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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge
Case No. 2024-CP-02-00187

Appellate 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 Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Appellants Janice Meusel and Adam Meusel ("Appellants")—homeowners in the Woodside Plantation subdivision—initiated this action against Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, Invited, and Woodside Plantation Property Owners' Association, Inc. on January 24, 2024, alleging negligence, intentional infliction of emotional distress, and a violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") against all Defendants and an additional claim for breach of fiduciary duty against the HOA. (R. pp. 12-18; Compl.). Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and

Invited ("Respondents") moved to dismiss Appellants' Complaint, and the circuit court granted Respondents' motion. Because this is an appeal from the circuit court's order granting Respondents' motion to dismiss, Respondents present the following facts and inferences drawn from the facts alleged in the Complaint in the light most favorable to Appellants.

Appellants own a piece of real property located in the Woodside Plantation subdivision located in Aiken County, South Carolina. (R. pp. 12-18; Compl.). Respondent Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club ("the Country Club") owns and operates the golf course around which the subdivision is situated. (R. pp. 12-18; Compl.). Respondent Invited is alleged to be a related corporate entity to the Country Club, and Appellants assert it "owns, operates, and controls the [C]ountry [C]lub." (R. pp. 13; Compl. at ¶ 8). Defendant Woodside Plantation Property Owners' Association, Inc. ("HOA") is the property owners' association that governs the homeowners within the subdivision. (R. pp. 12-18; Compl.).

Appellants' property directly borders the golf course. (R. pp. 14 ; Compl. at ¶ 11). Appellants allege that unidentified people that play the golf course would walk into Appellants' yard to retrieve errantly hit golf balls. (R. pp. 12-18; Compl.). According to Appellants, they have "quite politely noted to a few of these golfers that they should not be" in their yard. (R. p. 14; Compl. at ¶ 14). Appellants allege that they were met by a "torrent of hostility" from these trespassing golfers. (R. p. 14; Compl. at ¶ 15). Appellants assert that certain members of the Country Club (not the Country Club itself) and members of the HOA, launched "a campaign of racist harassment" against Appellants and that such harassment includes "numerous deliberate and unwarranted trespasses on the [Appellants'] property and the use of racial slurs and insults."[1] (R.

[1] Appellants assert that Appellant Janice Meusel is of Hispanic descent. (R. p. 14; Compl. at ¶ 12).

p. 14; Compl. ¶ 16). Appellants claim that they brought their concerns about this unwanted behavior to the HOA and to the Country Club; however, the harassment has allegedly not stopped. (R. pp. 14-15; Compl. at ¶¶ 17, 20).

To this end, Appellants filed suit against the HOA and Respondents seeking money damages stemming from causes of action for (1) negligence; (2) violation of the SCUTPA; and (3) intentional infliction of emotional distress.[2] (R. pp. 12-18; Compl.). On March 14, 2024, Respondents, in response to Appellants' Complaint, filed a motion to dismiss, asserting the Complaint failed to allege facts sufficient to establish the causes of action set forth against Respondents. (R. pp. 19-20; Resp. Not. of Mot. to Dismiss). On May 21, 2024, Appellants filed their memorandum in opposition to Respondents' motion to dismiss, asserting the Complaint stated facts to support each claim but, in the alternative, if the court found the Complaint did not state such facts, requested to amend the Complaint. (R. pp. 54-60; App. Memo. in Opp. to Mot. to Dismiss). Respondents filed their memorandum in support of their motion to dismiss on May 22, 2024. (R. pp. 61-69; Resp. Memo. in Supp. of Mot. to Dismiss). The hearing on the matter took place on May 23, 2024, in person, before the Honorable Courtney Clyburn-Pope.

On May 30, 2024, the circuit court granted Respondents' motion to dismiss in full. A formal order from the circuit court was entered on June 19, 2024. (R. pp. 1-8; Order granting Mot. to Dismiss). Appellants filed a motion to reconsider pursuant to Rule 59(e), SCRCP, on June 28, 2024; however, Appellants never formally moved to amend nor proposed an amended complaint. (R. pp. 21-25; App. Mot. to Recon.). After consideration of the motion, the circuit court denied Appellants' motion to reconsider in a Form 4 Order on July 9, 2024. (R. pp. 7-10; Form 4 Order).

[2] As noted above, there is an additional claim for breach of fiduciary duty against the HOA; however, that claim is not part of this appeal.

The circuit court's orders had no impact on the remaining allegations set forth in the Complaint against the HOA. Shortly thereafter, Appellants filed a Notice of Appeal with this Court on July 23, 2024.

STANDARDS OF REVIEW

Motion to Dismiss

"A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524 (Ct. App. 2009). If the facts set forth in the complaint do not support relief under any theory of law, the complaint must be dismissed. *See, e.g.*, *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003). "If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006).

Amendment of Pleadings

"[A] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP. Although it is usually encouraged that leave to amend be "freely given," *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005), a party's right to amend is not absolute. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) ("A trial court has discretion to deny a

motion to amend if the party opposing the amendment can show a valid reason for denying the motion."). One of the valid reasons for a court to deny amendment is futility. *Id.*

ARGUMENT

Appellants submit to this Court several different arguments to support their claim that the circuit court's decision should be reversed. However, none of these arguments contain merit to warrant reversal. This Court should affirm the sound decision of the circuit court dismissing Appellants' Complaint as to Respondents.

I. The Court should affirm the circuit court's dismissal of Respondent Invited.

Before addressing the individual arguments made by Appellants, as an initial housekeeping matter, the Court should summarily affirm the circuit court's dismissal of Respondent Invited. This is appropriate based on the dearth of allegations in the Complaint as to Respondent Invited's alleged involvement in this case.

Respondent Invited is mentioned in passing only twice in Plaintiff's Complaint. The first being an identification paragraph in the Complaint stating, "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." (R. p. 13; Compl. at ¶ 4). The second being a few subsequent paragraphs that make the conclusory claim that Respondent Invited "owns, operates, and controls" the Club and is otherwise responsible for the acts of the Club. (R. p. 14; Compl. at ¶¶ 8-9). None of these satisfies proper pleading requirements.[3]

[3] Insofar as Appellants rely on other allegations throughout the Complaint discussing "Defendants," this is the type of "shotgun pleading" that flies in the face of Rule 8, SCRCP, and is greatly disfavored by courts because it fails to put each individual defendant on notice of what the defendant allegedly did wrong.

Rule 8 (a) of the South Carolina Rules of Civil Procedure provides that "[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . . ." In *Skywaves I Corporation v. Branch Banking and Trust Company*, 423 S.C. 432, 455 n.9, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018), this Court explained that "even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient." (quoting *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986)).

Appellants' Complaint, with respect to Respondent Invited, is tantamount to the prohibited conclusory pleading that is devoid of any particularized allegations of fact. Appellants do not claim in their Complaint that they brought any of their complaints about trespassing or harassing golfers to anyone at Respondent Invited. Instead, Appellants' Complaint focuses solely on claimed wrongdoing on behalf of the Country Club and the HOA in response to complaints submitted by Appellants. In short, Appellants attempt to drag Respondent Invited into this litigation simply based on their belief that it is a company related to the Country Club.

Courts routinely dismiss complaints as to related companies that fail to allege specific facts to support bald conclusions of wrongdoing on behalf of a related company. *See, e.g.*, *In re Trilegiant Corp., Inc.*, 2014 WL 1315846, at *5 (D. Conn. Mar. 28, 2014) (concluding that "conclusory allegations" regarding a parent corporation's conduct were insufficient to survive a motion to dismiss "because the plaintiffs failed to allege any specific facts that supported their conclusions that the fraudulent actions at issue in that case were caused by, known to, or ratified by the parent company"); *In re Digital Music Antitrust Litig.*, 812 F. Supp. 2d 390, 417 (S.D.N.Y. 2011) ("Although Plaintiffs argue that they alleged that the Parent Companies were directly involved in the alleged conspiracy, a reading of the complaint indicates otherwise. The complaint

alleges direct involvement of the Parent Companies by way of generic references to 'defendants.' This approach is insufficient." (internal citations omitted)). One can only imagine the slippery slope that might be adopted by permitting related corporate entities to be named in lawsuits and to be forced to participate in lawsuits grounded in conclusory allegations that they are a related corporate entity.

Accordingly, the Court should affirm the circuit court's dismissal with respect to Respondent Invited.

II. The circuit court did not err in dismissing Appellants' negligence claim.

The circuit court ruled that Appellants' negligence claim failed as a matter of law because there was no duty owed by Respondents to Appellants with respect to the matters alleged in the Complaint. (R. pp. 1-8, Order granting Mot. to Dismiss). The circuit court was correct.

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). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Oblachinski v. Reynolds*, 391 S.C. 557, 561, 706 S.E.2d 844, 845-46 (2011). Without a duty owed by the defendant to the plaintiff, there is no actionable negligence. *Id.* "In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to him by the defendant." *Trask v. Beaufort Cnty.*, 392 S.C. 560, 566, 709 S.E.2d 536, 539 (Ct. App. 2011).

The general rule is that the common law imposes no duty on a person to act. *See Rayfield v. S.C. Dep't of Corrs.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). More directly on

point to the case at bar, "South Carolina does not recognize a general duty to warn a third party or potential victim of danger or to control the conduct of another." *Doe 2 v. Citadel*, 421 S.C. 140, 146, 805 S.E.2d 578, 581 (2017).

Although this is the general rule, exceptions do exist. *See Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). Here, Appellants appear to concede the overarching general rule's application in light of *inter alia* Appellants not being members of the Country Club, Appellants not utilizing the services provided by the Country Club, and employees of the Country Club not engaging in the underlying harassment/trespass. Rather, Appellants claim that the voluntary undertaking exception applies. (App. Br. at 6-8). Appellants are mistaken.

The voluntary assumed duty is explained in the Restatement (Second) of Torts § 323 and provides:

> One who 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.

Restatement (Second) of Torts § 323. South Carolina courts have adopted and consistently apply this section of the Restatement when determining whether a voluntary undertaking can give rise to a legal duty. *See, e.g.*, *Wright*, 426 S.C. at 213, 826 S.E.2d at 290-91 (citing Restatement (Second) of Torts § 323 for analysis of a voluntary undertaking created a duty); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 444, 494 S.E.2d 827, 833 (Ct. App. 1997) (same).

Appellants appear to argue that because they merely alleged the existence of a duty via a voluntary undertaking on behalf of Respondents, the Complaint is immune from Rule 12(b)(6) scrutiny. (App. Br. at 8) (arguing the existence of a voluntary undertaking "is matter for the application of the law to the facts adduced later in the case, not a *pleadings* matter"). Not so; courts consistently grant motions to dismiss when appropriate because of the lack of a viable duty which would support a claim for damages. *See, e.g.*, *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007) (affirming the grant of a motion to dismiss in light of the nonexistence of a legal duty); *Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (2009) (same). And of course, it is the court's responsibility to determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff. *See Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003).

As told by Appellants, Respondents undertook a duty to Appellants to take and perform reasonable measures to address "past harassment" and "stop the ongoing harassment." (App. Br. at 6-7). And as told by Appellants, the harassment has not stopped. (App. Br. at 7). However, the language of section 323 is clear, a duty can only attach whenever the undertaking is commenced and the "failure to exercise such care increases the risk of such harm" or the "harm is suffered because of the other's reliance upon the undertaking." Restatement (Second) of Torts § 323 (emphasis added). Assuming for the sake of argument that an actual undertaking was commenced by Respondents, nowhere in Appellants' Complaint do they assert that the alleged harm increased due to the acts (if any) of Respondents. At the very most, the alleged harm has simply continued. Additionally, nowhere in Appellants' Complaint do they assert that the alleged harm was suffered because of their reliance on Respondents' undertaking. There is no mention of Appellants ceasing to take action because they relied on Respondents to do so. One additional point concerning the plain language of section 323. The Restatement speaks in terms of the liability for "physical harm

resulting from [a] failure to exercise reasonable care to perform [the] undertaking." Restatement (Second) of Torts § 323 (emphasis added). But Appellants do not claim physical harm resulting from the actions of Respondents. All said, the circuit court properly identified that no duty was created pursuant to a voluntary undertaking based on the plain language of the Restatement.

With respect to the required increased risk of harm factor, this Court's decision in *Doe 2 v. Citadel*, 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017) is particularly instructive. In *Doe 2*, the plaintiff asserted The Citadel established a duty of care to plaintiff when it voluntarily undertook the duty to investigate claims of sexual abuse on its campus, turn offenders over to its own law enforcement entity, and arrest offenders. *Id.* at 144-45, 805 S.E.2d at 580. This Court disagreed. In analyzing the claims under the plain language of section 323, the Court noted that plaintiff was already being abused by the abuser at the time The Citadel commenced its investigation. *Id.* at 144, 805 S.E.2d at 580. The Court held, "[W]e find no evidence supports a showing that [The Citadel's investigation] increased the risk of harm to Doe. In fact, the record demonstrates that ReVille was already abusing Doe—for nearly two years—when the April 23, 2007 allegations were made. Thus, any failure of The Citadel to exercise due care in its investigation regarding a former camper could not have reasonably increased the risk of harm to Doe when the harm was already occurring." *Id.* at 147, 805 S.E.2d at 582.

Here, the alleged harassment of Appellants, like the alleged abuse in *Doe 2*, was already taking place prior to the matter being brought to Defendants' attention. And like The Citadel's actions in *Doe 2*, Respondents' actions to help curb the alleged harassment, whether reasonable or not, did not increase the harm to Appellants.

To avoid the simple application of the plain language set forth in the Restatement, Appellants suggest that the Restatement is not the law in South Carolina. (App. Br. at 8).

Respondents, however, assert that *Wright* and *Goode* makes certain that South Carolina has adopted this Restatement provision as law. *See Wright*, 426 S.C. at 213, 826 S.E.2d at 290-91 ("The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in section 323 of the Restatement . . . ."). At the very least, South Carolina has wholly embraced the Restatement's language and such an extensive embrace cannot be discounted. Importantly, as aptly observed by this Court in *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 506, 737 S.E.2d 512, 515 (Ct. App. 2012), "the South Carolina Supreme Court [has] signaled a reluctance to expand the voluntary assumption of duty doctrine beyond the circumstances set forth in the Restatement 323 and recognized in our jurisprudence." (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456-58, 578 S.E.2d 711, 714 (2003)). This makes perfect sense. Our courts have discouraged "contorting" the Restatement because doing so "may have a chilling effect" on various conduct that we want performed without the fear of subsequent liability if not always successful. *See Johnson*, 401 S.C. at 505, 737 S.E.2d 514; *see also Underwood v. Coponen*, 367 S.C. 214, 219 n.3, 625 S.E.2d 236, 239 n.3 (Ct. App. 2006) ("If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devises, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability.").

In lieu of analyzing this situation under section 323 to determine whether a voluntary undertaking has occurred, Appellants urge this Court to apply its reasoning in *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). (App. Br. at 8). In *Hurst*, the plaintiff entered into an oral agreement with William Sandy to draw design plans for a residential dwelling. *Id.* William's son, Floyd Sandy, inspected the building site, reviewed the plans for building code compliance

and adequate footings for the foundation, and interfaced with Sumter County on the plaintiffs' behalf. *Id.* Additionally, Floyd placed his professional engineering seal on the submitted plans. *Id.* After receiving approval, the dwelling was constructed but was plagued with various construction defects stemming from the design plans. *Id.* The plaintiffs thereafter filed suit against William, Floyd, and the construction company. *Id.* In response, Floyd argued that there was no cause of action against him because the design contract was made between plaintiffs and William. *Id.* The *Hurst* Court disagreed. In analyzing the duty arising from a voluntary undertaking, the Court reasoned, "The record shows that William Sandy assumed a contractual duty to draft the design plans. *Id.* It also shows that Floyd Sandy reviewed the plans prepared by William for building code compliance, general bearing capacity of the soil, setbacks for zoning requirements, and legal standards of Sumter County for foundations." *Id.* at 480-81, 494 S.E.2d at 852. The *Hurst* Court reversed the lower court's award of summary judgment based on the nonexistence of a duty owed by Floyd to plaintiffs. *Id.*

Hurst is plainly inapposite to this case. Unlike the instant case, the actions performed by Floyd—in directly reviewing and approving the design plans for plaintiffs' dwelling—increased the harm to the plaintiffs. And, unlike Appellants, the *Hurst* plaintiffs relied heavily on the professional engineering services that were provided to the plaintiffs. Appellants utilize *Hurst* for the narrow position that physical harm to the body does not have to occur for there to be a voluntary undertaking. Maybe so. But in *Hurst* there was clearly physical damage to the plaintiffs' dwelling based on the undertaking performed by Floyd in his professional engineering capacity. *Id.* Appellants cannot point to any physical harm to themselves or their property stemming from the actions of Respondents. Furthermore, it does not change the fact that Appellants' harm was not

increased because of Respondents' actions, nor does it change the fact that Appellants did not rely on the actions of Respondents.

Accordingly, the circuit court properly dismissed Appellants' negligence cause of action against Respondents for lack of duty. This Court should affirm.

III. The circuit court did not err in dismissing Appellants' claim for intentional infliction of emotional distress.

The circuit court ruled that Appellants' claim for intentional infliction of emotional distress was not supported by the allegations pled in the Complaint. (R. pp. 4-6; Order at p. 5-6). The circuit court, again, was correct.

In order to recover for the intentional infliction of emotional distress (or outrage), a plaintiff is required to 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.

Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (internal quotations omitted).

Appellants are quick to criticize the circuit court's brief analysis of this issue. (App. Br. at 9) (noting "[w]ithout much analysis"). However, Appellants' critique is not a meritorious critique, as the circuit court's analysis (however brief) illustrated Appellants' apparent defects in raising this cause of action against Respondents. (R. p. 5; Order at p. 5).

Appellants attempt to focus this Court's analysis on the circuit court's scrutiny of the adequacy of damages or emotional distress discussed in its Order. (App. Br. at 9-10). However, the circuit court's analysis rightfully began (and really could have ended) with Appellants' clear failure to demonstrate elements (1) and (3) of an intentional infliction of emotional distress claim. (R. p. 5; Order at p. 5). Those elements being (1) **the defendant** intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; and (3) the actions of **the defendant** caused plaintiff's emotional distress. (R. p. 5; Order at p. 5).

Even under the most favorable light available to Appellants, Appellants have failed to demonstrate outrageous conduct performed by Respondents. What Appellants have demonstrated is that they came to Respondents to present complaints about the actions of various golfers, and, although Respondents took some action, or no action at all, to address Appellants' complaints, the actions of various golfers did not abate. The pled facts are simply not, nor could they be, that Respondents intentionally or recklessly inflicted severe emotional distress on Appellants or that Respondents' actions caused Appellants emotional distress. To the contrary, Appellants are discussing the actions and the conduct of the various unnamed golfers—not Respondents—and attempt to attribute those actions to Respondents. (R. pp. 17-18; Compl. at ¶¶ 44-48). But all the Complaint shows is that Respondents, despite their attempts to do so, were unable to control the actions of others. If these golfers did act in this manner, shame on them. And perhaps Appellants could plead this claim against these golfers, but Appellants did not state a viable cause of action of intentional infliction of emotional distress with respect to Respondents. *See Park v. Southeast Service Corp.*, 771 F. Supp. 2d 588, 593 (D.S.C. 2011) (granting an employer's motion to dismiss a claim of outrage after one of its employees videotaped the plaintiff in the restroom noting the

employees' actions were not in furtherance of the business and that the employer in no way furnished the employee with a video camera to carry out his tort).

Appellants, in recognizing this defect highlighted by the circuit court, quickly seek shelter under a single averment in their Complaint that "[e]ach of the Defendants, separately, has taken responsibility for the conduct of the offending golfers involved in this case." (R. p. 17; Compl. at ¶ 44). However, this conclusory statement sans any factual support whatsoever does not push Appellants past a motion to dismiss. *See Park*, 771 F. Supp. 2d at 588 (holding that even the outrageous actions of an employee cannot always be imputed to an employer). An offer to assist in curbing the unwanted behavior of golfers is a far-cry from assuming direct responsibility for someone else's actions. The Court should reject Appellants' invitation to expand tort liability to immeasurable bounds.

Additionally, the circuit court found that Appellants failed to establish in their Complaint a prima facie claim for damages to satisfy a claim for intentional infliction of emotional distress and failed to establish that the conduct alleged was insufficient to plead this cause of action. It is well-established that there exists 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." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 258, 650 S.E.2d 68, 72 (2007).

These prohibited bald assertions are exactly what Appellants presented to the circuit court and are what the circuit court correctly rejected. Appellants, in conclusory fashion, claimed that they experienced "emotional distress, which was severe and beyond what a reasonable person would be expected to endure." (R. p. 17; Compl. at ¶ 47). A formulaic recitation of the elements does not satisfy pleading requirements in South Carolina. Additionally, with respect to whether

Respondents' alleged conduct was so "extreme and outrageous as to exceed all possible bounds of decency," the circuit court correctly concluded that Respondents' alleged conduct fell woefully short of such a heightened requirement.

Accordingly, the circuit court properly dismissed Appellants' intentional infliction of emotional distress cause of action against Respondents for failure to satisfy the elements. This Court should affirm.

IV. The circuit court did not err in dismissing Appellants' SCUTPA claim.

Appellants argue the circuit court erred in dismissing their claim brought pursuant to the SCUTPA. (App. Br. at 11-14). It did not.

To recover in an action brought pursuant to the SCUTPA, it is the plaintiff's burden to 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 public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). S.C. Code Ann. §§ 39-5-10 to -560. The SCUTPA makes certain that "unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. *Id.* at § 39-5-20(a). "Trade" and "commerce" "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 include any trade or commerce directly or indirectly affecting the people of this State." *Id.* at 39-5-10(b). "An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005).

Appellants argue the circuit court gave the SCUTPA claim too "narrow" an application and begs this Court to stretch the SCUTPA far beyond what the General Assembly intended in

codifying this cause of action. (App. Br. at 11-14). To adopt Appellants' argument, any business, in any situation, can be sued for a violation of the SCUTPA because it operates a business. Such a cause of action cannot stand on the facts of this case.

As stated in *Wogan*, an unfair trade practice requires a practice which is "offensive to public policy or which is offensive to public policy or which is immoral, unethical, or oppressive." 366 S.C. at 606, 623 S.E.2d at 120. Appellants contend that Respondents' practice in this situation is their "repeated failures to take reasonable measures to stop ongoing, repeated behavior by their members after acknowledging their duties to stop it." (R. p. 16; Compl. at ¶ 31). Assuming this is true, as we must, ineffective attempts to curb the actions of third parties are not "immoral, unethical, or oppressive." Nor are these alleged practices "deceptive" or "unfair." *See Wright v. Craft*, 372 S.C. 1, 26, 640 S.E.2d 486, 500 (Ct. App. 2006) ("Whether an act or practice is unfair or deceptive within the meaning of the [SCUTPA] depends on the surrounding facts and the impact of the transaction on the marketplace.").

The circuit court makes another good point in its Order. "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." (R. p. 4; Order at p. 4). "[Respondents] lack of [action] in this instance is not applicable to business or consumer transactions and does not establish a cognizable claim under the SCUTPA." (R. p. 4; Order at p. 4). Of course, there was no business transaction between Appellants and Respondents. Appellants do not allege that they have paid to be members of the Country Club. Nor do they allege that they engaged in any commercial transaction for Respondents to take action to attempt to curb the behavior of various unnamed golfers. Thus, Respondents were never engaged in "trade or commerce" with Appellants. *See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 639,

743 S.E.2d 808, 816 (2013) (quoting the definition of "trade or commerce" set forth in Black's Law Dictionary and noting it involves "[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic"). Respondents' alleged acts or practices did not derive from any "bargain and sale, barter, exchange, or traffic" with Appellants.

To be sure, there was no trade or transaction between Appellants and Respondents. But even if there was, *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993) warrants discussion and application to this case. This Court explained that an "unfair or deceptive act or practice that affects only the parties to a trade or commercial transaction is beyond the SCUTPA's embrace." *Id.* at 518-19, 431 S.E.2d at 271. In *Ardis*, the plaintiff engaged in an isolated sale with the defendant and that no other similar transactions were made or contemplated by the defendant. A one-off sale did not trigger a violation of the SCUTPA because there was no potential for repetition. *Id.* Here, like *Ardis*, at most, we have that "one-off" situation where Respondents allegedly informed Appellants that they would try to stop unwanted behavior. Respondents are in the golf business, not in the policing or private security business. *See id.* (finding no impact on public interest, at least in part because the defendant did not sell underground petroleum storage tanks in the ordinary course of his business, and allegedly unfair and deceptive acts arose from sale of such tanks).

South Carolina case law further evinces that Appellants' allegations regarding Respondents' purported "deceptive acts" simply do not give rise to situations in which the SCUTPA is triggered. *See, e.g.*, *Wright*, 372 S.C. at 22-32, 640 S.E.2d at 497-503 (a situation in which the selling defendant, after being questioned about a truck's condition, told the plaintiff that the truck had not been wrecked); *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906

(1989) (a situation in which the selling defendant sold the plaintiff a large number of mislabeled peach trees after advertising "all stock is true to name" and "we [the nursery] exercise the greatest care to keep our varieties true to name); *Dowd v. Imperial Chrysler-Plymouth, Inc.*, 298 S.C. 439, 381 S.E.2d 212 (Ct. App. 1989) (situation in which salespersons were trained to deceive customers); *Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987) (situation in which auto repair shop defendant was "padding" bills).

Accordingly, the circuit court properly dismissed Appellants' claim for violation of the SCUTPA against Respondents for failure to satisfy the requisite elements. This Court should affirm.

V. The circuit court correctly applied the applicable Rule 12(b)(6) standards.

In a short section of their brief, Appellants contend the circuit court "did not view the allegations of the complaint and the inferences from them in the light most favorable" to Appellants. (App. Br. at 14-15). Although Appellants have accurately cited the law concerning the lens a reviewing court must view a motion to dismiss, the circuit court did just that and should be affirmed.

Out the gate, Respondents must note that this conclusory argument should be deemed abandoned. Appellants cite to no specific fact in which they contend the circuit court viewed incorrectly. Nevertheless, as discussed *ad nauseum* above, the circuit court viewed the facts and all inferences to those facts in a light most favorable to Appellants. At the end of the day, Appellants allegations failed to set forth viable causes of action against Respondents.

VI. The circuit court did not err declining Appellants the opportunity to amend.

Respondents must note that Appellants never submitted a motion to amend their pleadings and never provided the circuit court with a proposed amended complaint.

Rule 15 of the South Carolina Rules of Civil Procedure governs motions for leave to amend pleadings. While Rule 15(a) states that leave should "be freely given," the right to amend is not absolute. "A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion." *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). Once such reason is that the proposed amendment "would be clearly futile." *Id.* at 182, 826 S.E.2d at 589. An amendment is clearly futile when "the defendant would have been entitled to judgment as a matter of law even with the amendment." *See id.* at 191 n. 8, 826 S.E.2d at 593 n. 8. That is precisely the case here.

Consider each of Appellants' causes of actions in turn. For their first cause of action, Appellants allege negligence. To prevail on a negligence claim, a plaintiff must first establish that the defendant owed a duty of care. *Wright v. PRG Real Estate Mgm't, Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). "If there is no duty, then the defendant in a negligence action is entitled to judgment as a matter of law." *Id.* As the circuit court correctly concluded—and as discussed more fully above—Respondents owed no duty to Appellants. (R. pp. 1-8; Order Granting Mot. to Dismiss). No additional allegations can alter the underlying relationship so as to impose a duty where none exists. Accordingly, Respondents were, and remain, entitled to judgment as a matter of law. This remains true regardless of any proposed amendment, rendering such amendment clearly futile.

For their second cause of action, Appellants assert a claim under the SCUTPA. As discussed above, Respondents are entitled to judgment as a matter of law on this claim. However, one reason is particularly dispositive here: the absence of any commercial relationship between the parties. As the circuit court pointed out, "the General Assembly intended for the SCUTPA to apply to business or consumer transactions." *Health Promotion Specialists, LLC v. S.C. B.d. of*

Dentistry, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (2013); (R. p. 6; Order Granting Mot. to Dismiss). No such transaction ever occurred between Appellants and Respondents. Without a business relationship, Appellants cannot maintain a SCUTPA claim. Respondents therefore remain entitled to judgment as a matter of law. Because no set of amended allegations could cure this fundamental defect, any amendment would be clearly futile.

For their final cause of action, Appellants allege intentional infliction of emotional distress. Once again, Respondents were, and continue to be, entitled to judgment as a matter of law. To state a claim for intentional infliction of emotional distress, a plaintiff must first show that "the *defendant* intentionally or recklessly inflicted severe emotional distress." *Argoe*, 392 S.C. at 475, 710 S.E.2d at 74 (emphasis added). As the circuit court properly noted, the conduct giving rise to Appellants' claim was that of individual golfers, not Respondents. (R. pp. 4-5; Order Granting Mot. to Dismiss). To pursue such a claim, Appellants would have to bring suit against those individuals directly. No amendment can cure the fact that Appellants have sued the wrong party. Accordingly, any amendment would be clearly futile.

Moreover, Appellants attempt to stretch *Skydive* well beyond its logical limits. According to their view, the mere invocation of the words "leave to amend" obligates the court to grant it, as if Rule 15(a) were some kind of procedural incantation. But that interpretation is inconsistent with both the letter and spirit of *Skydive*. The *Skydive* Court began its Rule 15 analysis by reaffirming that trial courts retain discretion to deny leave to amend when the opposing party presents a valid reason. *Skydive*, 426 S.C. at 182, 826 S.E.2d at 588. This plainly signals that Rule 15 does not confer an absolute right to a mulligan. To hold otherwise would encourage endless litigation of meritless claims and squander already limited judicial resources. Rather, *Skydive* stands for the narrow proposition that plaintiffs should not be denied leave to amend where they have not only

requested it, but also proposed concrete amendments to cure identified deficiencies—only to have the court reject the request without evaluating those proposed changes. *See id.* at 183, 826 S.E.2d at 589 (noting that "the circuit did not conduct an analysis to determine whether any amendment would be futile" and that the court of appeals found that the amendment would be futile "without articulating any such analysis."). That is not what happened here.

Unlike the plaintiff in *Skydive*, who submitted an amended complaint for the court's consideration, Appellants have yet to offer any indication of how they would cure the deficiencies identified by the circuit court. *See id.* at 193 n. 10, 826 S.E.2d at 594 n. 10. Instead, they simply proclaim entitlement to amend, as if uttering the phrase alone compels the court's blessing with no effort or justification required. This case also differs from *Skydive* in a critical procedural respect. The circuit court's order did not place Appellants in the untenable position of being "practically unable to litigate a motion to amend before [they] must file the appeal." *Id.* at 181, 826 S.E.2d at 588. Unlike the plaintiff in *Skydive*, Appellants filed a Rule 59(e) motion, which provided a means of tolling the thirty-day appeal period during which a motion to amend could have been pursued. *Id.* Accordingly, this case falls outside the narrow protections contemplated by *Skydive*. This Court should affirm the circuit court's dismissal.

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CONCLUSION

Accordingly, based on the arguments set forth herein, this Court should affirm the circuit court's decision dismissing Respondents from the case.

Respectfully submitted,

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August 18, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge
Case No. 2024-CP-02-00187

Appellate 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..... Respondents.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Smith Robinson Holler DuBose and Morgan, LLC, counsel for the Defendant/Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, does hereby certify that service of the **Final Brief of Respondents** in the above-captioned matter was made upon all counsel of record by email only this the 18th day of August, 2025, as follows:

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Date: Monday, August 18, 2025 11:06:03 AM
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Final Resp. Br., 3.pdf
COS-Final Brief, 2.pdf

Attached herewith and served upon you please find the Final Brief of Respondents in regard to the above matter.

Thank you!

Daniel C. Plyler

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