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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-42-00740
Appellate Case No. 2025-000682

Gibbs International, Inc., ...Petitioner,

v.

Sarmad Harake, Eurosa, Inc., and Katherine Harake,..... Defendants

Of whom Sarmad Harake and Eurosa, Inc. are the.....Respondents.

PETITIONER GIBBS INTERNATIONAL, INC.'S REPLY TO RESPONDENTS' RETURN TO THE PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Court should grant the Petition for a Writ of Certiorari filed by Petitioner Gibbs International, Inc. ("Gibbs") for the following reasons:

- To address how circuit courts should handle motions to dismiss a cause of action that is based on an unrecognized legal theory, thereby justifying dismissal under Rule 12(b)(6) and existing precedent. In addition, the Harake Appellants represent that there is a lack of authority on this issue thereby conceding the existence of a novel issue making it appropriate for the Court to grant the petition.

- This case presents a novel issue as to how courts should address a defendant's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, when—at the very end of a scheduling order—the claimant asserts a brand new claim that requires substantial additional discovery and effort including, but not limited to: (i) taking additional international depositions; (ii) drafting and service of written discovery concerning the new claim; (iii) re-opening expert discovery deadlines and identifying/deposing new experts; (iv) re-deposing Appellant Harake; (v) deposing other fact witnesses; and (vi) postponing the date by which the case was to be ready for trial and encouraging disregard for scheduling orders.

- To address the Court of Appeals' decision to re-draft a claim that was described as being for tortious interference with "economic interest" into a claim for "intentional interference with contract" when it is undisputed that Respondent's pleading fails to assert the existence of an "intentional procurement of the breach of an existing contract"—the pivotal, required element of such a claim.

- The practical effect of the Court of Appeals' decision is the creation of a new civil litigation process in which a claimant need not be concerned with the business torts they assert and may call the tort whatever they please (even when claim is admittedly not recognized under South Carolina law) and the courts will save an untimely and improperly pled claim by converting it into a new business tort.

- To affirm that the holding in *Skydive Myrtle Beach v. Horry County* does not overrule *Holland v. Morbark, Inc.*, which prohibits untimely and prejudicial amendments.

In the underlying matter, the Harake Appellants filed an amended pleading asserting a new claim the circuit court dismissed on the ground that it is not recognized under South Carolina law. On appeal, the Court of Appeals blue penciled the Harake Appellants' pleading and selected one

possible counterclaim the Harake Appellants claim to have alleged in their amended pleading. If the Court of Appeals' decision is allowed to stand, then Gibbs is faced with filing a second motion to dismiss the same "counterclaim" that has been judicially re-named and has different elements than the counterclaim the circuit court previously dismissed. This places Gibbs in a position of defending against an amorphous pleading that was rescued by the Court of Appeals after the Harake Appellants chose to allege a claim that they admit has not been recognized under South Carolina law.

Regarding the ultimate resolution of this appeal, Gibbs' respectfully submits the Court's analysis should be simple. The circuit court correctly dismissed the Harake Appellants' fourth counterclaim for "tortious interference with economic interest" on the ground that the claim has not been recognized under South Carolina law, as admitted by the Harake Appellants. Since the unrecognized fourth counterclaim should have been dismissed, the next step is to determine whether the circuit court properly denied the Harake Appellants' request for leave to amend their pleading. In considering whether the circuit court properly denied the Harake Appellants' request to amend their pleading, the Court should consider the undue delay in the Harake Appellants' decision to assert a new counterclaim, the prejudice created by such a late amendment, and the futility of asserting their new claim. The Harake Appellants delayed assertion of their new purported claim causes extraordinary prejudice to Gibbs and the assertion of this new claim is also futile. Accordingly, the Court should affirm the circuit court's decision to deny the Harake Appellants leave to file an amended pleading to assert a new counterclaim.

This process begs the question of how a defendant is to respond to a claim that has not been recognized under South Carolina law? If a claimant alleges a claim that has not been recognized and courts are instructed to permit such claims to proceed under different legal theories, then is a

defendant required to move to dismiss all possible claims that the claimant failed to allege properly in their pleading even though never mentioned? The law does not require Gibbs to divine the Harake Appellants' unstated intentions regarding their pleading. Neither should Gibbs be required to have moved to dismiss an unpled claim for intentional interference with contractual relations when the Harake Appellants did not allege such a claim. Accordingly, the Court should grant Gibbs' Petition and provide circuit courts and lawyers in this State with guidance as to how to handle situations like the one before the Court in this appeal.

Moreover, if courts are permitted to revise pleadings to state new claims and alter the elements of a claim, then defendants like Gibbs have no way of knowing the elements of the claims being asserted against them, what evidence is relevant to dispute the claim, or the legal arguments available to defend against such claims. This places Gibbs and all similarly situated parties in a position of guessing what the claim being asserted *might* be, and the party asserting the claim is given a proverbial and prejudicial second, third, or fourth "bite at the apple" after filing a deficient pleading. The circuit court got it right and deserves this Court's support for dismissing a claim the Harake Appellants concede has never been recognized as a viable cause of action in this State, and the underlying allegations of which do not support any other recognized cause of action. Gibbs respectfully requests the opportunity to be heard on the merits of these critical issues.

ARGUMENTS

I. The circuit court's dismissal of the Harake Appellants' fourth counterclaim for "tortious interference with economic interest" should be affirmed and the Court of Appeals' opinion should be reversed.

A. Rule 12(b)(6) requires dismissal of a cause of action the claimant admits has never been recognized in South Carolina.

The Harake Appellants' Return ignores that the purpose of Rule 12(b)(6) is to provide a means for courts to dismiss claims when a pleading does not state facts sufficient to constitute a

cause of action. Simply stated, a party cannot state facts sufficient to constitute a cause of action when the cause of action has not been recognized in South Carolina. Therefore, it is proper for a circuit court to dismiss a purported claim when no South Carolina court has recognized it as a viable cause of action in this State.

If a litigant wishes to have such a claim recognized, then they have the immediate right to appeal the dismissal of the unrecognized claim. The Harake Appellants want to avoid the application of this simple procedural process regarding how the courts should address an unrecognized claim and, instead, request the unworkable solution of placing courts in a position of doing a litigant's job to re-draft an unrecognized claim and transform it into a viable cause of action.

In their Return, the Harake Appellants argue that Gibbs' reliance on *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007) is misplaced. The Harake Appellants argue *Doe* does not support the dismissal of an unrecognized claim because the court in *Doe* analyzed whether the plaintiffs' claim fit within other recognized causes of action.

Review of the procedural history in *Doe* reveals that it supports Gibbs' argument that the appropriate action by a circuit court confronted with a litigant's assertion of an unrecognized claim is to dismiss the claim pursuant to Rule 12(b)(6). In *Doe*, the circuit court dismissed a claim for loss of filial consortium because the claim was not recognized in this State. *Id.* at 66, 651 S.E.2d at 306. On appeal, the Court considered whether it would be appropriate to recognize such a claim and determined that it was not. Therefore, the Court held that "the trial court did not err in dismissing" the unrecognized claim, and it affirmed the dismissal. *Id.* at 70, 651 S.E.2d at 309.

The Court should grant Gibbs' Petition and clarify that circuit courts should dismiss claims that have not been recognized in South Carolina and, upon dismissal of that claim, the litigant may

seek a determination by the appellate courts as to whether a claim should be recognized in South Carolina.

B. The Court of Appeals erred in finding the Harake Appellants' pleading states a claim for intentional interference with contractual relations.

In their Return, the Harake Appellants contend that they were not required to use any "magic words" to state a claim for intentional interference with contractual relations. However, the Harake Appellants ignore the fact that they failed to allege the pivotal, fundamental element of their claim—the intentional procurement of a breach of an existing contract. *See Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993) (listing the elements of a claim for intentional interference with a contractual relationship). Intentional procurement of a breach of an existing contract is not a "magic word." It is a requirement, and the key element, to state a claim for intentional interference with contractual relations.

In response, the Harake Appellants contend that paragraph numbers 193, 194, 197, and 198 of their pleading support the Court of Appeals' conclusion that the fourth counterclaim alleges a "deliberate or intentional procurement" of a breach of an existing contract. However, review of those paragraphs demonstrates that the required allegation is not present. In fact, the pleading merely alleges that Gibbs—acting within its rights—simply chose not to transfer its own investment in Paysend Processing to Paysend UK. There is no allegation of malintent or that Gibbs had the obligation—contractual or otherwise—or legal duty to sell its interest in Paysend Processing or allow its investment in Paysend Processing to be rolled into Paysend UK. Moreover, the Harake Appellants never use the word "intentional," much less the words "intentional interference," and, most importantly, never even stated the required element of the claim—"intentional procurement of the breach of an existing contract." Thus, even when reading all of the allegations in a light most favorable to the Harake Appellants, there is no assertion that Gibbs

intentionally procured the breach of an existing contract. Rather, the Harake Appellants asked the Court of Appeals to re-draft their pleading and add this pivotal element by inference. The Court should grant the Petition and address whether this missing element should have been pled or, instead, whether a pleading can be re-drafted by the courts to add a required element (by inference) when considering the dismissal of a claim.

C. The Court should grant Gibbs' Petition and consider the appropriate standard of review applicable to a motion to dismiss one of several purported claims.

In their Return, the Harake Appellants rely heavily on the broad standard of review applied by courts considering whether to grant a motion to dismiss pursuant to Rule 12(b)(6) as set forth in *Sloan Construction Company v. Southco Grassing, Inc.*, 377 S.C. 108, 659 S.E.2d 158 (2008). In *Sloan*, the court stated that "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Id.* at 112–13, 659 S.E.2d at 161. The court in *Sloan* considered whether the circuit court erred in dismissing the *entire action* pursuant to Rule 12(b)(6)—not one of several purported claims.

This case is distinguishable from *Sloan* because this appeal concerns the dismissal of one of four counterclaims—not the entire pleading. The Court should grant Gibbs' Petition and address the intended scope of the Rule 12(b)(6) standard of review when a court considers whether to dismiss one of several alleged claims (which has admittedly not been recognized in this State)—not the dismissal of the whole pleading. Consideration of this distinction is important, because if a litigant asserts multiple claims—including one admittedly unrecognized claim—then circuit courts are placed in the difficult position of divining what that claim *could be* and stepping into the shoes of the claimant to choose the claim for them.

D. Judicial reinvention of a claim by re-drafting and adding an entire pivotal element of a cause of action goes too far.

The Harake Appellants' Return fails to address a seminal issue in this appeal—whether the Court of Appeals erred in re-drafting the Harake Appellants' pleading to state a new claim that was not alleged. Public policy supports consideration of this issue because the net result is that the legal elements required to state a claim for business torts, under the Court of Appeals' opinion, are meaningless because the courts are now allowed to infer words and meaning that are required to be asserted and are indisputably absent.

As an example, to state a claim for intentional interference with *prospective* contractual relations, a plaintiff must allege facts demonstrating: "(1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff." *United Educ. Dist., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). In contrast, to state a claim for intentional interference with a contractual relationship, a plaintiff must allege facts demonstrating: "(1) a contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) the damage resulting therefrom." *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). These two business torts are separate claims with substantial differences in the ultimate facts that must be pled and proven to succeed on the merits, including the fact that a claim for intentional interference with a contractual relationship requires an intentional procurement of the breach of an existing contract, while intentional interference with prospective contractual relations involves a potential contract.

Review of the Harake Appellants' fourth counterclaim demonstrates that neither claim is alleged but the Court of Appeals' opinion allows the subject business tort to be reinvented. The Harake Appellants' pleading references an agreement with Gibbs regarding capital investment in Paysend Processing, an entirely different investment with an entity in the United States—an

alleged contract.[1] (App'x 518–19). However, the alleged damages purportedly result from a failure to enter into prospective contracts (or obtain a prospective economic interest) that would have potentially resulted in the Harake Appellants having returns from that entity—Paysend UK. (App'x 519). The amalgamation of allegations regarding a contractual agreement related to capital investments in one company and the prospective opportunity to enter into contracts regarding another entity in another country demonstrates that it was improper for the Court of Appeals to decide that the Harake Appellants' claim was one arising out of a dispute related to an existing contract.

Rather than dismissing the Harake Appellants' unrecognized counterclaim for "tortious interference with economic interest," the Court of Appeals stepped into the shoes of the Harake Appellants and decided which claim they were alleging. In doing so, the Court of Appeals violated the principle that "the plaintiff is the master of his own complaint." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022).

Our courts should not rewrite a complaint to include claims that were never presented or construct legal arguments for a party. *See Martin v. Duffy*, No. CV 4:18-317-DCN-TER, 2018 WL 11462188, at *2 (D.S.C. Feb. 14, 2018), *report and recommendation adopted*, No. 4:18-CV-0317 DCN, 2018 WL 11462186 (D.S.C. Mar. 12, 2018), *aff'd*, 732 F. App'x 197 (4th Cir. 2018). The Court of Appeals violated this principle.

Gibbs and defendants in similar situations should not be put in the position of responding to alterations in the pleadings by a court when an entire element of a cause of action is added by

[1] Critically, the Paysend Processing contract cannot provide the basis for the claim because there can be no claim for intentional interference as to a contract to which the defendant is an alleged party. *See Callum v. CVS Health Corporation*, 137 F. Supp. 3d 817 (D.S.C. 2015); 30 S.C. Jur. Torts § 18.

the court. The South Carolina Rules of Civil Procedure provide a method of amending pleadings (Rule 15, SCRCP), and the Court of Appeals should have affirmed the dismissal of the Harake Appellants' claim and considered whether the circuit court properly denied the Harake Appellants' request to amend their pleading. The Court should grant Gibbs' Petition and address this issue.

II. The circuit court properly denied the Harake Appellants' request for leave to amend their pleading.

A. The Harake Appellants did request leave to amend their pleading under Rule 15.

In their Return, the Harake Appellants argue that they did not move to amend their pleading under Rule 15(a). The Record on Appeal and the Harake Appellants' submissions to the appellate courts directly, and unequivocally, contradict this position.

In the Harake Appellants' Brief to the Court of Appeals, the second issue listed in their Statement of Issues on Appeal was, "The Circuit Court erred in dismissing Appellants' Fourth Counterclaim without permitting them an opportunity to amend." (App'x 76). In support of their argument on that issue, the Harake Appellants stated, "Appellants timely requested an opportunity to amend relative to Gibbs' Motion, both in the hearing and in their Motion to Alter or Amend, noting that the claim could be recast as one for tortious interference with contractual relations. . . . In the November 30 Order, the Circuit Court rejected the amendment request by denying Appellants' Motion to Alter or Amend." (App'x 97–98). Thereafter, the Harake Appellants argued that "[t]he Rule 15(a) standard warranted permission to amend under these circumstances, and the Circuit Court erred in denying Appellants the opportunity to do so." (App'x 98).

It is nonsensical that in their Return, the Harake Appellants are taking the position that the analysis of the request for leave to amend—which was, in fact, requested during a hearing before the circuit court prior to their Motion to Alter or Amend and included as part of the Motion to Alter or Amend—should not be judged by the standard for reviewing whether it is proper to allow a

party to amend a pleading. Again, the Harake Appellants requested leave to amend pursuant to Rule 15(a) during the hearing on the Motion to Dismiss, and again in their Motion to Alter or Amend. (App'x 670 (stating "we would request that we be able to do that under Rule 15")); (App'x 630). Thus, any consideration of the Harake Appellants' request for leave to amend must be, necessarily, judged under the Rule 15 standard. Any contention to the contrary is simply not credible.

B. The issue of whether the circuit court properly denied the Harake Appellants' request for leave to amend is ripe for appellate review.

As the prevailing party, Gibbs was not required to request specific findings on a motion that was decided in its favor. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("[A] respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review."). Thus, Gibbs was not required to file a Motion to Alter or Amend and request a specific ruling as to the circuit court's basis for denying the Harake Appellants' request for leave to amend their pleadings. The Harake Appellants' arguments to the contrary are without merit and should be disregarded.

To the extent the Harake Appellants wanted a further ruling and an explanation from the circuit court as to the basis for the denial of their request for leave to file an amended pleading, the Harake Appellants did have the obligation to request a specific ruling from the circuit court. *See Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). As the prevailing party, Gibbs was not required to request any further ruling.

C. The Court should grant Gibbs' Petition to clarify the application of *Skydive* and *Holland*.

In their Return, the Harake Appellants misconstrue Gibbs' argument regarding the application of *Skydive Myrtle Beach v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), and *Holland v. Morbark, Inc.*, 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014). In *Skydive*, the court held that it is error to grant a motion to dismiss "without considering [a] request to amend the complaint." *Skydive*, 426 S.C. at 179, 826 S.E.2d at 587. The court, however, did not hold that every party is automatically entitled to amend if their complaint is dismissed. In *Holland*, the court held that consideration of a request for leave to amend a pleading pursuant to Rule 15, SCRCP, requires consideration of whether the amendment would prejudice any other party. Granting Gibbs' Petition presents the Court with the opportunity to clarify that the consideration of a right to request amendment as set forth in *Skydive* does not eliminate the courts' consideration of the prejudice that results from such a proposed amendment or its discretion to deny amendment on that basis. Likewise, the right to request amendment does not eliminate consideration of futility. The resulting prejudice and futility of the amendment act as independent bases for sustaining the circuit court's denial of the request for leave to amend.

D. The Record contains all of the necessary information for this Court's assessment of the prejudice Gibbs would suffer if the Harake Appellants were granted leave to file an amended pleading.

In their Return, the Harake Appellants argue that the Record in this case does not contain evidence of the prejudice Gibbs would suffer if they were granted leave to file an amended pleading. The Harake Appellants are incorrect.

The Record in this case demonstrates that Gibbs filed an Amended Complaint on May 3, 2017 (App'x 230). Thereafter, the parties engaged in substantial discovery—including several disputes as to the allowable scope of discovery in this case. After engaging in years of discovery, Gibbs obtained information and documents (which the Harake Appellants produced only after the circuit court forced them to do so) that supported the assertion of an additional claim on behalf of

Gibbs. Based on this newly discovered evidence, Gibbs moved to file its Third Amended Complaint within four (4) business days after receiving the requisite discovery to bring the claim.

In the course of the litigation, the parties agreed to several scheduling orders. Importantly, those controlling scheduling orders set forth several deadlines, such as the close of discovery (including depositions of expert witnesses), the deadline to file discovery motions, and a trial not before January 4, 2021. Despite the circuit court's issuance of several scheduling orders and the extensive discovery that occurred, the Harake Appellants chose to assert a new claim based on new facts and allegations after engaging in discovery for more than (3) years. Notably, and in contrast to Gibbs' filing of its Third Amended Complaint, the Harake Appellants made this decision despite the fact that they had all the information upon which they based their new purported counterclaim years earlier.

The prejudice that Gibbs will suffer if the new claim—based on new facts and allegations—is allowed to go forward is readily apparent from this simple procedural history. It would have been nonsensical for Gibbs to prepare a defense to the Harake Appellants' unasserted claim related to Paysend UK, and the record in this appeal demonstrates that the first instance in which the Harake Appellants placed any dispute regarding Paysend UK in issue was when they filed their amended pleading and asserted their purported fourth counterclaim for tortious interference with economic interest (App'x 518). They filed that pleading on August 20, 2020—more than three years after the litigation began and only a few months before the case was set to be called for trial (App'x 486,190). The prejudice Gibbs would suffer as a result of such a late amendment is readily apparent and in the record before this Court.

Furthermore, it is clear that the late assertion of this new claim is the textbook definition of prejudice under *Holland* and would require substantial additional discovery and effort including,

but not limited to: (i) taking additional international depositions; (ii) drafting and service of written discovery concerning the new claim; (iii) re-opening expert discovery deadlines and deposing new experts; (iv) re-deposing Appellant Harake; (v) deposing other fact witnesses; and (vi) postponing the date by which the case was to be ready for trial resulting in disregard for scheduling orders. *See Holland*, 407 S.C. at 235, 754 S.E.2d at 719 ("Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.").

III. The Court of Appeals erred in reversing the circuit court's dismissal of the Harake Appellants' counterclaim for "tortious interference with economic interest" based on their violation of the discovery rules.

The Court of Appeals erred in reversing the circuit court's dismissal of the fourth counterclaim as a discovery sanction. The Court of Appeals based its decision on the circuit court's purported failure to consider certain factors when determining the appropriate sanction. As stated in *Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 426, 887 S.E.2d 153, 157 (Ct. App. 2023), "[a]ctions taken in a deposition designed to prevent justice, delay the process, or drive up costs are improper and warrant sanctions." (Citation omitted).

In this case, Harake refused to testify as to the basis for the purported fourth counterclaim. In its November 18, 2020 order, the circuit court exercised its discretion and struck the Harake Appellants' fourth counterclaim on the ground that the refusal to allow Harake to testify as to the basis for the counterclaim justified dismissal of the claim. In denying the Harake Appellants' Motion to Alter or Amend the November 18, 2020 order, the circuit court stated that it considered "the arguments made in the Harake Defendants' motions/brief, as well as the motions, arguments, and briefings submitted in connection with the related hearing held September 22, 2020." (App'x 225).

Based on the party's submissions, which the circuit court expressly stated it considered, it is abundantly clear that the circuit court was aware of the nature of the discovery sought—testimony as to the basis of the fourth counterclaim. The discovery stage of the case was raised to the court by Gibbs in its motion to dismiss and, therefore, also considered by the circuit court. (App'x 620). The willfulness of the refusal to testify is also apparent from Gibbs' submissions to the circuit court. (App'x 617-620). Lastly, the resulting prejudice is apparent based on the simple fact that the circuit court acknowledged that the requested testimony related to the Harake Appellants' purported fourth counterclaim. The circuit court's consideration of the parties' submissions and filings demonstrates that the circuit court considered each of the necessary elements when it exercised its discretion and dismissed the fourth counterclaim as a discovery sanction. Accordingly, the circuit court's dismissal of the fourth counterclaim as a discovery sanction should not be reversed. *Cf. Farmer v. Farmer*, 388 S.C. 50, 57, 694 S.E.2d 47, 51 (Ct. App. 2010) (affirming an award of attorney's fees despite the fact that the family court "did not delineate its consideration of the [required] factors" because "awarding attorney's fees was proper").

CONCLUSION

This State recognizes certain individual business torts. Each of these torts has its own unique and independent characteristics. The case law specifies those elements that must be pled (and ultimately proven). When intentional conduct is a required element of a claim, it is reasonable to expect it to be included in the pleading.

The unfortunate new world under the Court of Appeals' opinion is that a claimant is not to worry about what is actually plead with business torts (even when they admit it is not recognized under South Carolina law) and the courts will re-draft a business tort for the claimant and infer elements of the claim that are not pled.

A great injustice would be to allow for the Harake Appellants to proceed with a claim they admit has never been recognized and then to re-draft it for them through unsubstantiated inference of words—words that constitute the entire pivotal element of the cause of action—which are indisputably, and unjustifiably, absent.

As part of its overall twenty-nine page order, the circuit court simply dismissed a claim under Rule 12(b)(6) that the Harake Appellants admit has never been recognized in South Carolina. This was a dismissal of a single claim, not an entire complaint, asserted at the very end of the discovery period under a scheduling order, resulting in extensive prejudice to Gibbs. And, again, the circuit court was evaluating a claim the Harake Appellants openly admit is not recognized. Opportunity was allowed for the Harake Appellants to file whatever motions they wanted to file. The circuit court, after allowing ample opportunity for those filings, properly denied the request to amend their pleading. The Harake Appellants also chose not to ask the appellate courts to recognize their purported claim for "tortious interference with economic interest" as a new claim under the law of this State. That just provides further support for the dismissal. Finally, is it really too much to ask that they plead what the case law requires as an element of the claim? Surely not.

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