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Oct 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Charleston County
Court of Common Pleas
Honorable Edgar W. Dickson

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

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

Andrew Pampu; Amanda Pampu; and John Pampu,Petitioners,

vs.

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

PETITION FOR WRIT OF CERTIORARI

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Certification of Counsel

The undersigned hereby certifies that Petitioners Andrew Pampu, Amanda Pampu, and John Pampu filed a petition for rehearing with the Court of Appeals and the Court Appeals ruled on the petition with finality on September 29, 2025.

Questions Presented for Review

1. Did the Court of Appeals err in affirming the dismissal the breach of fiduciary duty claim reasoning that it is “duplicative” of the professional negligence claim, despite allegations of distinct breaches occurring after the client-lawyer relationship ended, despite Rule 8(a) and 8(e)(2), SCRCPC authorizing alternative and even inconsistent claims, and by applying a standard appropriate for trial at the preliminary motion to dismiss stage?

2. Did the Court of Appeals err in concluding that Amanda and John Pampu lack standing, contrary to specific allegations establishing their client-lawyer relationship and resulting damages?

3. Did the Court of Appeals err in affirming the dismissal of the breach of contract claim against the Respondent law firms, despite detailed allegations of a contract, contractual breaches, and resulting damages?

Statement of the Case

Petitioners Andrew Pampu, Amanda Pampu, and John Pampu respectfully petition this Court for a writ of *certiorari* under Rule 242, SCACR, to review the decision of the South Carolina Court of Appeals affirming in part and reversing in part the trial court’s orders dismissing their claims. The issues presented in this case involve novel questions of law that have not been directly

addressed by this Court and are of significant legal importance warranting this Court's attention to correct material legal errors that undermine the procedural and substantive rights of the Pampus under South Carolina law. This Court's intervention is necessary to ensure the consistent application of South Carolina law and to protect the rights of litigants to pursue valid claims.

On March 19, 2021, the Pampus filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, asserting claims against Respondents, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fargnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq.¹ The Complaint alleged claims for professional negligence and breach of fiduciary duty against the Lawyers, and a breach of contract claim against the Law Firms. The Complaint alleges the Respondents' acts and omissions caused financial losses to the Pampus during their representation of the Pampus in a) a federal court lawsuit against a University for violations of Title IX, the United States Constitution, and the University's own disciplinary process arising from errors and mishandling of an investigation of an incident of Andrew Pampu's alleged nonconsensual sex with another student and b) a state court lawsuit against the individuals and others who made false statements and gave false testimony supporting the University's investigation. R. 36-37; Complaint, ¶¶ 1-2.

The Complaint alleges facts showing the Lawyers were negligent in 1) allowing their client, Andrew Pampu, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records, the results of which were contrary to what the Lawyers knew were the clients' desires and objectives, which was a key component of the Pampus' "consideration" to settle, and

¹ The individual Respondents will be referred to collectively as "the Lawyers" and the Limited Liability Company Respondents will be referred to as "the Law Firms."

without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to Andrew Pampus the full implication of this handwritten settlement agreement and how the University could refer to his student records to future schools, especially medical or dental schools; 3) in the manner in which they prosecuted the state court action, including substantial discovery deficiencies; and 4) the manner in which the Lawyers concluded the representation, including the manner in which they surrendered the materials related to their representation of the Pampus. R. 36-37; Complaint, ¶¶ 1-2, and R. 39-51; Complaint, ¶¶ 13-78. One or more of these negligent actions or related omissions were alleged to have caused substantial financial losses to the Pampus, including their payment of and continuing payment of substantial legal fees to successor counsel to mitigate their damages caused by the Lawyers and frustrating the purpose of the underlying litigation. R. 46; Complaint, ¶ 56 and R. 48; Complaint, ¶ 65. These same acts and omissions by the Lawyers form the basis for the Pampus' claim for breach of contract against the Law Firms. R. 54-55; Complaint, ¶¶ 97-101. After the Lawyers were discharged as counsel for the Pampus, the Lawyers acted in a manner establishing a clear and serious breach of their fiduciary duties of loyalty and confidentiality, including disclosing information related to their representation of the Pampus to counsel for the opposing parties without the Pampus' consent. R. 37; Complaint, ¶¶ 2, and R. 47-48; Complaint, ¶¶ 61-63.

On April 30, 2021, the Pampus filed an Amended Complaint asserting the same factual allegations along with the affidavit of Justin Dillon, Esq., an expert witness and lawyer with experience in litigating Title IX matters, which specifies at least one negligent act or omission by the Lawyers claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of his affidavit. R. 57-87; Amended Complaint. On May 9, 2021 and May 10, 2021, respectively, the Respondents filed their motions to dismiss the Amended Complaint

pursuant to Rule 12 (b)(6), SCRCPP and Rule 12 (b)(1), SCRCPP. R. 88-91, 95-98; Motions to Dismiss Amended Complaint. The Respondents' motions both asserted that there were no facts stated in the Amended Complaint supporting a claim for relief. On June 16, 2021, the Pampus filed a Second Amended Complaint asserting claims for professional negligence and breach of fiduciary duty against the Lawyers and a breach of contract claim against the Law Firms. R. 109-141, Sec. Amend. Complaint. The Second Amended Complaint is the operative pleading for this Petition for Certiorari and will be referred in this Petition to as "the Complaint."

On June 28, 2021 and June 30, 2021, respectfully, the Respondents filed motions to dismiss the Complaint pursuant to Rule 12(b)(6), SCRCPP and Rule 12(b)(1), SCRCPP, asserting that the Complaint failed to state facts sufficient to support a claim and asserting that Mr. and Ms. Pampu did not have standing to pursue any claims against the Respondents. R. 169-172, 194-197, Motions to Dismiss.

On March 2, 2022, a WebEx hearing on the motions to dismiss was held before the Honorable Edgar W. Dickson, during which the Complaint, legal memoranda, and arguments of counsel were presented, and after which Orders were entered on June 23, 2022 (collectively "the Orders"), granting the motions and dismissing the lawsuit. R. 6-31; Orders dismissing Complaint. On July 5, 2022, the Pampus timely filed a Motion for Reconsideration and to Alter or Amended Orders Dismissing the Complaint. R. 277-284; Motion for Reconsideration.

On October 23, 2023, Honorable Edgar W. Dickson entered an Order Denying Plaintiff's Motion for Reconsideration. R. 1-2; Order Denying Plaintiff's Motion for Reconsideration. The Pampus' Notice of Appeal was timely filed thereafter, and the parties submitted their briefs on their positions before the Court of Appeals.

On July 30, 2025, the Court of Appeals issued an Unpublished Opinion affirming in part

and reversing in part the Orders issued by the trial court dismissing the Pampus' claims. Unpublished Opinion No. 2025-UP-272, 2025 WL 2158945. The Court of Appeals found that the Complaint "*sufficiently alleged facts to support a cause of action for legal professional negligence and the circuit court erred in dismissing it.*" Op. at p. 1. The Opinion found that the "*claim for breach of fiduciary duty is duplicative and arises from the same set of facts as their claim for legal malpractice; thus, the Circuit Court did not err in dismissing it[,]*" citing RFT Mgmt. Co. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). Op. at p. 2. The Opinion found that the Circuit Court "*did not err in finding, Amanda and John Pampu, Andrew's parents, lacked standing[,]*" reasoning that "*Andrew's parents were not parties to the underlying federal or state lawsuits. Only Andrew was named as a party and signed the settlement agreement, thus, we find only Andrew can bring a claim against Respondents for any actions arising out of the federal or state lawsuit.*" Op. at p. 2. The Opinion also found that "*the Circuit Court did not err in dismissing Appellants' breach of contract claim. The Appellants' complaint fails to allege how Respondents breached any agreement. The complaint only states that Respondents 'fail[ed] to provide such services.'*" Op. at p. 2.

On August 14, 2025, the Pampus timely filed their Petition for Rehearing, which included the Questions Presented in this Petition. On September 29, 2025, the Court of Appeals issued its Order denying the Pampus' Petition for Rehearing.

Arguments

I. The Court of Appeals erred in not applying the Rules of Civil Procedure permitting pleading alternative claims.

The Court of Appeals' determination that the breach of fiduciary duty claim merely duplicates the legal malpractice claim misconstrues both the facts alleged in the Complaint and the applicable pleading rules.

A. The Pampus' breach of fiduciary duty claim is not duplicative of the professional negligence claim.

The Complaint plainly differentiates the two: the breach of fiduciary duty is grounded specifically in the Lawyers' disclosure of confidential information months *after* their client-lawyer relationship with the Pampus had ended, whereas the professional negligence claim concerns standards of care breached *during* the representation. Allegations that the Lawyers' unauthorized disclosure of information related to the representation interfered with the Pampus' state court claims and caused ongoing damages should have—at the motion to dismiss stage—been accepted as true demonstrating a discrete injury and proximate causation unique to the fiduciary duty claim, which is a separate and independent basis for liability.

The Complaint clearly delineates the breach of fiduciary duty as separate from the legal malpractice claim, focusing on the Lawyers' disclosure of confidential information without consent approximately nine months *after* the Pampus' representation had been terminated, which caused financial harm to the Pampus. *See* (R. 111, 121-22; Complaint, ¶¶ 2, 61-62). The allegations that the Lawyers' 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 and the Court of Appeals, all establish a proximate link between the Lawyers' actions and the Pampus' damages. The fiduciary duty claim is based on the Lawyers' breach of loyalty and confidentiality after the representation of been terminated, which are distinct from the professional negligence claim that centers on the Lawyers' failure to meet the standard of care in during their legal representation.

The Court of Appeals' reliance on RFT Mgmt. Co. v. Tinsley & Adams, LLC, 399 S.C. 322, 732 S.E.2d 166 (2012) 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’s holding 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), SCRPC 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, former 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). As recently as 2019, this Court recognized that the former code pleading restrictions on inconsistent pleading had been abolished; 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.

The South Carolina Court of Appeals should have applied the Georgia Supreme Court’s analysis in Titshaw v. Geer, 320 Ga. 128, 907 S.E.2d 835 (2024), and permitted the Pampus’ breach of fiduciary duty claim to proceed alongside their professional negligence and breach of contract claims. In Titshaw, the Georgia Supreme Court forcefully rejected automatic dismissal of alternative claims as “*duplicative*” merely because they arise from the same facts, holding that, “*plaintiffs are not prohibited from simultaneously pursuing different causes of action with different elements simply because the claims involve the same underlying conduct, the same damages, and duties deriving from the same source*” such as the client-lawyer relationship. 320 Ga. at 139, 907 S.E.2d at 845. The court disapproved of prior precedent dismissing claims for breach of fiduciary duty or contract that overlapped factually with malpractice, holding that alternative pleading of such causes is not merely tolerated but affirmatively protected in modern practice. The Titshaw court stressed that at the motion to dismiss stage, as long as the complaint alleges a separate breach—especially if, as here, it is based on conduct occurring after the representation ended—a distinct fiduciary duty cause of action must be allowed to proceed.

The Pampus pled a fiduciary breach based on post-representation conduct—disclosure of confidential information—and not merely the conduct underlying the negligence claim. As in Georgia, South Carolina’s Rule 8(a) and 8(e)(2) explicitly allow alternative and inconsistent claims when pled in good faith, and this Court found that “[a]t the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim. Skydive was—any

plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim.” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. at 180, 826 S.E.2d at 588. Accordingly, just as *Titshaw* held that dismissing alternative fiduciary duty claims at the pleading stage is contrary to both substantive law and the procedural rights embedded in modern rules of civil procedure, the South Carolina Court of Appeals should have allowed Petitioners to advance their distinct fiduciary duty claim for post-representation disclosures to discovery and adjudication, rather than foreclosing it as duplicative of professional negligence.

Accordingly, this Court should grant this Petition for *Certiorari* and allow the Pampus to fully brief these novel issues to this Court on why both the breach of fiduciary duty and professional liability claims should be allowed to be plead and litigated in conformity with Rule 8, SCRPC, and established precedent.

II. The Court of Appeals did not properly apply the Rule 12(b)(6) standard of review to the Complaint regarding (1) the Pampu parents’ standing and (2) the Breach of Contract cause of action.

The rulings that Amanda and John Pampu lack standing and that the Complaint failed to state a claim for breach of contract erroneously ignore the well-pled allegations in the Complaint, which should have been accepted as true at the motion to dismiss stage.

A. Improper application of the Rule 12(b)(6) standard—ignoring allegations and reasonable inferences on John and Amanda Pampu’s standing to sue.

The Court of Appeals acknowledged that, in reviewing a Rule 12(b)(6) dismissal, it must accept all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff, stating: “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” *Op.* at p. 1. The Court of Appeals also acknowledged

that dismissal is not proper merely because it doubts the plaintiff will prevail, and the review must be based solely on the allegations of the complaint. Id.

However, in its treatment of Pampu parents' standing and the breach of contract claim, the Court of Appeals failed to properly apply these principles. The Complaint alleges that the Law Firms 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 (R .113-14; Complaint, pp. 4-5 at ¶14 and ¶ 15). 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 the Respondents' breaches of their professional, fiduciary, and contractual duties.

The Court of Appeals' findings on page 2 of its Opinion 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 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 (R.113; Complaint, p. 4 at ¶ 13). It was clear

error by the Court of Appeals to affirm the trial court's dismissal of Amanda and John Pampu's claims for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP, based on the allegations in the Complaint.

The Court of Appeals' conclusion that only Andrew Pampu can bring claims arising out of the lawsuits fails to consider the allegations in the Complaint, which should have been taken as true for the purposes of the motion to dismiss, and the broader contractual obligations and the damages suffered by Amanda and John Pampu as a result of the Respondents' conduct. This Petition is warranted to correct this error and allow their claims to proceed.

B. Breach of Contract—The Complaint “only states” a failure to provide services.

The Court of Appeals affirmed dismissal of the breach of contract claim, asserting: *“Appellants’ complaint fails to allege how Respondents breached any agreement. The complaint only states that Respondents ‘fail[ed] to provide such services.’”* Op. at p. 2. The Court of Appeals cited the required elements of breach of contract (existence, breach, and damages), but its analysis did not identify or discuss any other factual allegations from the Complaint. The Complaint describes an agreement between the Pampus and the Law Firms for legal services, the failure to deliver the agreed-upon legal services, resulting in damages to the Pampus. See (R. 116-18; Complaint, ¶¶ 27-29, 36, 38, 40-42).

The Court of Appeals neither addressed factual specificity alleged elsewhere in the Complaint nor did it consider any reasonable inferences favoring the Pampus. In addition, the Court of Appeals failed to distinguish that the breach of contract claim is alleged only against the Law Firms and not the Lawyers.

The Rule 12(b)(6) standard, as restated by the Court Appeals itself, prohibits dismissal unless no set of facts or reasonable inferences from the complaint entitle the plaintiff to relief. A

statement that the Law Firms “*failed to provide such services,*” when read along with other factual allegations (such as promises to pursue certain litigation objectives, communicate legal advice, or protect the clients’ interests), states facts supporting a claim for breach of contract against the Law Firms. The Court of Appeals’ failure to address or analyze the full breadth of the pleading or the distinction between the parties against whom the breach of contract claim was asserted, instead reducing the claim to a single conclusory statement, shows it did not faithfully adhere to the proper standard.

Conclusion

This Court should grant this Petition for *Certiorari*, and allow the Pampus to fully brief these novel issues to this Court on a) why both the breach of fiduciary duty and professional liability claims should be allowed to be plead and litigated in conformity with Rule 8, SCRPC, and established precedent; b) why John and Amanda Pampu have standing to pursue the claims asserted in the Complaint; and c) why the Complaint states facts sufficient to support a claim for breach of contract against the Law Firms.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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October 29, 2025

Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Charleston County
Court of Common Pleas
Honorable Edgar W. Dickson

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

Appellate Case No. 2023-001779

Unpublished Opinion
No. 2025-UP-272 (S.C. Ct. App. filed July 30, 2025)

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

vs.

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

PROOF OF SERVICE

The undersigned hereby certifies that on October 29, 2025, a copy of the Petition for a Writ Certiorari filed on behalf of Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, was served on all counsel of record via electronic mail containing the above-referenced document to each counsel's individual AIS email addresses as follows:

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Respectfully submitted,

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October 29, 2025
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PENDARVIS LAW



October 29, 2025

VIA EMAIL AND US MAIL

The Honorable Patricia A. Howard
Clerk of Court
SUPREME COURT OF SOUTH CAROLINA
P.O. Box 11330
Columbia, SC 29211
supctfilings@sccourts.org

Re: Andrew Pampu, Amanda Pampu, and John Pampu vs. CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. Trial Court Case No.: 2021-CP-10-01343; Appellate Case No.: 2023-001779

Dear Ms. Howard:

Enclosed please find the following with regard to the above-referenced matter:

1. Appellants Andrew Pampu, Amanda Pampu, and John Pampu's Petition for a Writ of Certiorari;
2. Proof of Service; and
3. Check in the amount of \$250 representing the filing fee.

By copy of this correspondence and pursuant to the Court's standing Order, we are serving a copy of the enclosed documents via email to all counsel of record.

With warmest personal regards, I am

Sincerely,

PENDARVIS LAW OFFICES, P.C.

A handwritten signature in blue ink that reads "Tracy Lyn Landry". The signature is written in a cursive, flowing style.

Tracy Lyn Landry

Enclosures

cc: All Counsel of Record

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