in section 14-3-330. *See id.* at 195, 607 S.E.2d at 708. Section 14-3-330 provides for appellate jurisdiction over:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the

action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) (“Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed.”).

Here—under the well-established approach to analyzing the appealability of interlocutory orders—the circuit court’s order is not immediately appealable. The effect of the circuit court’s order is clear. The circuit court denied Appellant’s Motion to Amend his Complaint. That is all. The circuit court’s order *did not* dismiss Appellant’s case; the circuit court’s order *did not* dispense of any of Appellant’s causes of action; the circuit court’s order *did not* constitute a final judgment; the circuit court’s order *does not* prevent an appeal of Appellant’s complained issue following a final judgment in this matter.

Our appellate courts have consistently held that an interlocutory appeal of an order addressing a motion to amend pleadings is improper. *See, e.g., Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002) (holding a circuit court’s order denying defendant’s motion to amend her answer to assert third-party claims was not immediately appealable because the order “neither determine[d] a substantial matter ‘forming the whole or part of some cause of action,’ nor prevents ‘a judgment from being rendered in the action’ from which [defendant] could then seek review”); *Collins v. Sigmon*, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989) (“An order

permitting amendment of pleadings is interlocutory and generally is not appealable until final judgment.”); *S. Sales & Mktg. Grp., Inc. v. AMCO Const. Co.*, No. 2006-UP-278, 2006 WL 7286061, at \*2–4 (S.C. Ct. App. June 13, 2006); *Brown v. Tonney*, No. 2021-000185, 2022 WL 853436, at \*1 (S.C. Ct. App. Mar. 23, 2022) (dismissing an appeal of a special referee’s order denying a motion to amend complaint).

*Baldwin Construction Company v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004) is particularly instructive as to the issue of appealability. In *Baldwin*, the defendant filed a motion to amend to permit the filing of an amended answer, set-offs, and counterclaims. *Id.* at 228, 593 S.E.2d at 146. The circuit court denied the motion to amend, finding the relief requested would be “unduly prejudicial.” The South Carolina Supreme Court held the appeal of the denial of the motion to amend was not immediately appealable because the defendant would still be able to appeal the decision after the conclusion of trial. *Id.* at 230, 593 S.E.2d at 147-48. Our Supreme Court explained, “the judge did not strike a pleading but refused to allow its filing. [The defendants] have not ‘arrived at the end of the road’ and will be able to appeal the decision after the trial is finished.” *Id.*

The same can be said in the instant case. Appellant is appealing the denial of his Motion to Amend his Complaint. The matter is not immediately appealable, and there is nothing that would prohibit Appellant from appealing this decision after the conclusion of trial. Like the circuit court in *Baldwin*, the circuit court did not strike a cause of action or a pleading, it simply refused to allow its filing.

**CONCLUSION**

Based on the foregoing, Respondents respectfully request that the Court dismiss this interlocutory appeal because the issue raised is not immediately appealable.

Respectfully submitted,

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September 25, 2024

**RECEIVED**

**Feb 18 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr.  
Circuit Court Judge

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Civil Action No. 2020-CP-43-00734

Appellate Case No. 2021-001150

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Ronald L. Jones, Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooms, Respondents.

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**RESPONDENTS' REPLY TO APPELLANT'S RETURN TO  
MOTION TO DISMISS**

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Respondents Gary A. Jones, Sr., Becky J. Jones, and Shelley Allsbrooms (collectively, "Respondents"), by and through the undersigned counsel, respectfully submit this Reply to Appellant Ronald L. Jones's Return to the Motion to Dismiss filed February 14, 2022. Respondents stand confident that their Motion to Dismiss clearly demonstrates that dismissal of this interlocutory appeal is appropriate. However, for the Court's benefit, Respondents submit this brief Reply, not to reargue points raised in its Motion to Dismiss, but to simply highlight several of the inaccuracies and misunderstandings found in Appellant's Return. Respondents address Appellant's main points in turn.

**IV. *Thornton v. South Carolina Electric and Gas Corp.* Does Not Support Appellant's Position.**

Appellant believes *Thornton v. South Carolina Electric and Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), supports his position in this matter. However, this case—like the others cited—supports Respondents' position.

In *Thornton*, this Court issued an opinion with three different holdings: (1) the circuit court's order striking class action allegations was not immediately appealable; (2) the circuit court's order granting summary judgment under the Mining Act was not immediately appealable; and (3) the circuit court's order denying summary judgment as to the statute of limitations was not immediately appealable. *Id.* Appellant highlights a discussion in *Thornton* which cites to two cases that discussed appealability stemming from the predecessor statute to subsection 14-3-330(c)(2). *Thornton* summarized, "An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Id.* at 304, 705 S.E.2d at 479.

Here, the order did not remove a material issue from the case. Thus, the order does not prevent the issue from being litigated on the merits. Appellant still has the same three causes of action. Nothing prevents Appellant from presenting the very same stricken facts into evidence at the appropriate time. The circuit court's ruling simply found the stricken factual allegations were inappropriately included at the pleading stage. The circuit court did not rule that Appellant cannot attempt to prove the stricken facts at a later stage in the litigation. Moreover, should Appellant believe that he was harmed by the circuit court's decision to strike, at the pleading stage, the three factual allegations from the Complaint, Appellant will have the opportunity to argue error and prejudicial harm after a final judgment has been issued in the circuit court.