

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Judge Bentley D. Price

Court of Appeals Case No. 2022-000775

Circuit Case No. 2021-CP-10-2682

Pet Helpers, Inc..... Respondent,
Janet L. Frisco..... Appellant,
Melissa Susko.....Third-Party Defendant.

MOTION TO PETITION ORAL ARGUMENTS

Appellant hereby motions The Court to allow oral arguments to be heard due to a vital issue alluded to in Appellant’s briefs, but not adequately presented. According to the standards of oral argument, oral argument must be allowed if the facts and legal arguments were not adequately presented in the briefs to significantly aid the decisional process.

That issue is that the Appellant has filed a complaint against the

Respondent's attorney for legal malpractice, i.e. aiding and abetting his client in committing fraud which adds an entirely unique dimension to the case as a whole that must not be ignored by The Court. (See Exhibit A).

MEMORANDUM IN SUPPORT OF ORAL ARGUMENT

Appellant's appeal contains a very important legal issue that will influence categories of other cases that involve important government or societal actors, or institutions that affect society broadly. Namely, determining the limits or actions attorneys can engage in the process of representing their clients without transgressing the limits of the law. It could possibly establish a legal precedent for future cases involving legal malpractice.

The following are additional reasons why the court should allow oral argument with citation of authorities:

1. Oral argument can also be important as an institutional matter. Allowing parties their day in court before a judicial panel furthers their conviction that they receive the opportunity to be heard that is guaranteed by due process which was denied to Appellant in the lower court. 1
2. In at least one study of oral argument in the Supreme Court concluded that "oral argument is at times determinative of the outcome". 2
3. Frequently, oral argument forces an attorney to explain a complex case in simple form. Appellate judges (and their clerks) sometimes know little or nothing about the cases before them even after reading the briefs. 26 As a result, an attorney must sometimes use oral argument to provide background information and establish a context or in this case elaborate on a conclusive issue not

specifically stated or elaborated on in the briefs.³

4. In fact, some judges believe that oral argument should be “freely permitted on all matters of substance” and on those matters that are “dispositive”.⁴ This appeal decision is dispositive of case filed by Pet Helpers, Inc. v Janet Frisco.

1. Michael Duval, *When is Oral Argument Important? A Judicial Clerk’s View of the Debate*, 9 J.APP. PRAC PROCESS 121 (2007).

2. Stephen L. Wasby et al., *The Supreme Court’s Use of Per Curiam Dispositions: The Connection to Oral Argument*, 13, N. ILL. U. L. Rev. 1, 30 (1992; cf. Tony Mauro, *Courtside---Doubting Roberts*, 30 Leg. Times 10 (July 9, 2007). PAGE 123.

3. PAGE 27. PAGE 124

4. J. Thomas Greene, *From the Bench---Oral Arguments in the District Court*, 26 Litig. 3, 3 (Spring 2000) PAGE 130

CONCLUSION

Appellant respectfully requests the opportunity for oral argument as the standard and because of possible criminal acts committed by the Respondent aiding and abetting of those acts by their attorney that was not adequately presented in Appellant's briefs.

Respectfully submitted,



Janet L. Frisco,
203 Cardinal Drive
Summerville, South Carolina 294854
843-804-0875
janetfrisco@yahoo.com
Self-Represented Appellant

Dated: May 6, 2025

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2024-CP-10-04891

JANET L. FRISCO

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

Plaintiff,

vs.

FUTERAL AND NELSON, LLC,
Defendant.

FILED
2024 NOV -4 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

In opposition to the Defendant's Motion to Dismiss Complaint, the Plaintiff responds as follows:

The Defendant alleges that service was insufficient according to Rule 12(b)(5), SCRPC, but service was completed on October 7, 2023 by the Charleston County Sheriff's Office of Civil Process on Stephan V. Futeral who is the registered agent for the Defendant, Futeral and Nelson, LLC. (See EXHIBIT A). Due to a scrivener's error on the part of the Plaintiff when filling out the Civil Process Information Sheet the term "as registered agent" was omitted after Stephan V. Futeral's name, but prior to the service Plaintiff did request that the error be corrected on the affidavit, but the sheriff's office refused to correct the error (See EXHIBIT B). If Stephan V. Futeral was not the registered agent for his law firm, that would have constituted insufficient service but Mr. Futeral was served and he is the registered agent of Futeral and Nelson, LLC (See EXHIBIT C).

The Defendant alleges that Plaintiff did not state a cause of action according to Rule 12(b)(6), SCRPC. The Plaintiff's cause of action is twofold, related and both were stated in the complaint. Firstly, the Defendant made a false statement about the Plaintiff in writing on his complaint in Case No 2021-CP-10-2682 alleging that

the Plaintiff had trespassed on his client's property which defamed the Plaintiff. Due to the false accusatory statement of the Defendant, Plaintiff was subjected to restraining orders and other punitive actions granted by the Court as requested by the Defendant causing harm to the Plaintiff's reputation and emotional well-being. The Defendant acted with absolute malice in not determining the truth of his statement and did so with the intention of aiding and abetting his clients in criminal fraud. In addition, there is an existence of a legal possessory right in the Plaintiff over the matter. The possessory rights, in this case, mean that the Plaintiff's legal right exists not to be libeled or defamed and the Defendant's act affected that right.

The second cause of action and the reason that the Defendant made false statements, accused the Plaintiff of libel and slander and implemented the lawsuit was to aid and abet his clients, Pet Helpers, Inc., after they committed criminal fraud in the staged adoption of Plaintiff's surrendered dog, Toby.

The Defendant states as grounds for dismissal, No.2 that "an attorney is immune from liability to third persons arising from the performance of professional duties as an attorney..." There is an exception that limits the immunity afforded to attorneys if the attorney helps his client perpetuate fraudulent or unlawful activity which applies to the Plaintiff's current complaint against Futeral and Nelson, LLC stated in Plaintiff's second cause of action.

The Defendant states as grounds for dismissal, No. 3 that "the Plaintiff's complaint fails to state any independent duty owed to the Plaintiff". This is rendered moot by the fact that third-parties have the right to seek remedy in the case of malicious or fraudulent conduct by an attorney that committed a

malicious act against them in a lawsuit.

Mr. Futeral manufactured evidence in the form of an adoption contract he submitted to the court at a hearing for a summary judgment on April 22, 2022. If it was authentic, he would have submitted some form of identification with it to prove it was not counterfeit. The fact that he didn't, supports that he knew the document was not legitimate so he had "actual knowledge" that he was aiding his client in concealing their crime. In *Oster v. Kirschner* (77 AD3d 51, 55, 905 N.Y.S.2d 69 (1st Dept 2010)), the Appellate Division-First Department broadly construed the "actual knowledge" element of an aiding-and-abetting cause of action against lawyers, holding that plaintiffs may be able to sufficiently allege actual knowledge by inferring it from surrounding circumstances, such as the nature of the objectionable client known to the lawyer at the time legal services are rendered and the nature of legal services rendered. (*Id.*) On June 5, 2021 Pet Helpers executive director, Melissa Susko, attempted to entrap the Plaintiff by trying to lure me on to the property using one of her employees as bait and a second to take photographs and then wanted to press charges against me for violating her No Trespass Notice. Mr. Futeral then falsely stated in writing I had trespassed when he filed his complaint so he had discussed this incident with Ms.Susko.

In a fraud context, actual knowledge need only be pleaded generally cognizant that a plaintiff lacks access to the very discovery materials that would illuminate a defendant's state of mind at the pre-discovery states. Participants in a fraud do not affirmatively declare that they are engaged in the perpetration of fraud, just as misrepresenters do not keep elaborate diaries of their fraud for the use of the defrauded in court. (*Oster v. Kirschner*, 77 A.D. 3d 51, 52 J(N.Y. App. Div.

1st. Dep't 2010) While the knowledge element of an aiding and abetting fraud claim requires actual knowledge of the underlying fraud, such knowledge does not have to be based on defendant's explicit acknowledgement of such fraud. (Syncora Guar. Inc. v. Alinda Capital Partner, LLC, 2013 Misc. LEXIS 2943, *41-42 (N.Y. Sup. Ct. July 1, 2013) This is particularly apt, given that guilty knowledge is often particularly within the defendant's possession and is not susceptible to direct proof, but must instead be inferred from the circumstantial evidence. (Id)

The third element of attorney aiding and abetting fraud, "substantial assistance" in furtherance of the fraud exists where (1) a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed, and (2) the actions of the aider/abettor proximately cause the harm on which the primary liability is predicted. (Stanfield Offshore Leveraged Assets, Ltd. v. Metro. Life Ins. Co., 64 A.D.3d 472, 925 N.Y.S.2d 439 (1st Dept 2011). Under New York law, substantial assistance occurs when a defendant affirmatively assists, helps conceal, or fails to act when required to do so, thereby enabling the fraud to occur. The aider/abettor's actions must also proximately cause the harm on which the primary liability is predicted which was the damage caused by the Defendant's law suit against the Plaintiff.

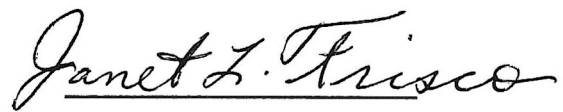
The material facts alleged in the Complaint permit a reasonable inference of the alleged conduct in light of surrounding circumstances that the Defendant had knowledge of and participated in concealing the fraudulent scheme of his clients. (Kirchner v. Bennett, 648 F. Supp. 2d 525, 540 (SDNY 2009)

Plaintiff previously directed legal action against Defendant's client, Pet Helpers, Inc. filing a complaint Case No. 2021-CP-10-2848 against them on June

17, 2021 and a counterclaim for Malicious Prosecution on June 16, 2021. Plaintiff's complaint was ordered consolidated on January 6, 2022 and counterclaim was dismissed by the court. Plaintiff filed a notice of appeal to the South Carolina Court of Appeals on June 21, 2022 that is currently pending decision.

The Plaintiff requests, based on the aforementioned arguments which support that Plaintiff stated a cause of action, service was sufficient, and an exception to Defendant's attorney immunity exists, that this Honorable Court deny the Defendant's Motion for Dismissal.

Respectfully submitted,

A handwritten signature in cursive script that reads "Janet L. Frisco". The signature is written in black ink and is positioned above a horizontal line.

Janet L. Frisco, Pro Se

Dated: November 4, 2023

EXHIBIT A

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Oct 15 2024
REFERENCE ID: 1731569

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

FILED

FEB 06 2004

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

Mark Hammond
SECRETARY OF STATE

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is Futeral + Brookshire, LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is
1004 Anna Knapp Blvd., 2nd Floor
Street Address
Mt. Pleasant, SC 29464
City Zip Code

3. The initial agent for service of process of the Limited Liability Company is
Stephan V. Futeral
Name Signature

and the street address in South Carolina for this initial agent for service of process is
1004 Anna Knapp Blvd., 2nd Floor
Street Address
Mt. Pleasant SC 29464
City Zip Code

4. The name and address of each organizer is
(a) Jennifer Smith Brookshire
Name
1443 Allen St. Mt. Pleasant
Street Address City
SC 29464
State Zip Code

(b) Stephan V. Futeral
Name
3184 Nix Ct. Mt. Pleasant
Street Address City
SC 29464
State Zip Code

(Add additional lines if necessary)

5. Check this box only if the company is to be a term company. If so, provide the term specified:

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Print Form

Oct 16 2024
REFERENCE ID: 1732513

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

AMENDED ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic
Filing Fee - \$110.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-44-204(a), the undersigned limited liability company adopts the following Amended Articles of Organization:

1. The name of the limited liability company is Futeral Law Firm, LLC
2. The date the articles of organization were filed is Filed 2/6/04, amended 6/21/05
3. The articles of organization are amended in the following respects, of which all amended provisions may lawfully be included in the articles of organization. If the space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph on this form.

Name change from Futeral Law Firm, LLC to Futeral & Nelson, LLC

[Signature]

Stephan V. Futeral

Signature (Please see the Filing Checklist below) _____

Print or Type Name

Capacity/Position of Person Signing (You must check one box.)

Date 4-15-09

- Manager Member Organizer
- Fiduciary Attorney-in-Fact

Filing Checklist

- Amended Articles of Organization (filed in duplicate)
- \$110.00 made payable to the Secretary of State's Office
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S.C. Code of Laws §33-44-205(a))
 - Limited Liability Company forms filed with the Secretary of State must be signed in the name of the company by a:
 - (1) manager of a manager-managed company
 - (2) member of a member-managed company
 - (3) person organizing the company, if the company has not been formed or
 - (4) fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary
- Return all documents to: South Carolina Secretary of State's Office
Attn: Corporate Filings
P.O. Box 11350
Columbia, SC 29211

090420-0109 FILED: 04/20/2009
FUTERAL & NELSON, LLC
Filing Fee: \$110.00 ORIG



EXHIBIT B

October 16, 2024

Sheriff Kristin Graziano
3841 Leeds Avenue
N. Charleston, South Carolina 29405

RE:S24007749 Service Number
Certified Mail 7022 2410 0000 8825 1958

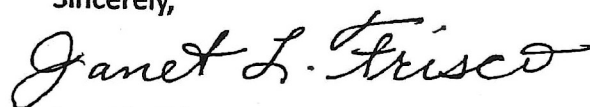
Dear Sheriff Graziano,

I tried to contact you by phone yesterday about a serious problem I am having with the Charleston County Sheriff's Civil Process Office whom I entrusted to serve a summons and complaint on a defendant on September 30, 2024 that was filed with the Charleston County Clerk of Court that same day.

At the time I filled out the Civil Process Information Sheet with the documents and gave them to the employee at the window, I was not aware that I needed to put the defendants name, Stephan V. Futeral and add "as the registered agent". When I learned that information I phoned the office of civil process a couple of days later, before they had served the papers, and spoke to Sgt. Mead and told him that the affidavit had to specifically state that, but when I picked up the affidavit on October 15th it was not done in that manner. The summons and complaint were served October 7, 2024 on Mr. Futeral who is the registered agent of his law firm, Futeral and Nelson, LLC so the documents were served to the correct person, but it's not correctly stated on the affidavit. If it was necessary for me to come in and fill out another information sheet, Sgt. Mead should have advised me of that rather than saying he understood and would handle it.

On the morning of October 15, Sgt. Mead sent me an email saying I have to have the summons and complaint served again and Major Burnsed confirmed that when he spoke with me on the phone yesterday. I simply cannot understand why Civil Process won't redo the affidavit using the correct term when I was told by another person in that office all I needed to do to have them correct it was to give them proof that Stephan V. Futeral is the registered agent of Futeral and Nelson, LLC which I emailed yesterday. It now appears to be deliberate obstruction on the part of Charleston County Sheriff's Civil Process Division. If they refuse to correct it by Wednesday, I will explain what happened and ask for pardon from the court for the lack of correct terminology on the affidavit and file it with the Clerk of Court as is.

Sincerely,



Janet L. Frisco

RECEIVED

May 06 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

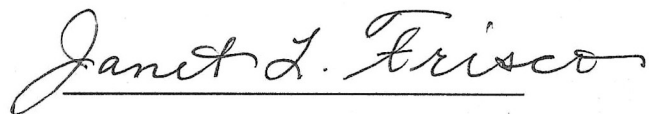
Case No. 2021-CP-10-2862
Appeal Case No. 2022-000775

Pet Helpers, Inc.....Respondent,
v.
Janet L. Frisco.....Appellant,
v.
Melissa Susko.....Third-Party Defendant.

PROOF OF SERVICE

I certify that I have served the Respondent the *Appellant's Motion to Petition Oral Arguments* by delivering the same via email and United States Regular Mail, postage prepaid, addressed to the Respondent's legal representative as follows:

Stephan V. Futeral
534 Johnnie Dodds Blvd., Suite 202
Mt. Pleasant, South Carolina 29464
sfuteral@charlestonlaw.net



Janet L. Frisco, Pro Se
203 Cardinal Drive
Summerville, South Carolina 29485
(803) 804-0875
janetfrisco@yahoo.com

DATED: May 6, 2025