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Aug 14 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Honorable Edgar W. Dickson

Trial Court Case No. 2021-CP-10-01343

Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, Appellants,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and BREWER LAW FIRM, LLC, Respondents.

APPELLANTS' PETITION FOR REHEARING

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Amanda Pampu; and John Pampu

Introduction

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully move for rehearing of the Court's decision affirming in part and reversing in part the dismissal of their claims. Rehearing is warranted because: (1) the ruling incorrectly holds that the breach of fiduciary duty claim is duplicative of the professional negligence claim; (2) Amanda and John Pampu possess standing under the Second Amended Complaint; and (3) the finding that the breach of contract claim was inadequately pled directly contradicts the Complaint's detailed allegations. Reconsideration of these points is necessary to ensure Appellants are afforded the full procedural protections and substantive rights guaranteed by South Carolina law.

Arguments

I. Breach of Fiduciary Duty Claim.

The Court's determination that the breach of fiduciary duty claim merely duplicates the legal malpractice claim misconstrues both the facts and the applicable pleading rules. The Second Amended Complaint plainly differentiates the two: the breach of fiduciary duty is grounded specifically in Respondents' disclosure of confidential information months *after* their client-lawyer relationship had ended, whereas the professional negligence claim concerns standards of care breached *during* the representation. Allegations that the Respondents' unauthorized disclosure interfered with mediation and caused ongoing damages must, at this stage, be accepted as true—demonstrating a discrete injury and proximate causation unique to the fiduciary duty claim

A. Because the fiduciary duty breach occurred after the Respondents were no longer representing the Appellants, it was separate and distinct from the professional negligence claim.

The Appellants' Second Amended Complaint clearly delineates the breach of fiduciary duty as separate from the legal malpractice claim, focusing on the Respondents' disclosure of confidential information without consent approximately nine months *after* the Respondents' representation had been terminated, which caused financial harm to the Appellants. *See* (Second Amended Complaint, ¶¶ 2, 61-62; R. 111, 121-22). The allegations that the Respondents' letter "interfered with the mediation process, disrupting and negotiations and disadvantaging [Andrew Pampu]'s position in the mediation, all of which added and continued to cause damages to [Andrew Pampu]", which should have been taken as true by the trial court, all establish a proximate link between the Respondents' actions and the Pampus' damages. The fiduciary duty claim is based on the Respondents' breach of loyalty and confidentiality after the representation of been terminated, which are distinct from the professional negligence claim that centers on the Respondents' failure to meet the standard of care in during their legal representation.

The Court's reliance on *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, is misplaced; that case did not address the propriety of alternative pleading at the motion to dismiss stage and arose in a wholly different context at the trial of that matter.

B. The Opinion is contrary to the language in Rule 8(a) and 8(e)(2) and the Court of Appeals' *Smith v. Hastie* opinion that permit pleading professional negligence and breach of fiduciary duty claims in the alternative.

Critically, Rule 8(a) and 8(e)(2), SCRCP expressly authorize alternative and even inconsistent claims, so long as pled in good faith. Dismissing the fiduciary duty claim at this early stage imposes a restriction found nowhere else in South Carolina law and

deprives litigants—in particular, clients asserting professional liability claims against their former lawyers—of the procedural rights guaranteed to other parties. As *Smith v. Hastie* confirms, clients may pursue professional negligence and breach of fiduciary duty theories concurrently.

South Carolina courts favor substance over technical formality: “Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.” *Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) (emphasis added); *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986) (new rules of civil procedure abolished the restriction on pleading inconsistent causes of action; parties are permitted to plead and prove all claims without making an election at the pleading stage). The Supreme Court has abolished former restrictions on inconsistent pleading; concerns over double recovery are handled through election of remedies after verdict, not at the outset. *See Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

Rule 8(a) and Rule 8(e)(2) of the South Carolina Rules of Civil Procedure govern the requirements for pleadings and explicitly permit parties to plead in the alternative. These provisions reflect the modern approach to civil procedure, which prioritizes flexibility and fairness in pleadings over rigid technicalities. Rule 8(a) allows a party to demand relief in the alternative or of several different types, while Rule 8(e)(2) permits the assertion of multiple statements of a cause of action or defense, even if inconsistent, provided they are made in good faith. This framework ensures that parties can present all potential claims or defenses without prematurely electing a single theory of recovery.

Accordingly, the Court should grant rehearing, withdraw the original opinion, and allow Appellants to proceed on both the breach of fiduciary duty and professional liability claims in conformity with Rule 8 and established precedent.

II. Amanda and John Pampu have standing based on the allegations in the Second Amended Complaint.

The ruling that Amanda and John Pampu lack standing erroneously ignores the well-pled allegations in the Second Amended Complaint, which must be credited as true at the motion to dismiss stage. The Second Amended Complaint alleges that the Respondents contracted to represent all Pampus, including John and Amanda, in the federal and state cases, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” *See* (Sec. Amend. Complaint, pp. 4-5 at ¶14 and ¶ 15; R .113-14). This forms a basis for standing: contractual privity and a client-lawyer status are alleged, and both Amanda and John Pampu suffered injury as a result of Respondents’ breaches.

The trial court’s findings on pages 6-7 of the Orders that Amanda and John Pampu lacked standing solely because they were not parties to the underlying federal or state litigation misconstrues the law. The existence of a client-lawyer relationship is not dependent on whether the client is a party to a lawsuit or later becomes a party to a lawsuit. Standing is derived from the client-lawyer relationship, which depends on whether a person sought legal advice or representation—even if they were not a named litigant. *See Marshall v. Marshall*, 282 S.C. 534, 320 S.E.2d 44 (Ct. App. 1984) (existence of client-lawyer relationship turns on whether “client” was seeking legal advice or assistance and communicating in confidence with the lawyer for the purpose of obtaining legal advice or employing the lawyer professionally); *Crawford v. Henderson*, 356 S.C. 389, 589 S.E.2d

204 (Ct. App. 2003). The Second Amended Complaint specifically alleges Amanda and John Pampu were clients of Respondents and parties to the relevant contracts. Paragraph 13 alleges “the Lawyers accepted the representation of the Does to provide legal advice, services, and representation of the Does” *See* (Sec. Amend. Complaint, p. 4 at ¶ 13; R.113). It was clear error by the trial court to dismiss Amanda and John Pampu’s claims for lack of subject matter jurisdiction under Rule 12(b)(1), SCRC.P.

The Court’s conclusion that only Andrew Pampu can bring claims arising out of the lawsuits fails to consider the allegations in the Second Amended Complaint, which must be taken as true for the purposes of the motion, and the broader contractual obligations and the damages suffered by Amanda and John Pampu as a result of the Respondents’ conduct. Rehearing is warranted to correct this error and allow their claims to proceed.

III. The Appellants Breach of Contract Claim was Properly Pled.

The affirmation of the trial court’s dismissal of the breach of contract claim cannot stand in light of detailed and specific factual allegations in the Second Amended Complaint. The Second Amended Complaint describes an agreement between the Pampus and the Law Firms for legal services, the failure to deliver those services, and resulting damages. alleges that the Law Firms failed to provide the agreed-upon legal services, resulting in damages to the Pampus. *See* (Sec. Amend. Complaint, pp. 4, 19-20 at ¶¶ 14, 97-101; R.113, 128-29). The Court’s finding that the Complaint fails to allege how the Respondents breached any agreement is contradicted by the detailed allegations of the Respondents’ failures to meet their contractual obligations. Specifically, the allegations in paragraphs 27-29, 36, 38, 40-42 of the Second Amended Complaint establish breaches by

the Respondents, meeting the standard for pleading a contract claim. *See* (Sec. Amend. Complaint, pp. 7-9, at ¶¶ 27-29, 36, 38, 40-42; R. 116-18).

Contrary to the Court’s conclusion, these factual assertions, taken as true, establish a viable claim for relief and merit adjudication on the merits—not dismissal at the pleading stage.

Conclusion

For the foregoing reasons, Appellants respectfully request that the Court grant this petition for rehearing, reverse the rulings under paragraphs 2 and 3, and reconsider the affirmation of the trial court’s dismissal of the breach of contract claim. The Appellants seek a remand for further proceedings consistent with these arguments.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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August 13, 2025

Beaufort, South Carolina

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PROOF OF SERVICE

Pursuant to Rules 240 and 262 of the South Carolina Rules of Appellate Procedure, the undersigned hereby certifies that on August 14, 2025, a copy of the *Petition for Rehearing* was served on all counsel of record via electronic mail containing the above-referenced documents to each counsel's individual AIS email addresses as follows:

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Respectfully submitted,

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August 14, 2025

Beaufort, South Carolina

PENDARVIS LAW



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SC Court of Appeals

Via Email Only

The Honorable Jenny Abbott Kitchings
SOUTH CAROLINA COURT OF APPEALS
ctappfilings@sccourts.org

**RE: Andrew Pampu, et al. vs. CLAWSON FARGNOLI, LLC, et al.
Trial Court Case No.: 2021-CP-10-01343; Appellate Case No.: 2023-001779**

Dear Mrs. Kitchings:

Please see the following for filing regarding the above-referenced matter:

1. Petition for Rehearing; and
2. Proof of Service.

By copy of this correspondence, we are serving a copy of the enclosed documents via email to all counsel of record.

With warmest personal regards, I am

Sincerely,



Tracy Lyn Landry

Enclosures

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