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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Jocelyn Newman, Circuit Court Judge

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Case No. 2022-CP-40-03484  
Appellate Case No. 2025-002579

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Suzanne Kay Young,

Appellant,

v.

Richland County Sheriff Leon Lott  
in his official capacity as  
Sheriff of Richland County,

Respondent.

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INITIAL REPLY BRIEF OF APPELLANT

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Kenneth M. Mathews  
1331 Laurel Street  
Post Office Box 7335  
Columbia, South Carolina 29202  
Telephone: (803) 252-1242  
South Carolina Bar number 3683

Attorney for Appellant

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## STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in finding this action barred by the statute of limitations and in failing to find the amended complaint naming the correct defendant related back to the date of the original pleading pursuant to Rule 15(c) of the South Carolina Rules of Civil Procedure?

## ARGUMENT IN REPLY

THE CIRCUIT COURT ERRED IN FINDING THIS ACTION BARRED BY THE STATUTE OF LIMITATIONS AND IN FAILING TO FIND THE AMENDED COMPLAINT NAMING THE CORRECT DEFENDANT RELATED BACK TO THE DATE OF THE ORIGINAL PLEADING, PURSUANT TO RULE 15(c), SCRPC.

Appellant rests on the arguments made in her principal brief and does not repeat them here. This reply is for the purpose of addressing certain arguments made by Respondent in his brief.

This case stems from the acts of Richland County Deputy Aiden Sean Evans, in his capacity as an employee of Respondent, Richland County Sheriff Leon Lott. Appellant contends that Sheriff Lott's attorney, who also represented Deputy Evans in this lawsuit, should have strictly complied with the requirements of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70(c), and sought the substitution of Sheriff Lott as the defendant in the case, when Sheriff Lott's attorney brought the motion for dismissal of Sheriff Lott's employee pursuant to Section 15-78-70(c) of the Act.

Respondent is mistaken in characterizing Appellant's argument as seeking to place a duty upon Deputy Evans to seek his employer's substitution under Section 15-78-70(c). On the contrary, Appellant's argument is premised on the fact that the same attorneys represented both Sheriff Lott and Deputy Evans. Lott and Evans stood in an

employer-employee relationship, and Appellant’s lawsuit against Sheriff Lott is premised on the actions of his employee, Deputy Evans. The same law firm<sup>1</sup> represented both Sheriff Lott and his employee, Deputy Evans, as shown by the separate motions to dismiss filed on their behalf. R. pp. \_\_\_ [motion filed December 14, 2022; motion filed August 2, 2023]. Under the circumstances of this case, the only logical inference is that Sheriff Lott provided for the representation of his deputy in the defense of this lawsuit by his own attorney. It was Sheriff Lott’s own attorney who filed the motion on behalf of Deputy Evans for his dismissal as a defendant, and it was Sheriff Lott’s own attorney who failed to strictly comply with the requirements of Section 15-78-70(c) of the Act, which provides: “In the event that the employee is individually named, the agency or political subdivision for which the employee was acting *must* be substituted as the party defendant.” See S.C. Code Ann. § 15-78-70(c) (emphasis added). The motion to dismiss filed on behalf of Sheriff Lott’s employee by Sheriff Lott’s attorney did not seek this mandated substitution. R. pp. \_\_\_ [Motion].

As argued in Appellant’s principal brief, authorities invoked in the court below by both Respondent and the trial court require strict compliance with the requirements of the Tort Claims Act. R. p. \_\_\_ [memorandum, p. 5; order, pp. 4-5]. However, the motion to dismiss filed by Sheriff Lott’s attorney on behalf of Sheriff Lott’s employee did *not* strictly comply with the statute invoked in the motion to dismiss by also seeking the required substitution. Based on the clear language of Section 15-78-70(c), Sheriff Lott

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<sup>1</sup> The two motions to dismiss establish that the same law firm, Crowe LaFave Garfield & Bagley, LLC, represented both Sheriff Lott and his employee, Deputy Evans, in the court below. R. pp. \_\_\_ [motion filed December 14, 2022, p. 2 ; motion filed August 2, 2023, p. 3].

should not be allowed to escape responsibility for answering this lawsuit, where *his own attorney failed to pursue the substitution mandated by the statute.*

Respondent argues that this case is controlled by *Flateau v. Harrison*, 355 S.C. 197, 584 S.E.2d 413 (Ct.App. 2003). Appellant disagrees. *Flateau* involved an entirely different factual situation. There, employees of a state commission personally sued certain members of the commission board. The Court of Appeals found the board members were not the proper defendants and further found the language of the statute placed no burden on the board members to seek substitution of the state agency, the commission. *See Flateau*, 355 S.C. at 206-07, 584 S.E.2d at 417-18. But the case now before the Court presents facts not presented in *Flateau*. Here, the attorney of the proper defendant, Sheriff Lott, who also represented the employee of the proper defendant, Sheriff Lott, sought dismissal of the employee as a defendant, without seeking the statutorily mandated substitution of the proper defendant, Sheriff Lott. Fairness and equity mandate that such action by Sheriff Lott's own attorney should not allow Sheriff Lott to escape responsibility for answering the lawsuit. If the Court disagrees with Appellant's position that *Flateau* is not controlling of the issue presented by the unique facts of this case, Appellant respectfully urges the Court to overrule its decision in *Flateau*.

Neither this Court nor the South Carolina Supreme Court has addressed the exact factual situation presented here, where the attorney for a governmental entity representing the employee of the governmental entity invoked Section 15-78-70(c) to seek dismissal of the employee while simultaneously failing to seek the procedural step of substitution of the proper party, the governmental entity, as mandated by the statute. This Court

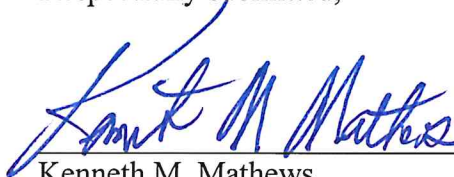
should find that, under the unique circumstances presented in this case, it is inequitable and simply wrong to allow the employer to escape responsibility for the tortious acts of his employee committed during the course and scope of his employment.

As was argued in the court below and in Appellant's principal brief, Sheriff Lott should be estopped from invoking the statute of limitations under the unique circumstances of this case. Liberally construing Rule 15(c) of the South Carolina Rules of Civil Procedure in accordance with its purpose, this Court should find the amended complaint relates back to the date of the original pleading and the action is not barred by the statute of limitations. *See Thomas v. Grayson*, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995) (purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations); *Hughes v. Water World Water Slide, Inc.*, 314 S.C. 211, 215, 442 S.E.2d 584, 586 (1994) (civil procedure rules should be liberally construed). This lawsuit should go forward.

#### CONCLUSION

This Court should reverse the dismissal order, find the action is not barred by the statute of limitations, and remand the case for trial.

Respectfully submitted,



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Kenneth M. Mathews  
1331 Laurel Street  
Post Office Box 7335  
Columbia, South Carolina 29202  
Telephone: (803) 252-1242  
South Carolina Bar number 3683  
Attorney for Appellant