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S.C. SUPREME COURT

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Unpublished Opinion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-Respondents,
vs.

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

**PETITIONERS-RESPONDENTS' REPLY TO RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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Petitioners-Respondents respectfully submit this Reply to address the Return's mischaracterizations of the pleadings, its failure to engage Rule 8's plain authorization of alternative and inconsistent pleading, its disregard of well-pled standing allegations, and its refusal to confront incorporated factual allegations supporting the breach-of-contract claim. The Return also offers no persuasive reason to deny certiorari, which is warranted to correct clear pleading-stage errors that conflict with settled rules governing motions to dismiss and Rule 8.

ARGUMENTS

I. The trial court erred by disregarding well-pled facts showing the breach of fiduciary duty claim is not duplicative of legal malpractice.

At the Rule 12(b)(6) stage, the Second Amended Complaint's fiduciary duty cause of action pleads facts supporting that claim and a theory distinguished from professional negligence, including allegations concerning conduct surrounding and following the mediation and settlement process and the client-lawyer relationship's fiduciary incidents; the Return itself acknowledges Petitioners argued a temporal and conduct-based distinction. The Return asserts Petitioners "attempt to draw a distinction between the professional negligence claims and the breach of fiduciary duty claims based on timing," and that Petitioners contended the fiduciary claim "arose after [they] fired the Lawyers," while negligence "arose before," but then declares the pleading "contradicts this distinction."

Rather than credit well-pled factual distinctions and draw reasonable inferences in Petitioners' favor, the trial court dismissed the claims solely because both arise from the client-lawyer relationship. The Return confirms the dismissal rested on alleged duplicity, not on the absence of fiduciary-duty elements pled. The Return states the court dismissed the fiduciary claim as "encompassed by the claim for legal malpractice," which the Court of Appeals affirmed as "duplicative."

Those rulings improperly treated overlap in background facts as dispositive, while ignoring additional fiduciary misconduct alleged and different duties implicated. The Return does not identify any pleading deficiency regarding the fiduciary elements but relies solely on a duplicative label. The Return argues that the fiduciary claim is duplicative without addressing how the Second Amended Complaint failed to plead fiduciary duty, breach, and damages as elements distinct from the professional negligence theory.

II. The Return fails to explain why Rule 8 permits no alternative pleading and offers no Rule-based interpretation.

The Return concedes Petitioners invoked Rule 8 but offered no analysis of the Rule’s text authorizing alternative and inconsistent statements of a claim. Instead, the Return relies on a conclusory assertion that duplicative claims “fail as a matter of law.” The Return contends “Rule 8(c), SCRCF, does not permit alternative pleading here” and characterizes the Pampus’ alternative pleading as a “logical fallacy,” without engaging the Rule’s language and while relying on duplicativeness as the sole rationale.

The Return’s only attempt at Rule 8 engagement is to argue what Hastie did not say; it never addresses why the Rules’ allowance of alternative theories at the pleading stage would not apply when factual development may delineate fiduciary from negligence-based breaches. The Return states Hastie did not consider whether “a plaintiff can allege these claims alternatively.” Then it declares alternative pleading “defies logic,” without quoting or interpreting Rule 8’s text or even attempting to distinguish the fact that claims for legal professional negligence and breach of fiduciary duty were asserted in the Hastie case.

III. The Second Amended Complaint alleges the Pampus parents’ standing; the Return does not rebut the standing allegations pled.

Petitioners alleged a client-lawyer relationship and resulting harms to “the [Pampus],” including the parents; the Return acknowledges Petitioners pointed the trial court to specific

paragraphs alleging representation of “the [Pampus]” and financial losses to “the [Pampus].” The Return does not rebut or offer any analysis on why those allegations were not sufficient to establish the Pampu parents’ standing in this case.

The trial court nonetheless concluded that only Andrew had standing because he alone was a party to the prior lawsuits and signed the settlement agreement, a merits-driven constraint that ignores the well-pled client-lawyer relationship with the parents and the independent injuries alleged; the Return repeats that rationale without addressing the pleading-stage standard. The Return recounts that the trial court held that because Andrew “was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing.”

The Return further concedes the Court of Appeals’ standing analysis turned on participation in the prior litigation and execution of the settlement, not on whether the Second Amended Complaint pled a client-lawyer relationship with direct harms to the parents. The Return states the Court of Appeals emphasized that Andrew “was the only one . . . who was a party” to the prior cases and that “only Andrew signed the settlement agreement.”

IV. The Return refuses to address incorporated fact allegations supporting the breach of contract claim; the dismissal for failure to plead breach was error.

Petitioners incorporated detailed factual allegations—promises, objectives, advice, and protections owed—that inform the pleaded contract terms and breach; the Return acknowledges Petitioners cited paragraphs “such as promises to pursue certain litigation objectives, communicate legal advice, or protect the clients’ interests,” yet labels them conclusory without engaging their substance. The Return asserts that, despite Petitioners’ reliance on specific allegations (§§ 27–29, 36, 38, 40–42), the Second Amended Complaint “fails to allege how Respondents-Petitioners breached any agreement,” characterizing those allegations as conclusory.

The Return also asserts duplicativeness as an alternative ground, again declining to analyze

the incorporated allegations that define contractual duties distinct from tort standards. The Return states the breach of contract claim “arises from the same set of facts as [the] legal malpractice” and is therefore duplicative.

V. The Return’s arguments against certiorari are unpersuasive; this case presents important Rule 12 and Rule 8 issues warranting review.

The Return’s section on why certiorari should be denied rests on assertions that there is no novel question, no conflict, and no dissent, but it does not engage that the lower courts’ approach effectively nullifies Rule 8 alternative pleading when overlapping facts exist and endorses a Rule 12 shortcut that disregards well-pled distinctions and incorporated allegations. The Return argues the petition “does not raise any special or important reason,” repeatedly asserting there is no novel question, no dissent, no conflict, and no constitutional or federal issue.

It also confirms that the dismissal rulings turned on duplicativeness and participation in prior litigation, not on any failure of the pleadings to allege elements of fiduciary duty, contract breach, or parental standing—precisely the sort of recurring pleading-stage errors meriting guidance. The Return’s summaries of the rulings emphasize duplicativeness for fiduciary duty and contract, and party/signatory status for standing.

Conclusion

For these reasons, this Court should grant this Petition for *Certiorari*, reverse the pleading-stage dismissal of breach of fiduciary duty, breach of contract, and the Pampu parents’ claims, and remand for adjudication on a developed record.

Respectfully submitted,

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