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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2025-001659

Charleston Carriage Works, LLC, ...Petitioner,

v.

Charleston Animal Society, Ellen Harley,
and Charleston Carriage Horse Advocates, LLC..... .....Respondents.

JOINT RETURN TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

It is beyond question that the use of carriage horses in urban areas has inspired spirited debate for years, not just in Charleston but nationwide. At the time this lawsuit was filed, Petitioner Charleston Carriage Works, LLC, owned and operated one of the carriage horse tour companies in Charleston. During the pendency of this appeal, Petitioner sold its business. (Mot. to Sub. Parties, filed in COA on 10/30/23)

On April 19, 2017, in the midst of years of the public debate and discord concerning Charleston's carriage horse operations, one of Petitioner's horses, Big John, fell during a tour and remained on the pavement as spectators gathered until a group of individuals, including firemen, assisted the horse to a standing position. Respondent Charleston Animal Society ("CAS") posted a video[1] on its YouTube channel comprised of footage of the incident sent to it by bystanders and added in the following subtitles:

> *Why were eyewitnesses intimidated to stop taking video when a horse collapsed?*
>
> *Was Big John exhausted or did he just "trip"?*
>
> *By law, the horses are not supposed to pull more than three times their weight. However, loaded carriages are never weighed, and Charleston does not enforce this provision.*
>
> *Big John could not get up on his own. A team of people had to try and pull him up.*
>
> *After several minutes of trying, finally some good news for Big John!*
>
> *Charleston Animal Society and several local and national animal welfare groups want an independent, scientific, peer-reviewed study to answer questions (with research) on whether the working environment for horses like Big John is truly safe and humane.*
>
> *Is this too much to ask for Big John and other working horses?*

[1] https://www.youtube.com/watch?v=WLXdlMsxBZM (last accessed 10/7/25).

As set forth in more detail hereinbelow, Joe Elmore, CEO of CAS, submitted an affidavit confirming that he directed the creation of the video (the "Big John video") from footage sent in by bystanders, including the subtitles, that he was not then, nor at the time of his affidavit, in possession of any information that would contradict the use of the word "collapse" to describe how the horse went from standing to lying on the pavement, and that he had no intent to harm Petitioner. (R. p. 1775) Rather, the intent in creating and publishing the video was to bring awareness to CAS's advocacy for the carriage horses and, specifically, CAS's push for an independent, peer-reviewed study of the carriage horse industry in Charleston. (R. p. 1775)

The Big John video was reposted by Respondent Charleston Carriage Horse Advocates ("CCHA"), a local advocacy group founded by Respondent Ellen Harley ("Harley"), on its social media sites. Petitioner alleges that the video went "viral", resulting in significant public backlash.

On August 17, 2018, Petitioner filed its Complaint, alleging that the Big John video, and specifically, the subtitle asserting that the horse "collapsed", were defamatory and implied Petitioner abuses its animals and is inhumane. Petitioner's Complaint also includes causes of action for civil conspiracy, "Violation of [Petitioner's] Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness", and tortious interference with business relations.

At the outset, Respondents took the deposition of Broderick Christoff, Petitioner's principal and sole owner. Mr. Christoff's testimony established that the use of the word "collapse" was a true, and at a minimum, a substantially true, statement. Specifically, he testified that Big John fell suddenly and completely to the ground. (R. p. 720, l. 13-21) Merriam-Webster defines "collapse" as "to fall or shrink together abruptly and completely".[2] Respondents also deposed

[2] https://www.merriam-webster.com/dictionary/collapse (last accessed 10/7/25).

Petitioner's vet, Dr. Nikki Byrd Little, who examined Big John shortly after his fall and, according to Mr. Christoff, "would know whether the horse collapsed or not". (R. pp. 638-639) However, she testified that if Big John tripped and fell, which is what Petitioner claims, that it would still be accurate to classify the incident as a "collapse." (R. pp. 1843-1846, 1848) Specifically, Dr. Little agreed that the definition of "collapse" as it relates to equines is "partial or complete loss of posture that can occur either at rest and/or at exercise" and that tripping and falling would classify as "collapsing". (R. pp. 1847-1848)

Ubiquitous in Petitioner's pleadings, including its Petition before this Court, are statements and arguments that Petitioner submits as "evidence" supporting its claims. Conspicuously absent from this multitude of assertions and allegations are citations to competent, admissible evidence in the Record on Appeal. For one, Petitioner has maintained all along that there are additional defamatory statements, outside of the Big John video, that are at issue. However, no such additional statements, made by Respondents that could fairly be said to identify Petitioner, have ever been specifically identified by Petitioner. Likewise, Petitioner has invited the lower courts, and now this Court, to find evidence of a conspiracy amongst Respondents to injure Petitioner's business but has failed to point to any competent evidence of an agreement, any concerted action, or any intent to harm on the part of Respondents. By way of example, Petitioner represents that there is evidence of a conspiracy amongst Respondents to "depress [Petitioner's] income". This phrase comes from a single email sent by Respondent Harley to three employees of CAS on March 30, 2017. In this email, Mrs. Harley states:

> "Started today [in reference to an apparent ad campaign]. Running 150k through next Wednesday. I am thinking the only way to defeat this City/Industry cartel is by depressing their income. The corruption is too great to fight and win."

(R. p. 387) There is no evidence or testimony that CAS requested this information or email, that the ad campaign that appears to be referenced in the email was part of a plan hatched amongst the Respondents, that CAS responded to this email, or that this email was an attempt by CCHA or Harley to propose a plan or coordinated effort amongst the Respondents. This email, which doesn't reference Petitioner and was sent prior to the Big John incident and video, is not evidence or testimony of any joint or concerted effort that would support a conspiracy cause of action. In fact, when Petitioner attempted to rely on this email during the hearing on Respondents' Motions for Summary Judgment, the lower court immediately questioned the admissibility and competence of the email, indicating that it constituted hearsay. (R. pp. 1655-1657)

By Consent Scheduling Order filed July 16, 2019, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020 (R. p. 75) Mediation was completed but was not successful.

Petitioner filed a Motion to Amend Complaint on April 6, 2020. (R. pp. 242-243) Respondents CCHA and Harley filed Motions for Summary Judgment on September 11, 2020. (R. pp. 329-333) Petitioner submitted a Motion for Amended Scheduling Order on October 20, 2020. (R. pp. 336-337) Respondent CAS filed a Motion for Summary Judgment on November 16, 2020. (R. p. 2028-2029) On May 27, 2021, the parties consented to an order of reference that referred to the following motions at issue here to the Master-in-Equity: Plaintiff's Motion to Amend Complaint (filed 4/20/20); Plaintiff's Motion for Sanctions against Defendants Charleston Carriage Horse Advocates and Ellen Harley (filed 10/2/20); Plaintiff's Motion for Amended Scheduling Order (filed 10/20/20); Defendant Charleston Carriage Horse Advocates' Motion for Summary Judgment (filed 9/11/20); Defendant Ellen Harley's Motion for Summary Judgment

(filed 9/11/20); Defendant Charleston Animal Society's Motion for Summary Judgment (filed 11/16/20). (R. pp. 58-64)

On September 29, 2021, the Master-in-Equity, Mikell R. Scarborough, heard these motions. The Master denied Petitioner's Motion for Sanctions on May 5, 2022. (R. pp. 51-57) The Master denied Petitioner's Motion to Amend its Complaint and Motion for Amended Scheduling Order on May 12, 2022. (R. pp. 40-50) That same day, the Master granted Respondents' respective Motions for Summary Judgment, finding, in part, that the speech at issue was protected by the First Amendment, that Petitioner had failed to produce sufficient evidence of a civil conspiracy to create a question of fact, and that no issue of material fact existed as to remaining causes of action. (R. pp. 4-39)

On May 12, 2022, Petitioner submitted a Motion to Reconsider the Order denying sanctions. (R. pp. 339-340) On May 20, 2022, Petitioner submitted a Motion for Reconsideration of the Master's orders concerning the motion to amend, the motion to amend the scheduling order, and summary judgment. (R. pp. 341-342) The Master denied the Motions for Reconsideration on August 2, 2022. (R. pp. 1-3) Petitioner filed its Notice of Appeal to the Court of Appeals ("COA") on August 11, 2022. (R. pp. 345-348) Following oral argument, the COA issued its order affirming the lower court on April 30, 2025. Petitioner filed a Petition for Rehearing on May 12, 2025, which was denied on July 24, 2025.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE LOWER COURT'S DENIAL OF PETITIONER'S MOTION FOR SANCTIONS AGAINST RESPONDENTS HARLEY AND CCHA, AS PETITIONER MISUNDERSTANDS RICHARDSON ON BEHALF OF 15TH CIR. DRUG ENF'T UNIT V. TWENTY-ONE THOUSAND & NO/100 DOLLARS ($21,000.00) U.S. CURRENCY & VARIOUS JEWELRY.

Despite Petitioner's assertions to the contrary, the COA did not misapply settled law, or ignore controlling law, with respect to the Petitioner's appeal of the lower court's denial of its motion for sanctions against Respondents Harley and CCHA. Instead, Petitioner appears to continue conflating the notions of a motion to compel and a motion for sanctions, and misunderstanding the holding in Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (Ct. App. 2020).

As a preliminary matter, and to be clear, the lower court never ruled on any motion to compel, filed by the Petitioner or any other party in this case, because there was not one before him. Likewise, there is no order on any motion to compel that was appealed or is before this Court. The Petitioner's reference to Harley's "contumacious conduct," "contempt for norms," "array of dirty tricks," "taste for the jugular," and "evidence of obstruction," are all unfounded, misplaced, and most notably to this Court not before it or on appeal. (Pet for Cert, p. 11)

Instead, the motion to compel and order referenced in the Petition is a June 17, 2020 order entered by Judge Price which concerned the production of two, and only two, things, the decisions on both of which were arrived at by consent and agreement of the parties: bank statements from CCHA and responsive documents from a search of CCHA's hard drive after search terms were provided by Petitioner. (R. p. 68) The production of the bank statements was ordered by Judge Bentley and the search of the hard drive was tabled Judge Bentley while the parties attempted to agree on search terms for production. (Id.) Specifically, Judge Bentley's Order provided:

> The Plaintiff's motion to compel discovery against Defendants is granted. The Defendants will produce the bank statements. As to the search terms issue[,] we will take this under advisement for thirty days. If a formal order is desired[,] the parties are free to submit one.

(Id.)

a. The lower court did not abuse its discretion with respect to the motion for sanctions regarding the bank statements, nor did the lower court assert that it "lacked jurisdiction" to consider the issue.

The background on Judge Bentley's Order and subsequent actions by the parties regarding the bank statements are both informative and substantiate the lower court's denial of Petitioner's motion for sanctions and the COA's affirmation of the same. A few hours before the motion to compel hearing on June 16, 2020, the attorney for CCHA and Harley (Joseph "Trey" Thompson) sent the following email to Petitioner's counsel, to confirm a telephone call that had just taken place between the attorneys: "I am confirming that we will provide the CCHA monthly bank statements (to the extent that either CCHA physically possess them or to the extent the bank can produce same) to show cash in, cash out of CCHA bank accounts." (emphasis added). (R. p. 1717) In the subsequent hearing that same day, Petitioner never objected to receiving "cash in, cash out" bank statements, as had been agreed between counsel for the parties.

On December 2, 2020, Jenkins Mann (co-counsel for CCHA and Harley) and counsel for Petitioner again agreed by telephone to resolve the dispute regarding the bank statements. Respondents would produce the bank statements in their entirety, redacting only the portion of the deposit tickets which could indicate the pledge source of the deposit. On December 11, 2020, CCHA produced the redacted bank statements as agreed. (R., p. 2027) The lower court, reviewing this same history between the parties regarding the production of the bank statements, and having considered all of Petitioner's arguments, correctly applied his discretion in ruling:

> Based on the June 16 email confirmation, Plaintiff received what it understood it would receive from CCHA and Harley. If Plaintiff objected to receiving cash in, cash out bank statements, it should have done so during the motion to compel hearing. Plaintiff cannot allege, in the face of its previous understanding, the willful disobedience or bad faith necessary for the Court to strike the Defendants' respective Answers and to set the case for a damages hearing. *Skywaves I Corp. v. Branch Banking & Tr. Co.*,423 S.C.432, 457, 814 S.E.2d 643,657."

(R. p. 53-54)

Petitioner's assertion that the lower court claimed he "lacked jurisdiction to rule on Petitioner's application for relief for Respondents' discovery abuses" at any point is simply incorrect and does not appear in the record. (Pet. for Writ, p. 10) The lower court directly addressed the entire history of the dispute between the parties regarding the bank statements and appropriately exercised his discretion in denying Petitioner's motion for sanctions. The Court of Appeals correctly affirmed that denial.

b. The lower court did not abuse its discretion with respect to the motion for sanctions regarding the search of Respondents' computers, nor did the lower court assert that he "lacked jurisdiction" to consider the issue and further correctly applied Richardson.

Again, as a preliminary matter, Judge Bentley's Order did not command the production of any documents from CCHA and/or Harley's computers, but instead Judge Price indicated, both in the hearing and in his subsequent Order, that Petitioner could return if an agreement concerning the search could not be reached among the parties. (R. p. 1585, ll. 11-20; R. p. 68)

After that hearing, counsel for CCHA and Harley engaged Rosen Litigation Technology and Consulting, Inc. ("Rosen") to search the requested hard drive and email accounts for information responsive to the terms to be provided by Petitioner's counsel. Shortly thereafter, counsel for CCHA and Harley began requesting search terms from Petitioner, repeatedly to no avail. On October 6, 2020, after multiple previous discussions with Petitioner's counsel, counsel for CCHA and Harley followed up with Petitioner's counsel by email noting, "I just need search terms [that] you want our expert to search on CCHA's computer". (R. p. 1721) After still not receiving search terms, counsel for CCHA and Harley followed up again with Petitioner's counsel on October 26, 2020:

Tommy,

> I'm following up again to see if you have a list of search terms that you want run through CCHA's computer. I cannot conduct a search unless and until have that. This is akin to a discovery request – it comes from the lawyer, not the expert. Certainly if you want to consult with your expert regarding the terms to be search[ed], I understand. If that's the case, please do so this week and get back to me.
>
> **I need to memorialize that I've been asking you for this list of search terms now for several months and repeatedly telling (as below) that I am prepared to respond to your request for information off of CCHA's computer (and any other databases you tell me you want us to search, if any) as soon as you tell me what it is to look for and where you want us to look. I remain concerned that this is an issue you don't want to resolve because you want to argue that you don't have documents or information to defeat summary judgment 2+ years into this case because of a failure by CCHA and Harley to respond to your discovery requests. …**

(R. p. 1720) (emphasis added).

After additional follow ups, by letter dated November 4, 2020, Petitioner provided CCHA with the terms it wanted searched. Rosen conducted the search and performed a de-duplication of the responses, a process that took approximately four months. CCHA thereafter reviewed the massive data compilation for privilege and work product, and then produced more than 10,000 responsive, non-privileged documents to the Petitioner.

Again, the lower court, having considered all of these issues before him, correctly applied his discretion in ruling:

> … Plaintiff also asks the Court, in the alternative, to order CCHA and Harley to turn over their computers for forensic inspection. Plaintiff has multiple problems here. First, "there must be an order of the Court before sanctions are imposed under subdivision O)...." *Richardson on Behalf of l5th Circuit Drug Enft Unit v. Twenty-One Thousand & no/100 Dollars ($21.000.00) U.S. Currency & Various Jewelry.* 430 S.C. 594, 599,846 S.E.2d 14, 16 (citation omitted). **As demonstrated, neither CCHA nor Harley violated Judge Price's June 17 Form Four Order. Plaintiff received exactly what Defendants said they would provide and what Plaintiff knew they would provide. Second, nothing in the order requires production of computers or responsive documents to search terms. The physical access to the computers is unnecessary because CCHA and Harley have nonetheless run the proposed search and provided Plaintiff in excess of 10,000 responsive**

> **documents. The delay in running the search, moreover, is due to Plaintiffs refusal to send search terms.** Fourth and finally, the court indicated that Plaintiff should return for another motion to compel hearing if physical access to the computers could not be worked out. Rather than seek a court order via a motion to compel, Plaintiff is hoping the Court will bypass this step and award access as a sanction under Rule 37(b). Again, this cannot be done. See *Richardson on Behalf of 15th Circuit Drug Enft Unit v. Twentv-One Thousand & no/100 Dollars ($21.000.00) U.S. Currency & Various Jewelry.* 430 S.C. 594,598400, 846 S.E.2d 14, 16-17 (discussing when sanctions are appropriate under Rule 37).

(R. p. 55) (emphasis added).

Again, Petitioner's assertion that the lower court claimed it "lacked jurisdiction to rule on Petitioner's application for relief for Respondents' discovery abuses" is simply incorrect and does not appear anywhere in the Record. (Pet. for Writ, p. 10) Petitioner's assertion appears to arise from a misunderstanding of both Richardson and the lower court's holding. Despite Petitioner's assertion, Richardson absolutely does not stand for the proposition that "**any judge** can consider a remedy for discovery abuses whether there has been a previous Order or not." (Id.) Instead, Richardson specifically holds that, in a situation wherein a party has not simply failed to respond to discovery altogether but has instead submitted responses that a requesting party finds objectionable, "there must be an order of the Court before sanctions are imposed under subdivision (b) [of Rule 37] …." Richardson, 430 S.C. at 599, 846 S.E.2d at 16 (citation omitted). "The distinction between the two subdivisions is that there must be an order of the Court before sanctions are imposed under subdivision (b), while under subdivision (d) a party may move directly for the imposition of sanctions." Id. Rule 37(d) is reserved for parties that fail to respond to discovery entirely. Id. ("But if a party simply fails to respond to discovery, the discovering party need not proceed under Rule 37(a) and (b); instead a remedy awaits in Rule 37(d)…."). As the lower court correctly concluded, the Petitioner's discovery was not ignored – "**CCHA and Harley have nonetheless run the proposed search and provided Plaintiff in excess of 10,000 responsive**

documents" –Petitioner cannot credibly suggest that Rule 37(d), SCRCP, has any application to this case. (R. p. 55) (emphasis added).

The lower court recounted and directly addressed the entire history of the dispute between the parties regarding the computer search, it applied its discretion in denying Petitioner's motion for sanctions, and it correctly applied Richardson's holding that where a party has responded to discovery, Rule 37(d), SCRCP, does not apply and that there must first be an order compelling production before a court can issue sanctions. The COA both correctly affirmed the lower court and correctly applied Richardson.

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE LOWER COURT'S DENIAL OF PETITIONER'S MOTION TO AMEND SCHEDULING ORDER.

Petitioner filed a Motion for Amended Scheduling Order on October 20, 2020, requesting additional time to conduct discovery. (R. pp. 336-337) The lower court denied the motion, correctly determining that Petitioner failed to show good cause why additional discovery should be permitted. (R. pp. 40-43) This was not an abuse of discretion and Petitioner has identified no error of law or deficit in evidence supporting the lower court's factual determinations.

Following the filing of Petitioner's Complaint on August 17, 2018, discovery began almost immediately. By Consent Scheduling Order filed July 16, 2019, nearly a year into the case, the parties agreed on a discovery deadline of February 7, 2020, a mediation deadline of March 9, 2020, and a trial not before date of May 11, 2020.

Petitioner's Motion for Amended Scheduling Order was based on three grounds: (1) that Petitioner's counsel suffered a heart attack in April 2019, followed by open heart surgery in August 2019 which Petitioner asserted caused its counsel to "miss[] about half the year"; (2) that COVID

has made "the efficient practice of law more difficult than usual"; and (3) that Respondents CCHA and Ellen Harley engaged in dilatory tactics that delayed discovery. (R. pp. 336-337)

While sympathetic to the very serious health issues faced by counsel for Petitioner, the lower court did not abuse its discretion in determining that those issues did not prevent Petitioner from participating in discovery. Rather, on May 3, 2019, a month after his heart attack, Petitioner's counsel took the deposition of Elizabeth Fort, a fact witness (R. p. 1814) and, apart from the deposition of Petitioner's sole member/owner (Broderick Christoff) which had already been taken, the remaining (eight) depositions in this case were taken in the year following counsel's heart attack. (R. p. 749)

As for COVID, the discovery deadline in the original scheduled order was in February 2020, before COVID began shutting the world down. Moreover, discovery, depositions, mediation, and motions hearings all took place in this case in 2020.

As for Petitioner's contentions that Respondents CCHA and Harley engaged in dilatory tactics (which the Record does not support), Petitioner failed to articulate how any such alleged tactics prevented it from conducting further discovery, such as scheduling depositions, or how the additional discovery sought was necessary for Petitioner's prosecution of its case.

Finally, although the discovery deadline was February 7, 2020, Petitioner inexplicably waited until October 20, 2020, to file its Motion for Amended Scheduling Order, months after Respondents filed Motions for Summary Judgment. Given that the case had been pending for over two years, that Petitioner failed to show good cause justifying the extension of the scheduling order, and that permitting additional discovery would prejudice Respondents, the COA did not err in affirming the lower court's denial of the Motion for Amended Scheduling Order.

III. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE LOWER COURT'S DENIAL OF PETITIONER'S MOTION TO AMEND COMPLAINT.

Petitioner sought to amend its Complaint pursuant to Rule 15, SCRCP, nearly two years into the case, to add both new plaintiffs and defendants and to add four additional causes of action, titled "Fraud/Slander/Libel Defamation Per Se", "Fraud/Piercing the Corporate Veil", "Slander per se/Outrage", and "Outrage". (R. pp. 242, 2071-2084) A motion to amend pleadings is addressed to the sound discretion of the trial judge, whose decision will not be disturbed unless there is shown an abuse of discretion. Anders v. Nash, 256 S.C. 102, 180 S.E.2d 878 (1971).

The lower court properly exercised its discretion in denying this motion, determining that Rule 15, SCRCP, did not allow the addition of new parties, that the amendments were untimely and would prejudice the Respondents, and that the amendment would be futile because the claims sought to be added were untimely. (R. pp. 43-49) The COA of appeals did not err in affirming this decision given that Petitioner failed to identify any error of law or absence of evidentiary support for the lower court's factual conclusions.

IV. THE COURT OF APPEALS CORRECTLY AFFIRMED THE LOWER COURT'S DETERMINATION THAT PETITIONER FAILED TO PRESENT EVIDENCE OF ALLEGEDLY DEFAMATORY STATEMENTS "OF AND CONCERNING" PETITIONER OUTSIDE OF THE "BIG JOHN VIDEO".

To prevail in a defamation action, the plaintiff must establish that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred. Burns v. Gardner, 328 S.C. 608, 615, 493 S.E.2d 356, 359 (Ct. App. 1997) (affirming the lower court's dismissal of defamation cause of action for failure to state a claim where allegedly defamatory statement failed to identify plaintiff). Here, the COA correctly affirmed the lower court's determination that Petitioner failed to present evidence of any allegedly defamatory statements, outside of the statements made in the "Big John video", that refer to, or in any way identify, Petitioner.

At the outset, it is important to distinguish between the Big John video, including its subtitles and text, and any other statements published by Respondents outside or apart from the video. Petitioner appears to have conflated these two categories. Respondents have not contested that the Big John video is "of and concerning" Petitioner and the COA did not hold otherwise. Rather, the lower court found that Petitioner had failed to present evidence of any *other* defamatory statements "of and concerning" Petitioner aside from the Big John video, which was addressed both by the lower court and the COA in separate analyses.

It cannot be ignored that Petitioner itself fails to identify a single specific statement, aside those contained within the "Big John video", made by Respondents that it alleges was defamatory, let alone one that identifies Petitioner with the requisite specificity. While Petitioner may argue that there is "overwhelming" evidence of other defamatory statements in the Record, conspicuously absent from Petitioner's appellate filings, including its Petition for Certiorari, are any citations to the Record evidencing any such statements. An issue of fact certainly cannot be created by argument of counsel unsupported by admissible evidence.

The COA did not err in affirming the lower court's determination that Petitioner failed to identify, let alone present evidence of, any allegedly defamatory statements published by Respondents outside of the Big John video.

V. THE LOWER COURT'S DETERMINATION THAT PETITIONER IS A LIMITED PUBLIC FIGURE FOR PURPOSES OF THE DEFAMATION ANALYSIS, AND THE COURT OF APPEAL'S AFFIRMATION OF THAT DETERMINATION, ARE SUPPORTED BY THE RECORD.

Petitioner argues that it did not voluntarily inject itself into the carriage horse controversy in Charleston until Respondents "attacked" it, and thus it cannot be a limited purpose public figure because it was simply defending itself. This argument is not supported by the Record.

The United States Supreme Court generally has defined a public figure as follows: "For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment." Gertz v. Welch, 418 U.S. 323, 345 (1974); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001) (plaintiff political candidate's engineering firm was a limited public figure under Gertz test in defamation action arising from statements candidate made during political campaign). In determining whether a claimant is a private or public figure, the court must focus on the "nature and extent of an individual's participation in the particular controversy giving rise to the defamation." Gertz, 418 U.S. at 352; Parker v. Evening Post Pub. Co., 317 S.C. 236, 243 n. 3, 452 S.E.2d 640, 644 n. 3 (Ct. App. 1994) (automobile dealer invited public's attention through extensive media advertising and, as to statements regarding his dealership, was a public figure).

A limited public figure, the type more commonly found, is an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions." Gertz, 418 U.S. at 351. The United States Supreme Court has identified a third category of involuntary public figures who become public figures through no purposeful action of their own. Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 473, 629 S.E.2d 653, 668 (2006).

All three types of public figures, just as public officials, must meet the New York Times standard of actual malice in order to recover damages for defamation. Erickson, 368 S.C. at 473,

629 S.E.2d at 668. Public figures and public officials are entitled to less protection from defamation than private figures because they enjoy greater media access and are less vulnerable to injury from defamatory statements due to their ability to publicly rebut such statements. Id.

To determine whether a plaintiff is a public figure for the limited purpose of comment on a particular public controversy, the Court considers whether: (1) the plaintiff has access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation. Id. at 474, 629 S.E.2d at 669.

Petitioner argues that it "did nothing to voluntarily inject himself [sic] into this controversy other than existing" and that it only publicly entered the controversy for the purpose of "defending against accusations he [sic] abused his [sic] horse." (Pet. for Cert, p. 25) The evidence presented by Petitioner, through the affidavits of its owner, Mr. Christoff, as to his public participation in this controversy suggests otherwise. (R. p. 351) ("For the past two decades, [Harley] and I frequently opposed one another at Tourism Commission meetings…"); (R. p. 364) ("Because I stood up to them at Tourism Commission meetings, Harley and Elmore identified me as the impediment to their plan to shut down the carriage tours because our frequent conflict, my science background, and my long history with horses prepared me to challenge their unscientific assertions to the City."); (R. p. 374) ("As I said above, in [Harley's] frequent appearances before City Council and the Tourism Commission, I often challenged her, pointing out that her information was not correct. I did the same thing with Charleston Animal Society.").

Moreover, Respondents presented evidence that Petitioner, through the actions of its owner, Mr. Christoff, injected itself into the debate over the operations of the carriage industry in Charleston and that it did so prior to the Respondents' publication of the Big John video. In the years leading up to the Big John incident, Mr. Christoff, who was routinely identified as being affiliated with and/or owning Petitioner, spoke at a number of City meetings concerning various carriage-related issues, including the March 14, 2017, City Council meeting and the November 23, 2015, February 4, 2016, and August 25, 2016 meetings of the City's Tourism Subcommittee. (R. pp. 664-713; 643-663)

Additionally, Petitioner has also appeared in, and through Mr. Christoff, has been quoted by, the media. An article published by the Post & Courier on August 23, 2016, concerning the carriage horse temperature ordinance, reports the following:

> Broderick Christoff, owner of Charleston Carriage Works, said carriage companies take horses' temperatures after every tour. If they are too high, the animals are allowed to rest.
>
> He also said that he thinks the media and the Charleston Animal Society have misled the public about the treatment of carriage horses. The tour companies take good care of them, he said.

(R. pp. 714-715) Mr. Christoff testified that he made these statements, although he believes he did so at a City Council committee or subcommittee meeting. (R. pp. 734-735)

A December 14, 2016, article titled "Charleston Panel Backs Lower Temperature Limits for Carriage Tours" reported on a study being proposed by CAS and states: "But Broderick Christoff of Charleston Carriage Works said the industry would be wary of participating in any study backed by an animal rights group." (R. pp. 743-745) Mr. Christoff testified that he believed he made these comments while speaking at a city meeting. (R. p. 271 [depo. pp. 78-79])

A February 20, 2017, article, titled "Carriage Company Owner Responds After Minor Incident Over the Weekend", reported an incident in which one of Petitioner's horses was spooked by a parade and included the following:

> We spoke with the owner of Charleston Carriage Works, Broderick Christoff, about the incident. He said a failure to follow city policy is what caused the minor incident with his carriage at the corner of King and Queen Streets.

(R. pp. 740-743) Mr. Christoff confirmed in his deposition that he made these comments. (R. p. 2026, l. 17-25)

Finally, a February 21, 2017, article published by the Post & Courier on the same incident reported as follows:

> "The parade gets louder and louder," Charleston Carriage Works owner Broderick Christoff said Tuesday. "The driver is basically just sitting there watching the fuse burn, and it gets to the point where the people on the carriage are trying to get the police officer's attention to just move so they can go.
>
> "At that point, the driver tells the people on the carriage, 'Hold on, because we've done everything we can do and it's going to be what it's going to be at this point.'"

(R. pp. 2095-2098) In both the article and in his deposition, Mr. Christoff stated that his intent was to make "an issue of" the incident to keep it from happening again, an incident he testified was caused by the Charleston police. (R. p. 2026 [depo. pp. 81-84])

All of these articles, and the meetings and incidents reported therein, occurred prior to the Big John video. See Atlanta Humane Soc. v. Mills, 274 Ga.App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005) ("Even a single interview given to the media may be sufficient to establish a defamation plaintiff as a limited-purpose public figure.").

Clearly, Petitioner has access to channels of effective communication, it has used its platform to voluntarily assume a role of prominence in the public debate concerning Charleston's carriage horse industry, and it has sought to influence the outcome of that controversy, which

existed prior to the publication of the Big John video. At a minimum, Petitioner chose a course of conduct, both before and after the Big John incident, that invited public attention. See Reuber v. Food Chemical News, Inc., 925 F.2d 702, 709 (4th Cir. 1991) ("Even 'involuntary' participants can be public figures when they choose a course of conduct that invites public attention.").

The COA did not err in affirming the lower court's determination that both before and at the time the Big John video was published, Petitioner had attained the status of a limited-purpose public figure in the context of the public debate surrounding the Charleston carriage horse industry.

VI. THE LOWER COURT AND THE COURT OF APPEALS APPLIED THE APPROPRIATE STANDARD OF REVIEW IN AFFIRMING THE LOWER COURT'S GRANTING OF SUMMARY JUDGMENT TO RESPONDENTS ON ALL CAUSES OF ACTION ASSERTED BY PETITIONER.

In determining that Respondents were entitled to summary judgment, the lower court found that Petitioner failed to present admissible, competent evidence sufficient to create a question of fact as to its civil conspiracy, "Violation of [Petitioner's] Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness", and tortious interference with business relations causes of action. This is the appropriate standard of review for these causes of action and the COA did not err in affirming the lower court's findings based on its application of the same. Petitioner has failed to identify any other standard of review it contends was applicable. Moreover, it appears from its Petition that its assignment of error is not the application of the "issue of material fact" standard of review, but rather the lower court's inability to find Petitioner's unsupported speculation and inferential leaps sufficient to create an "issue of fact".

As to the defamation cause of action, the lower court and the COA correctly applied a heightened standard of review in light of the fact that Petitioner is a limited purpose public figure in the context of the controversies surrounding Charleston carriage horse industry. Specifically, a limited purpose public figure must prove by clear and convincing evidence that the defendant acted

with actual malice in publishing a false and defamatory statement about the plaintiff to survive summary judgment. George, 345 S.C. at 456, 548 S.E.2d at 876.

Even if Petitioner was a private figure, the heightened standard, requiring clear and convincing evidence of actual malice, would nevertheless be applicable in this matter because the speech at issue relates to a matter of public concern. It is well-settled that, in a defamation suit involving a private plaintiff on a private matter, common law malice is presumed. However, when the allegedly defamatory statement relates to a matter of public concern, that presumption does not apply, and instead the plaintiff must prove both common law malice and actual damages. Erickson, 368 S.C. at 466, 629 S.E.2d at 665.

The Erickson Court discussed the rejection of the presumption of common law malice in the context of defamation cases involving media defendants. As discussed in pp. 24-25, the lower court correctly determined that Respondents are media defendants. However, the lower court also correctly determined that the heightened standard, requiring clear and convincing evidence of actual malice, was applicable in defamation cases involving speech on matters of public concern without regard to the media v. non-media defendant distinction.

It does not appear that this Court or the U.S. Supreme Court have had the opportunity to consider whether this heightened standard, rooted in the First Amendment of the U.S. Constitution, applies in defamation cases involving non-media defendants, the relevant precedence from the Federal judiciary clearly indicated that it is the content of the speech, not the identity of the speaker, that determines whether the heightened standard applies. Because Petitioner has not argued that the lower court erred in determining that the heightened standard applies in cases involving speech related to a matter of public concern without regard to whether or not the defendant is traditional "media", that issue is not before this Court. As such, additional argument will not be made herein,

rather, Respondents respectfully incorporate herein the argument made to the COA. (CAS Final Brief, pp. 27 -29)

The lower court and the COA's application of the heightened summary judgment standard, requiring clear and convincing evidence of actual malice, was appropriate given that Petitioner is a limited purpose public figure. Even if Petitioner were a private figure, the heightened standard is nonetheless appropriate here, where the speech relates to a matter of public concern, both because Respondents are media defendants and the media v. non-media distinction is immaterial in the context of speech related to a matter of public concern.

VII. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE LOWER COURT'S DETERMINATION THAT PETITIONER FAILED TO PRESENT ANY EVIDENCE OF MALICE.

When the First Amendment requires a plaintiff to prove actual malice, he must prove "that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement." Bose Corp. v. Consumers Union of United States, Inc., 466 U. S. 485, 511 n. 30 (1984); accord, Peeler v. Spartanburg Herald-Journal Div. of New York Times Co., 681 F. Supp. 1144, 1147 (D.S.C. 1988). Thus, as long as the defendant believed in good faith that what he said was true, it does not matter whether he acted out of spite or ill will toward the plaintiff. See Scott v. McCain, 272 S. C. 198, 201-02, 250 S.E.2d 118, 120-21 (1978). The question of whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law. Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 685 (1989).

Respondent CAS submitted the affidavit of Joe Elmore, its CEO, in which he states that, on April 19, 2017, CAS was contacted by members of the public who reported that a horse, identified as Big John, had collapsed to the pavement during a carriage tour and was unable to get

up without assistance. (R. p. 1775, ¶ 8) At Mr. Elmore's direction, CAS took videos of Big John received from eyewitnesses, added subtitles, and published the resulting video on CAS's social media sites and website. (R. p. 1775, ¶ 9) At the time Mr. Elmore instructed that the video be published, he was not in possession of any information that would call into question the veracity of using the term "collapse" to describe what occurred that left Big John lying there on the pavement. (R. p. 1775, ¶ 10) Mr. Elmore testified that even as of May 27, 2020, the date he signed his affidavit, he was still not in possession of any such information. (R. p. 1775, ¶ 10) In fact, one of the eyewitnesses who sent CAS footage that was used in the Big John video testified in her deposition that she believed at the time of the incident, and continues to believe to this day, that what she witnessed was a horse that had "collapsed". (R. pp. 1815-1820)

Mr. Elmore further explained that he directed that the video be published for the purpose of bringing awareness to the carriage horse issue and, specifically, CAS's push for an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. (R. p. 1775, ¶ 11) Mr. Elmore confirmed that in no way was it his intent to harm Petitioner or injure its business. (R. p. 1775, ¶ 11) See Dongguk Univ. v. Yale Univ., 734 F.3d 113, 123 (2d Cir. 2013) ("When there are multiple actors involved in an organizational defendant's publication of a defamatory statement, the plaintiff must identify the individual responsible for publication of a statement, and it is that individual the plaintiff must prove acted with actual malice.") (citing New York Times v. Sullivan, 376 U.S. 254, 287 (1964) ("[T]he state of mind required for actual malice would have to be brought home to the persons in the [defendant's] organization having responsibility for the publication of the [statement].")).

Respondents CCHA and Harley likewise presented testimony via affidavit that they neither shot the video that was posted regarding Big John's collapse on April 19, 2017, nor did they edit

or delete footage of the scene that day. (R. p. 432, ¶ 17) Further, CCHA and Harley presented uncontroverted testimony that they never published a statement that Big John "collapsed from heat and exhaustion", despite Petitioner's unsupported claims to the contrary, and that they republished the Big John Video only to raise awareness and support for the need of an independent, prospective, science-based, peer-reviewed study of the Charleston carriage industry. (R. p. 432, ¶¶16 & 18) Finally, CCHA and Harley presented evidence that the lower court correctly found to be uncontradicted that they did not publish the video with the malicious intent to harm the Petitioner or injure its business and they were not in possession then or now of any information that would call into question the veracity of the assertion that Big John "collapsed" on April 19, 2017. (R. p. 432, ¶¶ 19-20)

While Petitioner may argue that Respondents knew that the statements in the Big John video were false or otherwise acted with actual malice, those claims are not supported by admissible evidence and are conclusory at best. The COA correctly affirmed the lower court's determination that Petitioner failed to present evidence sufficient to create a question of fact as to actual malice. See Whitner v. Duke Power Co., 277 S.C. 397, 288 S.E.2d 389 (1982) (a conclusory statement in an affidavit as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment); Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (holding one may not create a genuine issue of material fact by speculation or an "inferential leap").

VIII. ALTHOUGH NOT ADDRESSED BY THE COURT OF APPEALS, THE LOWER COURT CORRECTLY DETERMINED THAT RESPONDENTS ARE "MEDIA DEFENDANTS."

Petitioner argues that, because Respondents CAS and CCHA are recognized as 501(c)(3) entities, they are incapable of being "media". Additionally, in assigning error below, Petitioner

frequently references the non-profit corporation act, submitting that Respondents have somehow violated the same. It is unclear how these arguments, which were not addressed by either the lower court or the COA, are relevant to the issues before this Court.

The lower court did, however, find that Respondents are media defendants, based on the evidence submitted by Respondents and considered that, in the age of the internet, blogging, social media, and the like, the traditional concept of "media" is no longer applicable. Respondents submit that this determination was correct and incorporates herein the lower court's analysis of the same as well as CAS's briefing on this issue. (R. pp. 30-31, 615-617)

IX. THE COA CORRECTLY AFFIRMED THE LOWER COURT'S DETERMINATION THAT PETITIONER FAILED TO PRESENT EVIDENCE SUFFICIENT TO CREATE A QUESTION OF FACT AS TO ITS CONSPIRACY CAUSE OF ACTION.

A plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (2021). The Paradis Court emphasized that intent to harm is an integral part of a civil conspiracy claim:

> Since civil conspiracy is an intentional tort, an intent to harm, which has also been discussed in our conspiracy law, remains an inherent part of the analysis. See 16 Am. Jur. 2d Conspiracy § 53 (2020) ("Since one cannot agree, expressly or tacitly, to commit a wrong about which they have no knowledge, in order for civil conspiracy to arise, the parties must be aware of the harm or wrongful conduct at the beginning of the combination or agreement. Thus, civil conspiracy is an intentional tort requiring a specific intent to accomplish the contemplated wrong." (footnotes omitted)).

Paradis, 433 S.C. at 574, 861 S.E.2d at 780, fn. 9.

At the outset, to the extent Petitioner's civil conspiracy claim is based upon speech that is protected by the First Amendment, the claim must fail. See Snyder v. Phelps, 562 U.S. 443, 460 (2011) (liability for civil conspiracy cannot be based on constitutionally protected speech).

Moreover, Respondents presented *admissible* evidence that there was no intent to harm Petitioner nor was there any agreement amongst them to commit an unlawful act or a lawful act by unlawful means. As set forth hereinabove, Respondents submitted affidavits, based on personal knowledge, testifying that they published the Big John video not with the intent of harming the Petitioner but instead to bring awareness to their push for a scientific study of Charleston's carriage industry, that they are not aware of any occasion in which the Respondents worked together for the purpose of harming Petitioner, and that any actions taken by the Respondents, whether or not in concert or individually, have been for the singular purpose of advocating for the carriage animals. (R. pp. 1775-1776, ¶¶ 9, 11, 16, 17; R. pp. 430-432, ¶¶ 5, 19, 23)

As discussed above, Petitioner believes an email, sent by Respondent Harley to Respondent CAS, is "evidence" of civil conspiracy to harm Petitioner. (App. Brief, pp. 26, 33, 41) ("The evidence ignored by the Master-in-Equity includes, but is not limited to, evidence of a deliberate conspiracy to "depress the carriage company's income…") ("[Respondents] [d]istributed an email on March 30, 2017 coordinating a joint plan to depress income"). The email referenced by Petitioner was sent by Harley to individuals at CAS on March 30, 2017 (prior to the Big John incident), and states: "I am thinking that the only way to defeat this City/Industry cartel is by depressing their income." (R. p. 387). There was no response from CAS and a single, unsolicited email is not evidence of an agreement or a conspiracy to harm Petitioner (which isn't even mentioned in the email). Moreover, the lower court did not ignore this email. Rather, it recognized

the incompetency of this "evidence" as hearsay. (R. pp. 1655-1656) This email, which does not reference Petitioner and to which there was no response, does not create a question of fact.

The burden was on Petitioner, and Petitioner failed to produce any admissible evidence, as opposed to inferential leaps, wild speculation, unauthenticated hearsay, and total fabrications, that Respondents combined or had an agreement to commit an unlawful act or a lawful act by unlawful means. More importantly, Petitioner has also failed to produce any admissible evidence establishing an intent to harm on the part of Respondents, either individually or collectively. Petitioner is fond of making sweeping accusations, such as: "The Court of appeals ignored the Respondents' pattern of coordinated acts to attack the Petitioner" (Pet. for Cert., p. 17), but fails to identify a single such act, let alone a pattern. The COA correctly affirmed the lower court's order granting summary judgment on the civil conspiracy cause of action.

X. THE COURT OF APPEALS CORRECTLY AFFIRMED THE LOWER COURT'S GRANT OF SUMMARY JUDGMENT ON PETITIONER'S "TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS" CAUSE OF ACTION BECAUSE PETITIONER CONCEDED THAT NO CONTRACT WAS BREACHED.

In attempting to assign error to the COA, Petitioner argues, for the first time, that its "Tortious Interference with Business Relations" cause of action should have been analyzed using the elements intentional interference with *prospective* contractual relations instead of intentional interference with a contract. Prior to the Petition before this Court, Petitioner has argued only that Respondents improperly interfered with Petitioner's franchise contract with the City of Charleston. (App. Final Brief, pp. 44-45; Petition for Rehearing, pp. 14-15). For its "Tortious Interference with Business Relations" cause of action, Petitioner's Complaint alleges that:

- Respondents "frequently and intentionally attempted to procure a breach of [the] franchise contract by publishing false and defamatory information about the [Petitioner]." (R. p 83, ¶ 24)

- Respondents "have no justification for attempting to interfere in the franchise contractual relationship with the [Petitioner] and the City of Charleston." (R. p. 83, ¶ 25)

- Petitioner, as a result of Respondent's alleged "dissemination of false information", "has faced challenges designed to thwart its contractual relationship or revocation of its franchise license. (R. p. 84, ¶ 27)

In granting summary judgment to Respondents, the lower court held that "[t]here has been no breach of the franchise contract, the subject of [Petitioner's] 'Tortious Interference with Business Relations' cause of action." (R. p. 35) The COA correctly affirmed this finding based on the evidence in the record: Petitioner's owner testified in his deposition that the franchise contract had never been terminated or threatened (R. p. 730, l. 23 – R. p. 731, l. 10) and Petitioner's counsel conceded as much at the summary judgment hearing (R. p. 1688, l. 13 – p. 1689, l. 14)

In its Final Brief to the COA, Petitioner argues that "the attacks on [Petitioner] were directed at interference in [Petitioner's] franchise agreement with the City" and even goes so far as to set forth the elements of its "intentional interference" claim:

> Intentional Interference
> 1. existence of a contract
> 2. defendants' knowledge of contract
> 3. intentional procurement of breach
> 4. absence of justification
> 5. damages.

(App. Final Brief, pp. 44-45) These are the elements of "Interference with a Contractual Relationship", see Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993), not "Interference with a Prospective Contractual Relationship". See Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990) ("To recover on a cause of action for intentional interference with prospective contractual relations, we hold the plaintiff must prove: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff.").

Now, Petitioner is asking this Court to review the lower courts' decisions using an entirely different cause of action and shifting the focus from the franchise agreement between Petitioner and the City to the Petitioner's new allegations that Respondents interfered with Petitioner's prospective contractual relationships with potential customers, an argument that was not raised in the Court of Appeals or in Petitioner's Petition for Rehearing. As such, this argument is not properly made at this juncture. See Rule 242(d)(2), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.").

To the extent that this Court is inclined to entertain Petitioner's interference with *prospective* contractual relations argument, Respondents would respectfully point to the absence of any competent evidence in the record of a specific prospective contract that Respondents intentionally interfered with, resulting in damage to Petitioner. To succeed on such a claim, "the plaintiff must demonstrate that he had a truly prospective or potential contract with a third party; that the agreement was a close certainty; and that the contract was not speculative…" Santoro v. Schulthess, 384 S.C. 250, 263, 681 S.E.2d 897, 904 (Ct. App. 2009) (finding insufficient evidence of interference with prospective contractual relations where plaintiff did not testify as to any specific prospective purchaser who would have made an offer on the property but for the existence of the defendant's actions alleged to be improper).

XI. THE COURT OF APPEALS CORRECTLY DETERMINED THAT PETITIONER ABANDONED ITS CIVIL RIGHTS CAUSE OF ACTION.

In its Complaint, Petitioner alleges a cause of action for "Violation of [Petitioner's] Civil Rights under Art. I, § 3, South Carolina Constitution – Gross Negligence, Recklessness". Essentially, Petitioner claims that Respondent CAS, acting under color of state law, knowingly

published false information and, in so doing, deprived Petitioner of its constitutionally guaranteed rights to conduct a lawful business and be free from threats of harm. (R. p. 82, ¶¶ 15-17) It further alleges that, because CAS acted in conjunction with CCHA and Harley in doing so, all Respondents are liable for violating Petitioner's civil rights. (Id.) Petitioner seeks monetary damages for this alleged deprivation. (R. p. 82, ¶¶ 18-19)

The lower court found that summary judgment was appropriate as to this cause of action because: 1) South Carolina does not recognize a cause of action seeking monetary damages for constitutional violations; 2) Petitioner failed to show any deprivation of a cognizable liberty or property interest; and 3) CAS is not a governmental entity, but even if a quasi-governmental entity, it was not acting under color of state law in taking any of the actions alleged by Petitioner. (R. pp. 35-38)

In its Final Brief to the COA, Petitioner completely failed to address the lower court's findings. It did no more than: 1) drop a footnote indicating that the elements of a conspiracy cause of action are indistinguishable from "the civil rights claim" and including a citation, without explanation, to "Dennis v. Sparks, 449 U.S. 241."; and 2) make the following conclusory statement: "The same evidence supports the plaintiff's claim that the defendants violated his civil rights since all defendants derive benefits from the government, and [CAS] is a quasi-governmental agency and individuals can be sued for violations of rights when they conspire with the government. Dennis v. Sparks, 449 U.S. 241[.]" (Pet. Final Brief, pp. 44-45) These conclusory references, devoid of any discussion, support the COA's determination that this issue was abandoned on appeal. See Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented

for review."); Rule 208(b)(1)(D), SCACR (requiring "discussion and citations of authority" for each issue in an appellant's brief).

CONCLUSION

For all of the above reasoning and law, Respondents respectfully submit that the Court of Appeals' opinion was correct, legally and factually, and that no basis exists for this Court to grant Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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