

RECEIVED

Jul 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Judge

App. Case No. 2024-001206

Janice Meusel and Adam Meusel,.....Appellants,

v.

Woodside Plantation Property Owners' Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside Country Club, and Invited,.....Defendants,

Of whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and
Invited are the..... Respondents.

RECORD ON APPEAL

Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
Attorney for Appellants

Daniel C. Plyler
S.C. Bar No. 72671
Austin T. Reed
S.C. Bar No. 102808
Rachel E. Lee
S.C. Bar No. 104184
Smith Robinson Holler DuBose
and Morgan, LLC
3200 Devine Street
Columbia, South Carolina 29205
(803) 254-5445
Daniel.Plyler@SmithRobinsonLaw.com
Austin.Reed@SmithRobinsonLaw.com
Rachel.Lee@SmithRobinsonLaw.com
Attorneys for Respondents

INDEX TO RECORD ON APPEAL

Order granting motion to dismiss with prejudice	1
Order denying motion to reconsider	9
Summons and complaint.....	12
Motion to dismiss.....	19
Motion to reconsider	21
Transcript of hearing.....	26
Memorandum in opposition to motion to dismiss	54
Memorandum in support of motion to dismiss	61
Certificate of counsel	70

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2024-CP-02-00187
Janice Meusel and Adam Meusel,	)	
	)	
Plaintiffs,	)	
	)	ORDER
vs.	)	
	)	
Woodside Plantation Property Owners'	)	
Association, Inc., Woodside Plantation	)	
Country Club, Inc. d/b/a Woodside	)	
Country Club, and Invited,	)	
	)	
Defendants.	)	
	)	

THIS MATTER came before the Honorable Courtney Clyburn Pope on Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited's (hereinafter "Defendants") Motion to Dismiss. The hearing took place on May 23, 2024, in person at the Aiken County Courthouse. Present at the hearing were attorneys Daniel C. Plyler and Rachel E. Lee on behalf of Defendants; Andrew Radeker on behalf of Plaintiffs; and Samuel Key on behalf of Defendant Woodside Plantation Property Owners' Association.

This Court has carefully considered the briefs submitted by the parties, the oral arguments, the complaint, the relevant authorities, and the South Carolina Rules of Civil Procedure. Based on those considerations, it is the judgment of this Court that Defendants' Motion to Dismiss be granted and Plaintiffs' claims against Defendants dismissed in their entirety with prejudice.

Facts

On January 24, 2024, Plaintiffs Janice Meusel and Adam Meusel (hereinafter "Plaintiffs") filed a complaint against Defendants and Woodside Plantation Property Owners' Association, Inc., ("HOA") alleging negligence/recklessness, unfair trade practices, breach of fiduciary duty by

HOA, and intentional infliction of emotional distress. Plaintiffs assert that they brought this lawsuit because of incidents that arose at their property and home which is in the same subdivision as the Woodside Plantation Country Club. It is undisputed that Plaintiffs' yard borders the golf course in the neighborhood, which is operated by Defendants. Plaintiffs state that presumed country club members and golfers often walk into their yard while playing golf. Plaintiffs contend that they have been met with hostility, "racist harassment," unwarranted trespasses on their property and have been the recipients of "racial slurs and insults" because they told golfers they were not allowed to trespass onto their property.¹ According to Plaintiffs, they brought these issues of harassment and trespass to the attention of Defendants and the HOA, but nothing changed.

On March 24, 2024, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure asserting that Plaintiffs failed to allege facts sufficient to establish a claim for a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), failed to allege facts sufficient to establish a claim for intentional infliction of emotional distress, and Plaintiffs were not owed a duty by Defendants.

Standard of Review

In considering a Motion to Dismiss, "the court must view the allegations in the light most favorable to the plaintiff, 'with every doubt resolved in his behalf,'" *Food Lion, Inc. v. United Food & Comm. Workers Intern. Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 252 (Ct. App. 2002) (quoting *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). "Under Rule 12(b)(6) a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action." *Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon

¹ The Complaint states that Ms. Janice Meusel is of Hispanic descent. Compl. ¶ 12.

allegations set forth on the face of the complaint.” *Id.* “If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). “A trial [court] may dismiss a claim when the defendant demonstrates the plaintiff’s ‘failure to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting Rule 12(b)(6)).

“When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true.” *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497–98 (2014). At the pre-trial stage only a prima facie showing of jurisdiction is required. *Brown v. Inv. Mgt. and Research*, 323 S.C. 395, 475 S.E.2d 754 (1996). The allegations of the complaint are sufficient to make a determination and are accepted as true. *Id.*

Analysis

I. South Carolina Unfair Trade Practices Act

In order to establish a claim under the SCUTPA, the plaintiff must show: “(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 483, 498 (Ct. App. 2006). “The UTPA declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful.” *Christina G. deBondt v. Carlton Motorcars, Inc.*, 324 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000).

As defined by the SCUTPA, “‘trade or commerce’ involves ‘the advertising, offering for

sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” *Health Promotion Specialists, LLC v. S.C. Bd. Of Dentistry*, 403 S.C. 623, 638-39, 743 S.E.2d 808, 816 (2013) (quoting S.C. Code Ann. § 39-5-10(b)). To be considered unfair under the SCUTPA, “the unfair or deceptive act or practice must have an impact upon the public interest.” *deBondt*, 324 S.C. at 270, 536 S.E.2d at 408.

Plaintiffs failed to meet the elements required to establish a claim against Defendants under the SCUTPA and therefore this claim is DISMISSED. Plaintiffs alleged that Defendants’ inaction to stop presumed club members and golfers from trespassing and harassing Plaintiffs amounted to the “deceptive” or “unfair” acts of Defendants in trade or commerce under the SCUTPA. The Court does not find the actions of Defendants, or the lack thereof, within the facts of this Complaint to constitute unfair or deceptive acts in the conduct of trade or commerce as the law intends. South Carolina courts have held the plain language of the SCUTPA statute is clear and “the General Assembly intended for the SCUTPA to apply to business or consumer transactions.” *Health Promotion Specialists*, 403 S.C. at 639, 743 S.E.2d at 816. Defendants’ lack of inaction in this instance is not applicable to business or consumer transactions and does not establish a cognizable claim under the SCUTPA. Moreover, Plaintiffs failed to demonstrate how Defendants’ inactions had a negative impact on the public interest within the SCUTPA and failed to demonstrate any loss they incurred due to Defendants’ deceptive acts. Therefore, the claim of a violation of the SCUTPA against Defendants is DISMISSED.

II. Intentional Infliction of Emotional Distress

To recover from a claim of intentional infliction of emotional distress, a plaintiff must

demonstrate the following:

- (1) The defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) The conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) The actions of the defendant caused plaintiff’s emotional distress; and
- (4) The emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.

Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981).

Plaintiffs’ claim for intentional infliction of emotional distress against Defendants arose from the offending golfers’ “extreme and outrageous conduct” which Plaintiffs relate to Defendants. As the conduct that Plaintiffs attribute their claims of intentional infliction of emotional distress to is the conduct of golfers and not that of the Defendants, the Court finds that Plaintiffs have failed to demonstrate the required elements of intentional infliction of emotional distress as provided in the *Ford* case.

Further, this Court finds that Plaintiffs have failed to establish a prima facie claim for damages from intentional infliction of emotional distress as is required in this specific claim. See *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 258, 650 S.E.2d 68, 72 (2007)(holding that there is a “heightened standard of proof for emotional distress claims” and a “party cannot establish a prima facie claim for damages resulting from a defendant’s tortious conduct with mere bald assertions.”). Moreover, the conduct provided in the Complaint did not meet the threshold of severe emotional distress that South Carolina courts have held is required to meet for intentional infliction of emotional distress. *Hansson*, 374 S.C. at 356, 650 S.E.2d at 71 (holding that the courts

are reluctant to “permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct.”) Therefore, the claim for intentional infliction of emotional distress against Defendants is DISMISSED.

III. Negligence

For a plaintiff to demonstrate negligence, the plaintiff must show the following: “(1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant’s breach was an actual and proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered injury or damages.” *Wright v. PRG Real Estate Mgm’t, Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). However, “[i]f there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” *Wright*, 426 S.C. at 212, 826 S.E.2d at 290 (quoting *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006)).

Based on the Complaint, there is no evidence that Plaintiffs were members of the Woodside Plantation Country Club or that a duty was owed to Plaintiffs by Defendants. However, Plaintiffs do assert that Defendants voluntarily undertook a duty to “reasonably perform reasonable measures to address the past harassment and stop the ongoing harassment of the Plaintiffs.”

In South Carolina, a voluntary undertaking is rooted in the Restatement (Second) of Torts and is considered if an individual and/or group,

undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking.

Wright, 426 S.C. at 213, 826 S.E.2d at 291. Based on the facts and background provided in the

Complaint, the Court finds that Defendants did not voluntarily undertake a duty to Plaintiffs. The Complaint fails to provide any evidence that Defendants' failure to uphold its duty to address the past harassment and stop the ongoing harassment led to an increased risk of harm to Plaintiffs or that Plaintiffs suffered the harm because they relied on Defendants to stop the offending conduct. The Complaint provides that the harassing behavior remained the same after informing Defendants and Plaintiffs suffered the harm before informing Defendants of the behavior.

Thus, there was no duty owed to Plaintiffs from Defendants and the negligence cause of action is DISMISSED.

Conclusion

For the reasons contained herein, I hereby find as a matter of fact, and conclude as a matter of law, that Defendants' Motion to Dismiss be GRANTED and Plaintiffs' Complaint be dismissed against these Defendants with prejudice.

AND IT IS SO ORDERED.

The Honorable Courtney Clyburn Pope

June 18, 2024

Aiken, South Carolina



Aiken Common Pleas

Case Caption: Janice Meusel , plaintiff, et al VS Woodside Plantation Property Owners Association Inc , defendant, et al
Case Number: 2024CP0200187
Type: Order/Dismissal

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2024-06-19 10:43:08 page 8 of 8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP0200187

Janice Meusel et al
PLAINTIFF(S)

Woodside Plantation Property Owners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on Plaintiffs' Motion to Reconsider filed on June 28, 2024. This motion was filed after the Court granted Defendants' Motion to Dismiss as to two of the named Defendants. Plaintiffs' Motion to Reconsider is DENIED as it relates to Defendants Woodside Plantation Country Club, Inc. and Invited, Inc.

This Order does not pertain to Defendant Woodside Plantation Property Owners' Association, Inc.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/09/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Janice Meusel , plaintiff, et al VS Woodside Plantation Property Owners Association Inc , defendant, et al
Case Number: 2024CP0200187
Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2024-07-09 12:13:03 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

CASE NO. 2024-CP-02-_____

Janice Meusel and Adam Meusel,

Plaintiffs,

vs.

**Woodside Plantation Property Owners'
Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside
Country Club, and Invited,**

Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 6903, Columbia, South Carolina 29260, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
RADEKER LAW, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
January 24, 2024

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
CASE NO. 2024-CP-02-_____

Janice Meusel and Adam Meusel,

Plaintiffs,
vs.

**Woodside Plantation Property Owners’
Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside
Country Club, and Invited,**

Defendants.

COMPLAINT

The above-named Plaintiffs, complaining of the above-named Defendants herein, allege as follows:

1. The Plaintiffs, Janice Meusel and Adam Meusel, are and at all times material to this case were citizens and residents of Aiken County, South Carolina.

2. Defendant Woodside Plantation Property Owners’ Association, Inc. (hereinafter “the HOA”) is a non-profit corporation with its principal place of business in Aiken County, South Carolina.

3. Defendant Woodside Plantation Country Club, Inc. (hereinafter “the country club”) is a South Carolina corporation with its principal place of business in Aiken County, South Carolina. The country club has begun to do business as “Woodside Country Club.”

4. Defendant Invited is, upon information and belief, a corporation that is not registered with the South Carolina Secretary of State to do business in South Carolina but that does business regularly in South Carolina.

5. The HOA operates as a homeowners’ association for the Woodside Plantation subdivision located in Aiken County, South Carolina.

6. The Plaintiffs are owners of a home in that subdivision and are members of the HOA.
7. The country club operates as a club for its own members on land that directly adjoins properties that are subject to the HOA.
8. Defendant Invited owns, operates, and controls the country club.
9. The acts and omissions of the country club in this case are the acts and omissions of Defendant Invited.
10. Defendant Invited is liable for the conduct of the country club subject of this case, and causes of action asserted in this complaint against the country club are asserted against Defendant Invited.
11. The Plaintiffs' house and yard directly border the property operated as a golf course by the country club.
12. Plaintiff Janice Meusel is of Hispanic descent.
13. People golfing at the country club, usually club members who have usually also been co-members of the HOA with the Plaintiffs, started to walk often into the Plaintiffs' yard.
14. The Plaintiffs quite politely noted to a few of these golfers that they should not be in the Plaintiffs' yard.
15. The Plaintiffs were not prepared for the torrent of hostility with which they were met after saying something about the repeated trespasses in their yard.
16. Members of the country club and the HOA (often the same people) began and have sustained a campaign of racist harassment against the Plaintiffs, such harassment including, but not being limited to, numerous deliberate and unwarranted trespasses on the Plaintiffs' property and the use of racial slurs and insults.
17. The Plaintiffs brought their concerns about this behavior to the HOA and to the country club.

18. The HOA expressly undertook a duty to stop the offending behavior and control the actions of those who have been doing it.

19. The country club also expressly undertook a duty to stop the offending behavior and control the actions of those who have been doing it.

20. The harassment has not stopped.

21. The HOA has not taken reasonable action to stop the harassment.

22. The country club has not taken reasonable action to stop the harassment.

23. The Defendants have behaved in the matters subject of this case with a conscious disregard for the Plaintiffs' rights.

24. The Plaintiffs have sustained damages as a result of the misconduct subject of this complaint, including anger, anxiety, depression, severe emotional distress, and diminished property value.

FOR A FIRST CAUSE OF ACTION
(Negligence/Recklessness)

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. The Defendants owed and undertook duties to the Plaintiffs to take and reasonably perform reasonable measures to address past the harassment and stop the ongoing harassment of the Plaintiffs.

27. The Defendants failed to exercise reasonable care in this regard and, through their negligence, gross negligence, or recklessness, have breached those duties to the Plaintiffs.

28. The Defendants' breaches of duty have proximately caused the Plaintiffs to sustain damages.

29. The Plaintiffs are entitled to judgment for actual and punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices)

30. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

31. Acts committed by the Defendants in this matter, including, but not necessarily limited to, the Defendants' repeated failures to take reasonable measures to stop ongoing, repeated behavior by their members after acknowledging their duties to stop it, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and are and were unfair and deceptive actions in trade or commerce.

32. The Defendants knew or should have known that the said actions were violations of the Unfair Trade Practices Act and were unfair and deceptive actions in trade or commerce.

33. These actions have had a negative impact on the public interest. Not only did they harm the Plaintiffs, they have also harmed those who live in the Plaintiffs' neighborhood and the public generally by allowing reprehensible racist conduct to go unaddressed, despite promises to address it.

34. These actions were capable of repetition. The instances of harassment continue, as do the Defendants' failure to take reasonable measures to prevent or even address it.

35. The Plaintiffs have sustained damages as a proximate result of these unfair trade practices.

36. The Plaintiffs are entitled to a judgment against the Defendants for damages, treble damages, reasonable attorney's fees, and costs.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty by HOA)

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. The HOA has a fiduciary duty to the Plaintiffs to take at least reasonable steps to prevent or mitigate the ongoing harassment.

39. The Plaintiffs reposed their trust and confidence in the HOA to do so, and the HOA accepted that trust and confidence and agreed to help the Plaintiffs.

40. The HOA has failed to take at least reasonable steps to prevent or mitigate the ongoing harassment and has breached its fiduciary duty to the Plaintiffs.

41. The Plaintiffs have sustained damages proximately caused by the HOA's breach of fiduciary duty.

42. The Plaintiffs are entitled to judgment against the HOA for actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. Each of the Defendants, separately, has taken responsibility for the conduct of the offending golfers involved in this case.

45. The offending golfers intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from their conduct.

46. The offending golfers' conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

47. As a proximate result of the offending golfers' conduct, the Plaintiffs did, in fact, experience emotional distress, which was severe and beyond what a reasonable person would be expected to endure.

48. The Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages.

WHEREFORE, the Plaintiffs pray:

- a) For judgment against the Defendants for actual damages;
- b) For judgment against the Defendants for punitive damages;
- c) For judgment against the Defendants for treble damages;
- d) For judgment against the Defendants for all applicable statutory penalties;
- e) For judgment against the Defendants awarding the Plaintiffs reasonable attorneys' fees;
- f) For judgment against the Defendants awarding the Plaintiffs the costs of this action;

and

- g) For such other and further relief as the court may deem just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
RADEKER LAW, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
January 24, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2024-CP-02-00187
	)	
Janice Meusel and Adam Meusel,	)	
	)	
Plaintiffs,	)	
	)	NOTICE OF MOTION AND MOTION
vs.	)	TO DISMISS ON BEHALF OF
	)	DEFENDANT
Woodside Plantation Property Owners'	)	
Association, Inc., Woodside Plantation	)	
Country Club, Inc. d/b/a Woodside	)	
Country Club, and Invited,	)	
	)	
Defendants.	)	
	)	

TO: ANDREW RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, and Invited (hereinafter "Defendants"), will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Courthouse, Aiken, South Carolina, on the tenth (10th) day hereafter, or at such time and place as may be set by the Court, for an Order dismissing this case with prejudice on the following grounds:

1. Plaintiffs have failed to allege facts sufficient to establish a claim for a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), S.C. Code Ann. § 39-5-10, *et seq.*, and therefore said claim must be dismissed. Pursuant to S.C. Code Ann. § 39-5-10, the terms "trade" and "commerce" "shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b). In order to establish a claim under the SCUTPA, a plaintiff must first allege and establish that there were "unfair or deceptive

acts or practices in the conduct of any trade or commerce....” S.C. Code Ann. § 39-5-20 (a).

No where in Plaintiffs’ Complaint do they allege that Defendants were engaged in trade or commerce, and therefore Plaintiffs have failed to allege facts that would establish a claim for alleged violations of SCUPTA by Defendants.

2. Plaintiffs have failed to allege facts that would establish a claim for Intentional Infliction of Emotional Distress, and therefore said claim must be dismissed. *See generally, Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981); *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *overruled on other grounds*.

3. Plaintiffs have failed to establish any claim against Defendants upon which relief can be granted. Defendants owed no duty to Plaintiffs, and Plaintiffs’ attempts to allege a “voluntary undertaking” created a duty on the part of Defendants is misplaced. *See, Wright v. PRG Real Estate Management, Inc.*, 436 S.C. 202, 826 S.E.2d 285 (2019).

This Motion is based upon the pleadings on file, the rules of court, the prevailing case law, and any other matter properly submitted to the Court at the hearing of this motion.

Respectfully submitted,

SMITH | ROBINSON

s/ Daniel C. Plyler

DANIEL C. PLYLER, SC Bar #72671

RACHEL E. LEE, SC Bar # 104184

2530 Devine Street, Third Floor

Columbia, SC 29205

T: 803-254-5445

F: 803-254-5007

Daniel.Plyler@SmithRobinsonLaw.com

Rachel.Lee@SmithRobinsonLaw.com

*Counsel for Defendants Woodside Plantation Country Club
d/b/a Woodside Country Club and Invited*

Columbia, South Carolina
March 14, 2024

STATE OF SOUTH CAROLINA**COUNTY OF AIKEN****IN THE COURT OF COMMON PLEAS****CASE NO. 2024-CP-02-00187****Janice Meusel and Adam Meusel,****Plaintiffs,****vs.****Woodside Plantation Property Owners'
Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside
Country Club, and Invited,****Defendants.****MOTION TO RECONSIDER**

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs move before this court pursuant to Rule 59, SCRCP, for an order reconsidering, altering, or amending the order filed in the above-captioned action on June 19, 2024, which granted the motion of Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, and Invited (“the Country Club”) to dismiss the complaint in this action as against the Country Club.

The Plaintiffs so move on the following grounds:

1. The Plaintiffs specifically incorporate into this motion by reference and restate here the arguments in their memorandum in opposition to the Country Club’s motion to dismiss and all arguments they made at the hearing that produced the aforesaid order.
2. The court should address all arguments previously raised by the Plaintiffs and rule for the Plaintiffs on those arguments, which were correct. The court should reconsider its decision and alter or amend it to rule in the Plaintiffs’ favor on each issue that was before the court.

3. The decision reached by the court in its order goes against South Carolina precedent in a few ways.
4. The order makes evident that the court did not view the allegations of the complaint in the light most favorable to the Plaintiffs, which the court was required to do. E.g., Benedict Coll. v. Natl. Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012).
5. Viewing the allegations of the complaint in the light most favorable to the Plaintiffs,
 - a) the complaint alleged facts supportive of each element of the Plaintiffs' claims against the Country Club, b) the complaint at least alleged facts that would support the existence of *some* claim against the Country Club, precluding a proper dismissal, or, even if neither of the first two points were correct, c) it would not have been futile to allow the Plaintiffs' request, made in the alternative, to amend their complaint. See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019).
6. The court erred in dismissing the complaint and erred in not allowing the Plaintiffs an opportunity to amend, and the court should use this opportunity to correct those errors.
7. The complaint alleges more than enough to state a claim for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. See Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).
8. The court and the Country Club each seemed to have placed great weight on the idea that the complaint does not allege facts that, taken in the light most favorable to the Plaintiffs and with all doubts resolved in their favor, would establish that the

conduct at issue occurred within the Country Club's conduct of trade or commerce. Nothing could be further from the truth. All of the conduct of the Country Club alleged in the complaint occurred within the Country Club's business activities.

9. The court concluded that the complaint alleged no unfair or deceptive acts by the Country Club. That is not correct and is not a view that comports with the applicable standard. Promising the Plaintiffs to take action to stop concerted and consistent harassment and then not doing what was promised is, or at the very least could be understood to be, unfair. The same goes for whether the conduct was deceptive.
10. The complaint alleges that the Plaintiffs proximately sustained damages as a result of the Country Club's conduct. That embraces an allegation that these damages includes losses of the kind recoverable under the Unfair Trade Practices Act. Again, the court's conclusion otherwise runs afoul of the standard for ruling on a motion to dismiss.
11. The complaint alleges more than enough to state a claim for intentional infliction of emotional distress. See Bass v. S.C. Dept. of Soc. Servs., 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015).
12. The court concluded that the conduct alleged in the complaint – a sustained campaign of harassment, including racist harassment – did not meet the threshold to be outrageous enough for this cause of action to lie. Most respectfully, the undersigned cannot conceive of how the court could reach this conclusion in a way that comports with the law. The conduct alleged is quite outrageous. Maybe even more importantly, it is markedly more outrageous than other conduct our appellate

courts have deemed sufficiently beyond the pale to support such a cause of action. See, e.g., Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981).

13. The rest of the analysis of the intentional infliction of emotional distress claim and the negligence claim seems to center on whether one can undertake responsibility or another conduct and whether and in what circumstances one can undertake a duty that did not otherwise exist. The court's analysis on this is wrong.
14. The complaint, first of all, expressly alleges that the Country Club undertook such a duty and alleges facts supporting that. The court's order gives that short shrift, and it should not.
15. Here, whether the Country Club undertook such a duty and whether the Country Club undertook responsibility for the golfers' conduct is a mixed question of law and fact to be decided by the jury. See Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 291 (2019).
16. The court and the Country Club's counsel seemed hung up on the words from the Restatement to the effect that a voluntary undertaking analysis applies only where *physical* harm is suffered. As noted at the hearing, South Carolina law evidently differs from the Restatement on that point, as our courts have upheld a voluntary undertaking analysis in a case alleging only economic harm. Hurst v. Sandy, 329 S.C. 471, 481, 494 S.E.2d 847 (Ct. App. 1997).
17. In addition, whether either or both of the Plaintiffs sustained an injury that qualifies as physical harm under South Carolina law remains to be determined. That is a factual question to be decided on a factual record, not a pleadings question to be decided on a motion to dismiss.

18. The Plaintiffs have alleged more than enough to state a cause of action for negligence, satisfying each element thereof.

19. The court should reconsider its ruling, which has reached the wrong decisions.

Pursuant to Rule 11, SCRCPP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
RADEKER LAW, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
June 28, 2024

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF AIKEN CASE NO.:2024-CP-02-00187

****TRANSCRIPTION FROM AUDIO/DIGITAL COURTROOM****

May 23, 2024

BEFORE: The Honorable Courtney Clyburn Pope

JANICE MEUSEL, et. al,

Plaintiffs,

vs.

WOODSIDE PLANTATION PROPERTY OWNERS ASSOCIATION,
et. al,

Defendants.

APPEARANCES:

Andrew Sims Radeker, Esq.
Appearing for the Plaintiffs.

Daniel Plyler, Esq.
Appearing for the Defendants.

Recorded by: Digital Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

INDEX

Description	Page
(NONE)	

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality

P R O C E E D I N G S

THE CLERK: This is 2024-CP-02-00187, Janice Meusel, et. al, v. Woodside Plantation Property Owners Association, et. al.

MR. PLYLER: Good morning, Your Honor.

THE COURT: Good morning.

All right. Mr. Plyler for the defendant?

MR. PLYLER: Yeah, I represent the country club, and my name is Daniel Plyler, P as in Paul, L-Y-L-E-R.

UNIDENTIFIED PERSON: P-L-Y?

MR. PLYLER: P-L-Y-L-E-R. It gets everyone. It's phonetic, but it gets everyone.

I represent Woodside Plantation Country Club and Invited, Inc., so two of the defendants. Rachel Rea (phonetic) is my associate. She's here with me representing those defendants. And then Samuel Key represents the other defendant, which would be the Property Owners' Association.

THE COURT: Yes.

MR. RADEKER: I'm Drew Radeker here for the plaintiffs. You can guess how to spell Radeker, but I'll just tell you. It is R-A-D-E-K-E-R.

THE COURT: All right. So, Mr. Plyler, this is your motion, sir?

1 MR. PLYLER: Yes. Yes, Your Honor.

2 May it please the Court?

3 THE COURT: Yes, sir.

4 MR. PLYLER: As stated earlier, I represent
5 the Woodside Plantation Country Club. It is styled
6 in the caption as Woodside Plantation Country Club,
7 Inc., doing business as Woodside Country Club, as
8 well as Invited, Inc.

9 From the allegations in the complaint,
10 Invited, Inc. is the parent company or an umbrella
11 company that owns Woodside Plantation Country Club,
12 as well as other country clubs across the country.
13 We filed a motion to dismiss the three claims that
14 were -- or as we understand them to be -- three
15 claims pending against our defendants in this case.

16 To put it succinctly, Mr. and Mrs. Meusel
17 owned property on Bald Cypress Court, which abuts
18 the 18 -- excuse me, the 9th hole of the cut
19 course out on Woodside Plantation. They are not
20 members of the country club. They are -- they
21 obviously are members of the property association,
22 which is the co-defendants case, but not members of
23 the country club.

24 Their obligation stems from several incidents
25 that they claim to have occurred between the

1 Meusels and the people utilizing the golf course,
2 so these could be members, guests. It is a little
3 uncertain, and not specific in the complaint, but
4 people utilizing the golf course have had
5 interactions with the Meusels, and the Meusels have
6 found them offensive and/or disturbing, and as a
7 result, they have alleged claims for negligence,
8 voluntary undertaking, which I assume is associated
9 with negligence, intentional infliction of
10 emotional distress, and Unfair Trade Practice Act
11 claims against the country club.

12 Their theory becomes when we told the country
13 club that this was happening, the country club said
14 they would do something to make it stop, it has not
15 stopped; therefore, we want to hold the country
16 club responsible. It's our position that that
17 doesn't state any valid claim against my defendants
18 in this case, and I would like to take each one of
19 them in turn.

20 I'll start with the Unfair Trade Practices
21 Act. The complaint fails to state a cause of
22 action against my defendants for Unfair Trade
23 Practices Act violations, and I would cite the
24 Court to the deBont case. DeBont v. Carlton
25 Motorcars, Inc. It is a court of appeals case from

1 2000. The South Carolina site would be 342 S.C.
2 254. I brought some extra copies if I could hand
3 it up.

4 THE COURT: Yes, please.

5 Mr. Plyler, if you will, while you're handing
6 that up, just give me one moment.

7 MR. PLYLER: Sure.

8 (A brief pause in the proceedings.)

9 THE COURT: All right.

10 MR. PLYLER: Thank you, Your Honor.

11 As you may be aware, under the Unfair Trade
12 Practices Act, there is a private right of action
13 provision within the UTPA. That particular
14 provision is found at 39-5-140. In the deBondt
15 case of the printed-out version, it is on the sixth
16 page. The South Carolina site would be at 269.

17 The court of the private right of action
18 statute says any person who suffers an
19 ascertainable loss of money or property, real or
20 personal, as a result of the use or employment by
21 another person of an unfair or deceptive method,
22 act, or practice declared unlawful by -- and
23 there's a citation, but it would be the UTPA. They
24 may bring an action individually, but not in a
25 representative capacity to recover actual damages.

1 The reason I start the analysis there, Your
2 Honor, is that is the only provision under the UTPA
3 that allows you to bring a suit. So you have to
4 establish you have an ascertainable loss of money
5 or property related to this business interaction
6 between you and the defendant. And, then, if I
7 have that loss, the next step would be: Was there
8 something about that business interaction that is,
9 quote, deceptive or unfair as defined by the
10 statute?

11 Our position is that the pleadings don't
12 allege any of that. There was no business
13 interaction between the country club and the
14 Meusels.

15 Secondly, they haven't alleged an
16 ascertainable loss of property or money related to
17 some sort of business interaction. In addition to
18 that, Your Honor, they failed to meet the case
19 law's requirements of what you must allege for how
20 it affects others interests.

21 So the case law is clear, and we cited in our
22 memo -- and I apologize that we only got that filed
23 yesterday evening. It was really more of a reply
24 to what Mr. Radeker filed. The case law is clear
25 that if the interaction you are talking about is

1 isolated to solely you and that business, this
2 isn't something repetitive, doesn't involve other
3 people, it doesn't affect public interest, then you
4 don't have a UTPA case. We cite that in our brief.
5 So there is two layers here -- sorry, Your Honor, I
6 can't get a glass of water without --

7 THE COURT: No, it's fine. It is late
8 allergies -- late-season allergies.

9 MR. PLYLER: Well, the weather can't decide
10 whether it's going to be hot or cold.

11 So there is really two layers as to why they
12 fail to establish a claim or even pled a claim for
13 Unfair Trade Practice Act violation against our
14 defendants. The first being that they don't meet
15 the requirements of that private right of action
16 provision, because there isn't an ascertainable
17 loss of money or property related to some sort of
18 business interaction between the plaintiffs and my
19 defendants.

20 And then, secondly, they haven't pled enough
21 to establish that public interest requirement that
22 they would have to plead to be able to get an
23 Unfair Trade Practices Act claim. I can also cite
24 to the Court -- and it really just reiterates these
25 same things, but you can look at the Beneficial

1 Financial, Inc., v. Wyndham case from 2020. It is
2 a South Carolina cite of 431 S.C 256. It makes
3 some of the same points, Private Right of Action
4 Statute and what you have to establish for public
5 interest. Since I brought copies of these, I'll go
6 ahead and hand them out for everybody.

7 THE COURT: Thank you.

8 MR. PLYLER: The next claim that I would like
9 to address is the -- is the intentional infliction
10 of emotional distress claim. The reason is I think
11 the voluntary undertaking and negligence claims
12 that they are trying to bring are interrelated --
13 the way I read them -- so I'll save that one for
14 last.

15 With the intentional infliction of emotion
16 distress, if Your Honor has a copy of the complaint
17 that -- that particular cause of action can be
18 found on the fifth page of the complaint, and under
19 Paragraph 45 of the complaint, on Page 5, it says:
20 The offending golfers intentionally or recklessly
21 inflicted severe emotional distress or were certain
22 or substantially certain that such distress would
23 result from their conduct.

24 Under the -- I call it IIED -- intentional
25 infliction of emotional distress case law, first

1 off, before, it has been very cautious over the
2 decade for this cause of action as existed to not
3 allow it to be a catch-all for wounded feelings.
4 It wasn't designed to, Well, my feelings are hurt.
5 No, I wasn't seriously injured in any way, but I
6 have hurt feelings, I should be able to sue about
7 this. That is never what it was supposed to
8 become, and the case law is clear on that. It says
9 we're not trying to create a panacea of wounded
10 feelings as opposed to addressing reprehensible
11 conduct.

12 The idea was to address reprehens --
13 reprehens -- outrageous conduct, much easier word.
14 Reprehensible conduct. The Hansson case versus
15 Scalise Builders of South Carolina, this is a
16 supreme court case of 2007. The cite is 371 S.C.
17 352. I have copies. Obviously, Your Honor is
18 aware of the Ford v. Hudson case. It is a similar
19 case on this. It's from the 1980s where South
20 Carolina officially recognizes the Court. So we
21 always point back to Ford. Hansson does that. It
22 relies heavily on Ford for its analysis. It is a
23 more recent case. If you flip to the second page
24 of the printed copy of the opinion, the citations
25 are going to span from 355 through 357 of the South

1 Carolina citations. There is an analysis of what
2 you must establish and plead for an IIED claim in
3 South Carolina.

4 There are four elements according to Hansson
5 and relying on Ford. Those four elements are the
6 defendant intentionally or recklessly inflicted
7 severe emotional distress or was certain or
8 substantially certain that such distress would
9 result from his conduct. That is the first
10 element.

11 As you can see from the complaint, they don't
12 allege that the country club's actions did this.
13 They are alleging these offending golfers did these
14 actions that they are suing about. Well, for an
15 IIED claim, you have to allege that the defendant's
16 actions were intentionally or recklessly inflicting
17 this distress. So the conduct has to be specific
18 to the defendant you are suing, not, as they say,
19 Well, they took responsibility for the golfers and
20 said they would get them to stop. That is not
21 enough. This is not a respondeat superior type of
22 claim.

23 The actions that they are alleging of the
24 country club are that we reported it to you, you
25 said you would do something about it, but it hasn't

1 stopped. Well, that's not this sort of reckless,
2 intentional conduct that would cause severe
3 emotional distress. It simply fails to meet the
4 elements of an IIED.

5 Secondly, there is an important -- and I'm
6 using the language from Hansson. It's going to
7 actually bleed over onto the next page of the
8 printed page, Page 3, and the citation is at 358.
9 But there is a discussion here of: In order to
10 prevent claims for intentional infliction of
11 emotional distress from becoming a, quote, panacea
12 from wounded feelings rather than reprehensible
13 conduct, the Court plays a significant gatekeeping
14 role.

15 That gatekeeping rule is: What is the
16 emotional distress you are claiming? It has to be
17 so severe, and the conduct has to be so outside
18 what is acceptable in society, that the defendant
19 allegedly did, in order for you to have a basis of
20 an IIED claim. The defendants would point out that
21 in the complaint they have not alleged that sort of
22 severe emotional distress, and they use that magic
23 word. They say that, but it's frustration and
24 anger related to what these golfers allegedly did.
25 So I don't believe that meets the requirements of

1 the IIED case law, but even if that did, even if
2 that bare minimum sort of allegation of distress
3 did it, they failed to connect it directly to
4 reprehensible conduct on the part of the named
5 defendants.

6 Instead, they are pointing towards actions of
7 third parties and saying you didn't stop those
8 third parties. That wouldn't get you to an IIED
9 claim against my defendants.

10 Lastly, Your Honor, it takes us to -- I'm
11 combining the two, which is the alleged negligence
12 claim versus the voluntary undertaking, which is
13 specifically cause of action one. They didn't
14 break it out, so.

15 The way I understand the complaint, there is
16 no legal duty created for interactions between the
17 country club and the Meusels. The Meusels aren't a
18 member of the country club. They weren't trying to
19 utilize services offered by the country club.
20 There is not an allegation that employees of the
21 country club was doing this reprehensible conduct.
22 There is just simply no legal duty alleged or
23 established under the complaint.

24 Instead, they say they voluntarily undertook
25 these actions to try to prevent this from

1 continuing. Well, under the voluntary undertaking
2 case law, South Carolina courts have adopted the
3 restatement on the court's language -- and I'll
4 point the Court to Wright v. PRG Real Estate
5 Management, Inc. It's a 2019 supreme court case.
6 The South Carolina site would be 426 S.C 202. I
7 have some copies, if I may approach?

8 (A brief pause in the proceedings.)

9 MR. PLYLER: In the printed opinion, if you
10 go to the fourth page of the document, it is where
11 they start talking about voluntarily assumed duties
12 in South Carolina. And I'll paraphrase part of it,
13 but essentially it's a recognition. While there may
14 not be a duty on your part to act, if you
15 voluntarily undertake certain actions, then there is
16 going to be a reasonable standard that will be
17 applied to your actions. That is where we get to
18 the reinstatement of torts.

19 So at the bottom of Page 4: The recognition
20 of a voluntary assumed duty in South Carolina juris
21 prudence is rooted in Sections 323 of the
22 restatement, which provides that one who undertakes
23 gratuitously or for consideration to render services
24 to another, which he should recognize as necessary
25 for the protection of the other's person or

1 things -- and here becomes the key language, Your
2 Honor -- is subject to liability to the other for
3 physical harm resulting from his failure to exercise
4 care to perform his undertaking -- physical harm.

5 So the first thing you have to establish, if
6 you are trying to bring -- I know you didn't have a
7 legal duty, but you voluntarily undertook certain
8 actions to protect me, the first thing you have to
9 establish is a physical harm. Liability may be
10 imposed if there is a physical harm, provided you
11 can establish one of the next two things.

12 Your Honor, our position is that, one, they
13 haven't alleged a physical harm anywhere in this
14 complaint, so they don't even get to this step. But
15 even if they were to construe something as a
16 physical harm, you have to get to the next part of
17 this, which is that liability can be established if:
18 One, his failure to exercise such care increases the
19 risks of such harm.

20 So there is no allegation in the case that,
21 Well, you attempted to stop the golfers from
22 continuing what we claim is reprehensible conduct,
23 and that made things worse. Or, Now even more
24 golfers are out here because their friends are upset
25 about what we complained about. There is no

1 allegation like that anywhere in this complaint.
2 There definitely is nothing alleged that, I'm
3 reporting this, you undertook a duty to stop it, it
4 has gotten worse, it's increased my risk of harm.

5 Or, the harm is suffered because of the
6 other's reliance upon the undertaking. There is
7 absolutely no allegation here that I relied on you
8 saying you would stop it; so, therefore, I stopped
9 any actions on my part to try to prevent harm.

10 In fact, if the case survived, the evidence
11 would show Mr. Meusel put up no trespassing signs,
12 he has brought a shack charge claim against the
13 property owners' association. All of this stuff
14 after he reported it to the country club and was
15 dissatisfied with the results of that complaint.
16 He's continued to take steps to try to address what
17 he considers to be reprehensible conduct.

18 So there is no legal duty that would exist
19 here between the country club and the Meusels under
20 ordinary circumstances, and they fail to establish a
21 claim that would trigger this voluntary undertaking
22 duty they implied to it.

23 If I can check with this very smart person I
24 brought with me and make sure I didn't miss
25 anything -- oh, thank you. I'm getting old and

1 start forgetting.

2 You have heard me talk a lot about the
3 country club, because the complaint talks a lot
4 about the country club. You haven't heard me talk
5 about Invited, Inc., and that is because there is
6 almost no allegations, whatsoever, in this case
7 about Invited, Inc., except that they allege, Well,
8 that is the parent company so they should be
9 responsible for anything the companies underneath
10 them do.

11 South Carolina law is clear on this. If
12 there is a company that exists that you are alleging
13 did harm to you, that is who you have to sue. You
14 can't just say, And every other company connected to
15 it in some way. That is not how it works. And
16 there is no factual allegations in this complaint
17 that Invited, Inc., did anything, whatsoever, that
18 would have harmed the Meusels in any way.

19 So even if the Court weren't convinced that
20 all of these claims should be dismissed -- which,
21 quite frankly, I submit they should -- Invited, Inc.
22 should be one hundred percent dismissed at this
23 stage for failure to plead anything against them to
24 give rise to a valid point.

25 Thank you, Your Honor. I'm happy to answer

1 any questions at the appropriate time.

2 THE COURT: Thank you, Mr. Plyler.

3 Mr. Radeker, I'll hear from you at this
4 point.

5 MR. RADEKER: Thank you, Your Honor. I would
6 say at the outset I don't think there is anything
7 wrong with our complaint, but if there is, then the
8 fix is an amendment and not dismissal. This is a
9 weird set of facts. I don't know that I've ever
10 gotten a weirder case, but this one is weirder than
11 many I've had. I certainly would not have said I'm
12 responsible for some other people's actions, but
13 that's what the country club did. They said they
14 are responsible for these golfers' actions. They
15 can make themselves liable for things that they
16 weren't liable for before. They said that they
17 would take care of it and stop it, and that is what
18 has given rise to the whole complaint.

19 With regard to the Unfair Trade Practices Act
20 cause of action, there never has been any law that
21 said under the Unfair Trade Practices Act
22 violation, it has to happen only between a seller
23 of some service or customer or something like that.
24 It says it has to be done in the course of trade
25 commerce. We haven't alleged that they have done

1 anything that would be outside of their business.
2 All of the actions in this complaint are within the
3 trade commerce that this country club carries on.
4 It rents the memberships, this facility, to golfers
5 to come golf on it.

6 I'm sorry, I've been hitting the microphone
7 with my hand there.

8 And -- and, you know, it's not like -- it's
9 not like it was communicating this to the Meusels
10 like something social. It is within their capacity
11 as the operator of this golf course that they are
12 saying that they are doing it.

13 Trade and commerce includes, per statute, the
14 distribution of any services of anything of value,
15 and I would think that golf courses and golf course
16 memberships are all within that definition, so that
17 brings this case within that.

18 I think we pled these allegations that are
19 adequate to satisfy the ascertainable loss of the
20 property, but if you don't, then the thing to do is
21 to let us amend.

22 It's interesting, one of the cases that is
23 cited in the defendants' motion, we cited it in our
24 memorandum that we put in here. There's a few
25 typos copied in our brief. I'm sorry, my bad. But

1 one of the real interesting things from the case is
2 that case says that the carrying on of every
3 business occupation falls within the scope of trade
4 commerce. I guess it's like this: It does not
5 make any sense to say that this country club, in
6 addressing the conduct of its golfers, who are out
7 there enjoying the facilities that they are paying
8 for, this country club is somehow not within the
9 scope of the business operations.

10 As to the intentional infliction of emotional
11 distress, they are all there. Again, if you don't
12 think they are detailed enough, then the thing to
13 do is amend. There has been no case ever saying
14 that one cannot take on liability for what someone
15 else did in this context or, really, in almost any
16 other that's out there. So there is nothing that
17 says that you can't make yourself liable for
18 someone else's intentional infliction of emotional
19 distress, and that's what they did. They said we
20 are responsible for those people's conduct. That
21 may not be wise, but it is what they said.

22 As to the voluntary undertaking, the best
23 argument I've heard about voluntary undertaking is
24 a statement without physical danger. I point the
25 Court to the case (inaudible), which is cited in

1 our memorandum, and may be in the defendants'
2 motion as well. That case upheld a voluntary
3 undertaking going to the jury. That point was
4 brought up because physical harm, damages, were not
5 alleged among the solely economic. The Court said
6 we don't have a problem with that, and let it go to
7 the jury. So we don't completely (inaudible) in
8 the voluntary undertaking context.

9 They were talking about Invited. Actually,
10 what the complaint alleges is that Invited controls
11 and operates the country club. So it does not say
12 they are liable because they are a parent company.
13 They are a parent company, but they do more than
14 that, and that is what gets them in the liability.

15 So, basically, that is what I have got to
16 say, and don't dismiss our complaint. Thanks.

17 THE COURT: Thank you.

18 Mr. Plyler, any response?

19 MR. PLYLER: Yeah, a couple of things. One,
20 if Mr. Radeker is right about the interpretation of
21 the Unfair Trade Practices Act, then I guess I can
22 sue Walmart for just about anything. The whole
23 premise of the Unfair Trade Practices Act statute
24 is if I, as a consumer, am going to utilize your
25 services or buy your products, you can't be unfair,

1 deceptive, to me. That is why for me to bring a
2 private right of action, I have to first establish
3 what I quoted to you in the Unfair Trade Practices
4 Act cases that we handed up, like deBundt and
5 Beneficial Financial. Any person who suffers an
6 ascertainable loss of money or property, real or
7 personal, as a result of the use or employment by
8 another person of an unfair, deceptive method, act
9 or practice may bring an action individually.

10 What he's talking about is not an Unfair
11 Trade Practices Act claim. I don't know what that
12 claim would be, but it definitely hasn't been pled
13 in this complaint. In order to get under the
14 Unfair Trade Practices Act, it has to be I am
15 interacting with you in your trade or the way you
16 are doing commerce, and you have been unfair and
17 deceptive, and not only to me, but in the way you
18 are doing that, there are other people. It affects
19 the public interest and, therefore, the court
20 allows me to sue specifically under this statute
21 for that claim. I mean, that's what this act is
22 about.

23 This idea of, Well, nobody ever said you
24 can't do what I am doing, that is because no one
25 would ever try to do it since it specifically says

1 in the statute how you have to go about doing the
2 claim, and they haven't alleged that sort of
3 interaction.

4 Secondly, it is patently false that in South
5 Carolina you can just accept responsibility for
6 someone else's actions. The plaintiff has to
7 establish that we are legally responsible. There
8 is no contract claim here. There's no allegation
9 of agency. There is no allegation that an employee
10 did this. There is no legal basis to say, yeah,
11 you said you are responsible. That is just not
12 true. And under the law, they would not be
13 responsible for these people doing this alleged
14 conduct. You would need to sue those people, the
15 ones you claim are harassing you, the ones you
16 claim did racial slurs. You would need to sue
17 them.

18 I mean, if I go to a restaurant and the table
19 next to me is rude to me, and I go up after they
20 leave and say, Mr. GM of the restaurant, those
21 people were rude to me. Well, I'm sorry that
22 happened to you. We don't want that to happen in
23 our restaurant. That doesn't make them liable for
24 them being rude to you, but that is the analogy of
25 what they are claiming in this case. There were

1 people at your facility that have been mean to me
2 and, therefore, I should hold you responsible for
3 what they did. That flies in the face of the whole
4 basis of liability in South Carolina.

5 So IIED case law is very clear. It has to be
6 the defendant's actions are intentionally or
7 recklessly causing the distress -- the defendant.
8 I mean, I quoted from the case -- Bedstrom
9 (phonetic) and Hansson both say that, and I think I
10 talked about Hansson during my presentation.

11 And then, interestingly enough, he hasn't
12 even made the argument that there is a legal duty
13 here. Everything he is saying is you undertook a
14 legal duty. You undertook the responsibility to
15 stop this, and since it didn't stop -- from what is
16 in the complaint, since it didn't stop, you must
17 have been negligent in the way you tried to get
18 them to stop harassing me. But in order to get to
19 the undertaking provision -- I mean, I read
20 straight from the case law to you -- physical harm,
21 and then those two points: If that harm that you
22 are alleging, my actions actually increased your
23 risk of harm, that is one way you can do it. There
24 is no allegation of that in the complaint. Or, I
25 relied on you and, therefore, I didn't protect

1 myself anymore, and if you didn't make me rely on
2 you, I would have continued to protect myself.
3 Those allegations are completely lacking in this
4 complaint.

5 I was trying to find that case. So the
6 Wright case I handed up, subject liability to the
7 other for physical harm resulting from his failure
8 to exercise reasonable care to perform his
9 undertaking --

10 THE COURT: Where is that?

11 MR. PLYLER: On the printed opinion, on Page
12 5. The pinpoint citation would be 213 of the South
13 Carolina site. It says: Is subject to liability
14 to the other for physical harm resulting from his
15 failure to exercise reasonable care impart an
16 undertaking if, A, his failure to exercise such
17 care increases the risk of such harm.

18 There is no allegation of that in the
19 complaint.

20 Or, B, the harm is suffered because of the
21 other's reliance upon the undertaking.

22 So a law school classic example was you have
23 a child drowning in a pond -- or appears to be
24 drowning in a pond. If you voluntarily undertake
25 to go in there and try to save the child, you might

1 prevent the mom from jumping in there and trying to
2 save the child, because the mom sees there is this
3 good Samaritan out there doing what needs to be
4 done. And if you hadn't done that -- you just swam
5 half way out, oh, it's too hard, and turned around,
6 the mom can say I relied on you, and because you
7 are negligent in the way you did this, harm came to
8 me; otherwise, I would have protected myself.
9 That's sort of the analogy. There is no allegation
10 of that part of this case either.

11 But as a result, they haven't made the
12 showing they need to make in the complaint to get
13 them to where they want to be, that there was a
14 voluntary duty assumed.

15 So unless the Court has questions, I believe
16 I've taken up enough of your time.

17 THE COURT: I don't have any questions at
18 this time. What I'm going to do, gentlemen, is to
19 rely on -- catch myself up with the memos that were
20 presented to the Court, as well as the case law
21 that was presented. So I'll get you all a decision
22 on this shortly, just as soon as I can. It has
23 been a pleasure.

24 MR. PLYLER: Always nice to be in Aiken.

25 THE COURT: Will you be staying, Mr. Plyler?

1 MR. PLYLER: Unfortunately, no. I have
2 something at the kids' school that I need to
3 attend.

4 THE COURT: Well, both of you travel safely.

5 (Whereupon, the recording for the proceedings
6 concluded.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

Case Name: Janice Meusel, et. al., v. Woodside
Plantation Property Owners Ass., et. al

Case No.: 2024-CP-02-00187

Date of Hearing: May 23, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
audio recording.**

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
CASE NO. 2024-CP-02-00187

Janice Meusel and Adam Meusel,

Plaintiffs,
vs.

**Woodside Plantation Property Owners’
Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside
Country Club, and Invited,**

Defendants.

**MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS**

The Plaintiffs hereby submit this memorandum in opposition to the motion of Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, and Invited (“the Country Club”) to dismiss the Plaintiffs’ claim against them.

APPLICABLE STANDARD

The ruling on a motion to dismiss for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). “In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff.” Benedict Coll. v. Natl. Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012). “The motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. The question is whether in the light most favorable to plaintiff, and with every doubt resolved in [his] behalf, the complaint states any valid claim for relief.” Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995). “If those facts and inferences

would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper.” Benedict Coll., 400 S.C. at 544.

THE COUNTRY CLUB ACTED IN TRADE AND COMMERCE

The Country Club apparently claims that the complaint does not allege it was acting in trade and commerce when it wronged the Plaintiffs, arguing that the Plaintiffs have not pled a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

A claimant under the Unfair Trade Practices Act must show: (1) the other party violated S.C. Code Ann. § 39-5-20 by engaging in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the claimant suffered damages as a result. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

The Unfair Trade Practices Act specifically defines by statute that, under the Act, “[t]rade’ and ‘commerce’ shall include the . . . distribution of *any services* and any property, tangible or intangible, . . . and *any* other article, commodity or *thing of value* wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. Code Ann. § 39-5-10(b) (emphasis added). “The statute’s use of the words ‘shall include’ clearly suggests the legislature did not intend to limit ‘trade’ and ‘commerce’ to only the listed transactions.” Baker v. Chavis, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). “[T]he UTPA ‘should be given a liberal construction.’” McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People’s Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)).

This Court’s decision in Health Promotion Specialists, cited in the Court of Appeals’ opinion, does not support the Court of Appeals’ conclusion but is quite consistent with the HOA’s

actions being within the definition of trade and commerce under the Unfair Trade Practices Act.

403 S.C. 623. Health Promotion Specialists reads, in pertinent part, as follows:

As defined by the SCUTPA, “trade or commerce” includes “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.” S.C. Code Ann. § 39–5–10(b) (1985). By these plain terms, it is clear the General Assembly intended for the SCUTPA to apply to business or consumer transactions.

Furthermore, *by its very definition, “trade or commerce” involves “[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.”* Black's Law Dictionary (9th ed.2009); *see Bretton v. State Lottery Comm’n*, 41 Mass. App. Ct. 736, 673 N.E.2d 76, 78–79 (1996) (recognizing that “the proscription in § 2 of ‘unfair or deceptive acts or practices in the conduct of any trade or commerce’ must be read to apply to those acts or practices which are perpetrated in a business context” (citations omitted)).

Health Promotion Specialists, 403 S.C. at 638-39 (emphasis added).

Trade and commerce are construed broadly under the Unfair Trade Practices Act.

The complaint pleads the County Club was acting in trade or commerce. The complaint expressly alleges that the Country Club’s actions “are and were unfair and deceptive actions in trade or commerce.” (Complaint ¶ 31.) Further, the Country Club is in business and committed the acts involved here, which included promising to stop harassment by its member golfers during the golfers’ use of the golf course for which they pay the Country, in the course of that business. The acts and omissions about which the Plaintiffs complaint were all done in the course of the Country Club’s business operations in renting golf course usage to customers (club membership and its use and management) and concerned those operations. They were done in the course of the Country Club providing a service (golf course use and maintenance) in exchange for money.

Indeed, none of the Country Club's acts involved in this case were committed *outside* the scope of trade or commerce.

For the Country Club to prevail on this point would require a different, much narrower definition of trade and commerce than what is in the Unfair Trade Practices Act. S.C. Code Ann. § 39-5-10(b).

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS PLED

The Country Club contends the Plaintiffs have not pled all elements of the tort of intentional infliction of emotional distress. That is not correct.

To recover for outrage—otherwise known as intentional infliction of emotional distress—a plaintiff must establish the following:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Bass v. S.C. Dept. of Soc. Servs., 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015).

The complaint pleads facts that touch upon each of those elements. Here is what is pled under the heading of intentional infliction of emotional distress:

Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

Each of the Defendants, separately, has taken responsibility for the conduct of the offending golfers involved in this case.

The offending golfers intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from their conduct.

The offending golfers' conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

As a proximate result of the offending golfers' conduct, the Plaintiffs did, in fact, experience emotional distress, which was severe and beyond what a reasonable person would be expected to endure.

The Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages.

(Complaint ¶¶ 43-48.)

The conduct at issue – “a campaign of racist harassment against the Plaintiffs, such harassment including, but not being limited to, numerous deliberate and unwarranted trespasses on the Plaintiffs' property and the use of racial slurs and insults” (Complaint ¶ 16) is surely of the sort that at least has the potential to be “so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community[.]” Bass, 414 S.C. at 575. Accordingly, the Plaintiffs' complaint has pled facts sufficient to constitute this cause of action.

VOLUNTARY UNDERTAKING CREATES A DUTY

The Country Club claims that they should be dismissed from this suit for lack of a duty to the Plaintiffs. First of all, the Plaintiffs note that duty is not even an element of an Unfair Trade Practices or intentional infliction of emotional distress cause of action.

Second, Plaintiffs allege that the Country Club took on a duty to them, and that is enough to allege the existence of a duty under their negligence cause of action.

One who does not owe a duty may assume a duty by voluntarily undertaking to do something he is not already required to do.

“While there is generally no duty to act under the common law, a duty to use due care may arise where an act is voluntarily undertaken.” Vaughan v. Town of Lyman, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006). “The question of whether such a duty arises in a given case may depend on the existence of particular facts. Where there are factual issues regarding whether the defendant was in fact a volunteer, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact finder.” Id. at 446-47, 635 S.E.2d at 637 (quoting Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997)).

Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 291 (2019); accord Hurst v. Sandy, 329 S.C. 471, 481, 494 S.E.2d 847 (Ct. App. 1997).

The complaint alleges that the Country Club “expressly undertook a duty to stop the offending behavior and control the actions of those who have been doing it.” (Complaint ¶ 19.) The Country Club may well contend that it did not actually undertake such a duty, but that is a *facts* matter, not a *pleadings* matter. The existence of a duty, having been undertaken by the Country Club, has been pled.

AMENDMENT, NOT DISMISSAL, IF THE COURT DISAGREES

In the event that the court disagrees with the Plaintiffs about whether their complaint states facts sufficient to constitute any of the causes of action at issue, the remedy is amendment, not dismissal. Our Supreme Court has noted that “[u]nder Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019).

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
RADEKER LAW, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
May 21, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2024-CP-02-00187
	)	
Janice Meusel and Adam Meusel,	)	
	)	
Plaintiffs,	)	
	)	MEMORANDUM IN SUPPORT OF THE
vs.	)	MOTION TO DISMISS FILED ON
	)	BEHALF OF WOODSIDE
Woodside Plantation Property Owners’	)	PLANTATION COUNTRY CLUB, INC
Association, Inc., Woodside Plantation	)	D/B/A WOODSIDE COUNTRY CLUB
Country Club, Inc. d/b/a Woodside	)	AND INVITED
Country Club, and Invited,	)	
	)	
Defendants.	)	
	)	

Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, and Invited (hereinafter “Defendants”), by and through the undersigned counsel, respectfully submit this Memorandum of Law in support of the Motion to Dismiss filed on March 14, 2024. Pursuant to Rules 12(b)(6) and Rule 12(c) of the South Carolina Rules of Civil Procedure, the complaint against Defendants must be dismissed with prejudice.

BACKGROUND

On January 24, 2024, Plaintiffs Janice Meusel and Adam Meusel (hereinafter “Plaintiffs”) filed a complaint against Defendants and Woodside Plantation Property Owners’ Association, Inc., (hereinafter “HOA”) alleging negligence/recklessness, unfair trade practices, breach of fiduciary duty by HOA, and intentional infliction of emotional distress. (See Complt.). Plaintiffs assert their causes of action arise from incidents that arose at their property and home which is located in the same subdivision as the Woodside Plantation Country Club. (Complt. ¶¶ 5-10). Plaintiffs allege that their yard borders the golf course in the neighborhood, which is operated by Defendants, and that presumed country club members and golfers often walk into

their yard. (Complt. ¶¶ 13-14). According to Plaintiffs, they have been met with hostility, “racist harassment,” unwarranted trespasses on their property, and the use of “racial slurs and insults” because they told golfers that they were not allowed to come onto their property. (Complt. ¶¶ 14-16). Plaintiffs claim they brought these issues of harassment and trespass to the attention of Defendants and HOA, but the alleged harassment has not stopped. (Complt. at 17-22).

ARGUMENT

I. Plaintiffs failed to allege facts sufficient to establish a claim for a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), and therefore the court must dismiss the claim.

Plaintiffs fail to properly plead a cause of action against Defendants for a violation of the SCUTPA. Specifically, Plaintiffs alleged the following against Defendants in the complaint:

Acts committed by the Defendants in this matter, including, but not necessarily limited to, the Defendants’ repeated failures to take reasonable measures to stop ongoing, repeated behavior by their members after acknowledging their duties to stop it, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and are and were unfair and deceptive actions in trade or commerce.

(Complt. ¶ 31). The pleading states that the Defendants’ “repeated failures to take reasonable measures to stop ongoing, repeated behavior by their members” somehow constitutes a violation of the SCUTPA. This is simply not a violation of the SCUTPA and does not involve trade or commerce as the statute intended the use of trade or commerce. Therefore, this claim must be dismissed.

In order to establish a claim under the SCUTPA, “the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C.

1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). As defined by the SCUTPA, ““trade or commerce” involves “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.”” *Health Promotion Specialists, LLC v. S.C. Bd. Of Dentistry*, 403 S.C. 623, 638-39, 743 S.E.2d 808, 816 (2013) (quoting S.C. Code Ann. § 39-5-10(b)).

Here, as demonstrated in the pleadings, Plaintiffs attempt to reach the conclusion that because Defendants conduct some form of business operations, any and all of their actions encompass trade and commerce, and any perceived alleged negative actions would therefore be a violation of the SCUTPA. This simply cannot be true. The Plaintiffs make the argument that Defendants’ promise to stop harassment by golfers using the country club’s golf course was within the scope of Defendants business of operating the golf course and, therefore, their failure to stop the alleged harassment constituted unfair and deceptive acts by Defendants. This argument is nonsensical, and Plaintiffs have missed the point of the SCUTPA.

First, in order to establish a claim for the SCUTPA, the pleadings needed to demonstrate that Defendants engaged in an unfair or deceptive act within the conduct of trade or commerce. *Craft*, 372 S.C. at 23, 640 S.E.2d at 498. Here, alleged the “deceptive” or “unfair” acts of Defendants in trade or commerce were “Defendants’ repeated failures to take reasonable measures to stop ongoing, repeated behavior by their members after acknowledging their duties to stop it.” (Compt. ¶ 31). The courts have held that “[a]n act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive” and “[a]n act is ‘deceptive’ when it has a tendency to deceive.” *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999) (overturned on other grounds). An allegation that Defendants failed to stop repeated behaviors

by their members could possibly be viewed as an “unfair”; however, the pleadings that these alleged actions were offensive to public policy or that these alleged actions occurred within trade or commerce. South Carolina courts have held the plain language of the SCUTPA statute is clear and “the General Assembly intended for the SCUTPA to apply to business or consumer transactions.” *Health Promotion Specialists*, 403 S.C. at 639, 743 S.E.2d at 816 (2013). Plaintiffs’ allegation against Defendants for a violation of SCUTPA is clearly not applicable to business or consumer transactions and falls short of the intended application of the SCUTPA.

Second, even if the Court found the Plaintiffs demonstrated that Defendants engaged in unfair or deceptive actions in the conduct of trade or commerce, the Plaintiffs would still have to demonstrate that the “unfair or deceptive act affected [the] public interest” in order to establish a claim under the SCUTPA. *Craft*, 372 S.C. at 23, 640 S.E.2d at 498. In the complaint, Plaintiffs claim that Defendants’ actions have “had a negative impact on the public interest” and that the actions not only harmed Plaintiffs but also “those who live in Plaintiffs’ neighborhood and the public generally by allowing reprehensible racist conduct to go unaddressed.” (Complt. ¶ 33). The pleadings do not provide any support for how Defendants’ actions or lack thereof have had a negative impact on the public interest as it relates to trade and commerce under the SCUTPA other than stating a generalized claim of harm. It is clear from precedent in this state that, “South Carolina courts have consistently rejected speculative claims of adverse public interest and required evidentiary proof of such effects.” *Omni Outdoor Adver. V. Columbia Outdoor Adver., Inc.*, 974 F.2d 502, 507 (4th Cir. 1992); *see also Florence Paper Co. v. Orphan*, 298 S.C. 210, 379 S.E.2d 289, 291 (1989). Here, the pleadings do not provide sufficient support of how the alleged “unfair” or “deceptive” act of “repeated failures to take reasonable measures to stop ongoing, repeated behavior” had a negative impact on the public interest in the context of the

SCUTPA. Moreover, it is important to note that the “SCUTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA.” *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014). In the complaint, Plaintiffs make it clear that the issue of the alleged harassment is quite specific to them and fails to show how the “unfair” or “deceptive” acts by Defendants negatively impacted public interest. (Complt. ¶¶ 1-17).

Lastly, even if the court found the Plaintiffs were able to overcome the first two hurdles of establishing a claim under the SCUTPA, there is nowhere in the complaint where Plaintiffs allege that they “suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Craft*, 372 S.C. at 23, 640 S.E.2d at 498. As such, their claim of a violation of the SCUTPA against Defendants must be dismissed.

II. Plaintiffs failed to allege facts sufficient to establish a claim for intentional infliction of emotional distress and this cause of action must be dismissed.

The pleadings fall short of alleging facts sufficient to support a claim for intentional infliction of emotional distress against Defendants. To establish a claim for intentional infliction of emotional distress, a plaintiff must establish the following:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Bass v. S.C. Dep't of Soc. Serv., 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015). Here, Plaintiffs assert that Defendants have “taken responsibility for the conduct of the offending golfers”; “the offending golfers intentionally or recklessly inflicted severe emotional distress, or was certain . . . that such distress would result from their conduct”; “the offending golfers’ conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious . . .” and “[a]s a proximate result of the offending golfers’ conduct, Plaintiffs did, in fact, experience emotional distress, which was severe and beyond what a reasonable person would be expected to endure.” (Complt. ¶¶44-47).

First, there is no allegation in the pleadings that there is any agency relationship on behalf of the Defendants or the golfers or any type of relationship such that Defendants have taken responsibility for the conduct of the offending golfers. To be sure, there is no mention whatsoever in the complaint of this responsibility on behalf of the Defendants. The complaint simply states that the “country club expressly undertook a duty to stop the offending behavior and control the actions of those who have been doing it.” This allegation does not indicate that Defendants took on “responsibility for the conduct of the offending golfers.” (Complt. ¶ 19). Therefore, the claim for intentional infliction of emotional distress must fail as the remaining allegations only allege actions taken by the “offending golfers” and not actions of the Defendants.

However, if the court were to take into consideration the actions of the offending golfers as being the responsibility of the Defendants, dismissal of this cause of action is still appropriate. South Carolina courts have held that there is a “heightened standard of proof for emotional distress claims” and that a “party cannot establish a prima facie claim for damages resulting from a defendant’s tortious conduct with mere bald assertions.” *See Hansson v. Scalise Builders of*

S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007). In *Hansson*, the court found that “[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, ‘I suffered emotional distress’ would be irreconcilable with this Court’s development of the law in this area.” *Id.* In *Bass*, the court looked to whether the alleged conduct could be construed as “‘extreme and outrageous’ that it exceeded ‘all possible bounds of decency’ and must be regarded as atrocious, and utterly intolerable in a civilized community.’” *Bass*, 414 S.C. at 576, 780 S.E.2d at 261.

Based on the complaint, the offending golfers’ conduct, who have not been identified, included walking into Plaintiffs’ yard, which borders a golf course; a “torrent of hostility” towards Plaintiffs by said unidentified golfers; and presumably a “campaign of racist harassment.” (Complt. ¶¶ 15-17). Even in the light most favorable to the Plaintiffs, there is no inference that could be drawn from these pleadings that would support a cause of action of intentional infliction of emotional distress and find that Defendants conduct, even if the court were to view the golfers’ conduct as the responsibility of Defendants, was extreme, outrageous, or exceeded all possible bounds of decency. This complaint is an example of what the court in *Hansson* warned against, it is simply a cause of action stating that Plaintiffs suffered emotional distress. It is clear from the complaint that Plaintiffs failed to outline any specific harm they have endured other than stating they did in fact “experience emotional distress” which courts have repeatedly said is not enough. Therefore, the cause of action of intentional infliction of emotional distress must be dismissed.

III. Defendants owed no duty to Plaintiffs.

Plaintiffs have failed to establish Defendants owed them a duty or engaged in a voluntary undertaking which created a duty on the part of Defendants. In the complaint, Plaintiffs simply allege that Defendants “owed and undertook duties to the Plaintiffs to take and reasonably

perform reasonable measures to address past the harassment and stop the ongoing harassment of the Plaintiffs.” (Complt. ¶ 26). However, Defendants owed no duty to Plaintiffs and Plaintiffs have failed to demonstrate the duty owed to them or a voluntary undertaking of a duty by Defendants.

A voluntary undertaking is considered if an individual and/or group,

undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking.

Wright v. PRG Real Estate Management, Inc., 426 S.C. 202, 213, 826 S.E.2d 285, 291 (2019).

There was no voluntary undertaking by Defendants and Plaintiffs failed to provide any allegations to the contrary. Specifically, the complaint is void of any allegations that the actions or lack thereof by Defendants made Plaintiffs’ situation worse. On the contrary, the complaint specifically states that Plaintiffs brought their concerns regarding the harassment to the Defendants, Defendants did nothing, and the harassment did not stop. (Complt. ¶¶ 17-20). There is nothing in the complaint that states that Defendants’ failure to exercise such care or lack of care increased the risk of harm to Plaintiffs. *See Wright*, 426 S.C. at 213, 826 S.E.2d at 291. Further, there is nothing in the complaint that states Plaintiffs suffered the alleged harm because of their reliance on Defendants’ alleged duty to “stop the offending behavior and control the actions of those who have been doing it.” (Complt. ¶ 19). It is explicit in the complaint that Plaintiffs assert they suffered harm before they informed Defendants of the harassing behavior. (Complt. ¶¶ 15-16). There is simply nothing in the complaint that demonstrates any action or inaction on behalf of the Defendants made the alleged harassment and behavior for which

Plaintiffs brought this action worse. As such, there was no voluntary undertaking and Defendants owed no duty to Plaintiffs.

CONCLUSION

Based on the foregoing, Defendants respectfully request this court grant the Motion to Dismiss with prejudice and dismiss these Defendants from this case.

SMITH | ROBINSON

s/ Rachel Lee

DANIEL C. PLYLER, SC Bar #72671
RACHEL E. LEE, SC Bar # 104184
2530 Devine Street, Third Floor
Columbia, SC 29205
T: 803-254-5445
F: 803-254-5007
Daniel.Plyler@SmithRobinsonLaw.com
Rachel.Lee@SmithRobinsonLaw.com

*Counsel for Defendants Woodside Plantation Country Club
d/b/a Woodside Country Club and Invited*

Columbia, South Carolina
May 22, 2024

RECEIVED

Jul 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Judge

App. Case No. 2024-001206

Janice Meusel and Adam Meusel,.....Appellants,

v.

Woodside Plantation Property Owners' Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside Country Club, and Invited,.....Defendants,

Of whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and
Invited are the..... Respondents.

CERTIFICATE OF COUNSEL

I certify that the record on appeal contains all material proposed to be included
by any of the parties and not any other material.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
Post Office Box 6903
Columbia, South Carolina 29260
(803) 500-0891
drew@radekerlaw.com
Attorney for Appellants

July 19, 2025

RECEIVED

Jul 21 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Judge

App. Case No. 2024-001206

Janice Meusel and Adam Meusel,.....Appellants,

v.

Woodside Plantation Property Owners' Association, Inc., Woodside Plantation
Country Club, Inc. d/b/a Woodside Country Club, and Invited,.....Defendants,

Of whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and
Invited are the..... Respondents.

PROOF OF SERVICE

I certify that I have served the record on appeal on the date given below by
emailing it to the other counsel of record in this appeal at the address(es) noted below.

Daniel C. Plyler, Esq., at Daniel.Plyler@SmithRobinsonLaw.com
Austin T. Reed, Esq., at Austin.Reed@SmithRobinsonLaw.com
Rachel E. Lee, Esq., at Rachel.Lee@SmithRobinsonLaw.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Radeker Law, P.A.
drew@radekerlaw.com
Attorney for Appellants

July 19, 2025