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Apr 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

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

Appellate Case No. 2023-001779

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S.C. SUPREME COURT

Unpublished Opinion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' APPENDIX (Vol. 3 of 3)

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Nov 14 2023

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

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.

NOTICE OF APPEAL

Appellants/Plaintiffs, Andrew Pampu, Amanda Pampu, and John Pampu, appeal the following Orders issued by the Honorable Edgar W. Dickson:

1. Order, signed and filed on June 23, 2022, granting a motion to dismiss filed on behalf of Respondents/Defendants, Barrett R. Brewer and BREWER LAW FIRM, LLC, a copy of which is filed with this Notice of Appeal as **Exhibit 1**;
2. Order, signed and filed on June 23, 2022, granting a motion to dismiss filed on behalf of Respondents/Defendants, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq., a copy of which is filed with this Notice of Appeal as **Exhibit 2**; and
3. Order, signed and filed on October 23, 2023, denying Appellants/Plaintiffs' Motion for Reconsideration and to Alter and/or Amend the June 23, 2022 Orders granting Defendants/Respondents' motions to dismiss that was timely filed on July 5, 2022, a copy of which is filed with this Notice of Appeal as **Exhibit 3**.

On October 24, 2023, Appellants/Plaintiffs received written notice of the entry of the Order denying Appellants/Plaintiffs' Motion for Reconsideration and to Alter and/or Amend. A copy of the Orders subject to this appeal are included as Exhibits with this Notice.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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November 14, 2023

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS
CLAWSON FARGNOLI, LLC, SAMUEL
R. CLAWSON, JR., ESQ., AND
CHRISTINA R. FARGNOLI, ESQ.'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

On March 2, 2022, this Court heard a Motion to Dismiss¹ filed by Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“Clawson Fagnoli Defendants”). Appearing at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”) was Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC. Appearing at the hearing for the Clawson Fagnoli Defendants was James A. Dedman, Esquire, of Gallivan, White & Boyd, PA. Appearing at the hearing for Defendants Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“Brewer Defendants”) was R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC. Following the hearing, this Court took the Motion to Dismiss the Second Amended Complaint under advisement. After careful consideration and review of the Second Amended Complaint and caselaw, along with memoranda submitted by the Clawson Fagnoli Defendants, the Motion to Dismiss is **GRANTED**.

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Nov 14 2023

SC Court of Appeals

¹ The Clawson Fagnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their client. This order will focus solely on the Clawson Fagnoli Defendants’ representation of Plaintiff Andrew Pampu.

FACTUAL BACKGROUND

This case arises out of Plaintiffs' allegations of legal professional negligence and breach of fiduciary duty by the Clawson Fagnoli Defendants. Plaintiffs' allegations center primarily around the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu in a federal court lawsuit mediation.

On November 2, 2017, the Clawson Fagnoli Defendants agreed to represent Plaintiff Andrew Pampu in two separate lawsuits: (1) a case pending in the United States District Court for the District of South Carolina asserting Title IX and other claims against Clemson University (the "Federal Lawsuit") and (2) a case pending in the Pickens County Court of Common Pleas² asserting causes of action for defamation, civil conspiracy, and other tort claims against an accuser who submitted claims of sexual misconduct against Plaintiff Andrew Pampu to Clemson University (the "State Lawsuit").

The facts underlying the two lawsuits involved an accusation of sexual misconduct against Plaintiff Andrew Pampu. In Fall 2015, Plaintiff Andrew Pampu attended Clemson University as a freshman student. He was accused of and ultimately found by Clemson University to have engaged in "nonconsensual sexual activities" at an administrative hearing, resulting in Plaintiff Andrew Pampu's suspension from the school. (*See* Second Amended Complaint, ¶ 19). Plaintiff Andrew Pampu appealed Clemson University's administrative hearing decision but this appeal resulted in the imposition of heavier sanctions, including an additional suspension. (*Id.*, ¶ 20, 21).

As part of the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu, they participated in mediation with Clemson University. (*Id.*, ¶ 37). On March 2, 2018, prior to the

² A Pickens County jury returned a verdict in favor of Plaintiff Andrew Pampu following his jury trial in March 2022. There are pending post-trial motions that have not yet been ruled upon.

mediation, Plaintiffs emailed the Clawson Fagnoli Defendants with the goals for the mediation, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University's future treatment of Andrew Pampu's academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) Andrew Pampu's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

Id., ¶ 36.

On March 21, 2018, following a lengthy mediation, Plaintiff Andrew Pampu signed a settlement agreement with Clemson University.³ However, Plaintiff Andrew Pampu developed "buyer's remorse" in the days after the mediation and attempted to abandon the settlement. In the Second Amended Complaint, Plaintiffs contend that the settlement with Clemson University conflicted with the goals explained in the March 2, 2018 email and the goals for both the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41).

On May 8, 2018, Plaintiff Andrew Pampu terminated his attorney-client relationship with the Clawson Fagnoli Defendants and sought new counsel. (*Id.*, ¶ 47-48). Clemson University filed a motion to enforce the settlement in the Federal Lawsuit, which was ultimately granted. (*Id.*, ¶ 55-57).

³ Plaintiffs Amanda Pampu and John Pampu were not signatories to the Settlement Agreement. (*Id.*, ¶ 39).

PROCEDURAL BACKGROUND

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint against Defendants in the Charleston County Court of Pleas.⁴ In their Second Amended Complaint, Plaintiffs assert claims against the Clawson Fagnoli Defendants for legal professional negligence and breach of fiduciary duty. They allege:

[t]he Lawyers failed to meet the minimum standard or care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

Id., ¶ 83.

On June 28, 2021, the Clawson Fagnoli Defendants filed a Motion to Dismiss the Second Amended Complaint. A hearing on that Motion was held before this Court on March 2, 2022.

STANDARD OF REVIEW

Rule 12(b)(6) motions challenge the legal sufficiency of a complaint. In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the Court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App.

⁴ Plaintiffs initially filed suit against Defendants on March 19, 2021 and did not include an expert witness affidavit as required by the statute. The Amended Complaint was filed on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. The Complaint was then amended for a second time on June 16, 2021 to include arguments from the Defendants' respective Motions to Dismiss that asserted Mr. Dillon's affidavit was defective. The substantive allegations across the three (3) Complaints remained virtually the same.

2002). The court “must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff’s favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

DISCUSSION

I. Plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs’ claims are dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiffs’ allegations of legal malpractice center almost exclusively around Plaintiff Andrew Pampu’s unhappiness with the settlement following the Federal Lawsuit mediation. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Clawson Fargnoli Defendants committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the Clawson Fargnoli Defendants in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the Clawson Fargnoli Defendants induced Plaintiff Andrew Pampu into signing the mediation agreement. Plaintiff Andrew Pampu’s later regret regarding the terms of the settlement agreement is not a proper ground for a legal malpractice claim.

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the Clawson Fargnoli Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Clawson Fargnoli Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Clawson Fargnoli Defendants. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Therefore, Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

II. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs Amanda Pampu and John Pampu's claims are dismissed for lack of subject matter jurisdiction pursuant to the South Carolina Rules of Civil Procedure 12(b)(1) as Plaintiffs Amanda Pampu and John Pampu lack standing to assert claims in this lawsuit. Neither Amanda Pampu and John Pampu were parties to the Federal Lawsuit or the State Lawsuit. The only named party is Plaintiff Andrew Pampu. While Plaintiffs Amanda Pampu and John Pampu attended the mediation, Plaintiff Andrew Pampu alone signed the settlement agreement. The only individual that could assert any allegations of legal malpractice by the Clawson Fargnoli Defendants is Plaintiff Andrew Pampu as he was the only party to the Federal Lawsuit and the State Lawsuit. Plaintiff Andrew Pampu was also the only signatory to the Federal Lawsuit settlement agreement.

Plaintiffs assert that their allegation contained within the Second Amended Complaint that the Clawson Fargnoli Defendants undertook representation of all of the Plaintiffs, including Plaintiffs Amanda Pampu and John Pampu, is sufficient for this Court to have subject matter jurisdiction over Plaintiffs Amanda Pampu and John Pampu. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Clawson Fargnoli Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). The Clawson Fargnoli Defendants' Motion to Dismiss is **GRANTED**.

III. Plaintiffs' required expert witness affidavit was untimely and insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed as the required expert witness affidavit was untimely and insufficient as a matter of law. On March 19, 2021, Plaintiffs initially filed their Complaint against Defendants in the Charleston County Court of Common Pleas. That Complaint did not include an expert witness affidavit as required by South Carolina statute. South Carolina Code § 15-36-100(B) requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

Id.

Plaintiffs amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs argue that the Complaint was originally filed three (3) days before the three (3) year anniversary of the date on which any reasonable person would know or should have known of a claim against Defendants (i.e., the date of the Federal Lawsuit mediation). However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have **presumed** that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

Even if Plaintiffs had asserted that there was not time for an expert witness affidavit to be prepared to be filed with the original Complaint, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared*.

subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id.

In the expert witness affidavit, Mr. Dillon holds himself out as an expert in legal malpractice claims in South Carolina district court litigation. However, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Mr. Dillon admits in his affidavit that he has reviewed few materials related to the underlying federal and state litigation at issue.

While Plaintiffs are correct that the Rules do not require a South Carolina barred attorney to serve as an expert witness, the crux of the legal malpractice claim centers almost solely around the Clawson Fagnoli Defendant's advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

IV. Plaintiffs' claim for breach of fiduciary duty is duplicative.

“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.” *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs’ Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore “encompassed by the claim for legal malpractice.” *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. *See also* Rule 12(f), SCRCP (authorizing the court to strike any redundant matter).

Therefore, the Clawson Fagnoli Defendants’ Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

V. Plaintiffs' claims are adverse to public policy.

Plaintiffs' claims should be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case in both the state and federal courts of South Carolina. *See, e.g.*, Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met. Mediation is about compromising to reach a solution that all parties can tolerate. Plaintiffs' allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. Plaintiffs' response to the argument that their claims are against public policy is merely that the Clawson Fagnoli Defendants did not cite to any controlling law. Again, Plaintiffs reiterate that an attorney's act or omissions into leading a client to sign a settlement agreement permit legal malpractice lawsuits. However, the crux of Plaintiffs' claim against the Clawson Fagnoli Defendants is merely that the settlement agreement did not accomplish all of their goals. Plaintiffs did not identify any acts or omissions by the Clawson Fagnoli Defendants that led Plaintiff Andrew Pampu to sign the settlement agreement.

If this Court were to permit Plaintiffs' malpractice claims to continue against the Clawson Fagnoli Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Therefore,

the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

CONCLUSION

The Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is
GRANTED.

AND IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court

Orangeburg, South Carolina

June _____, 2022



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION
AND TO ALTER OR AMEND THE
ORDERS GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

The Court has now considered Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. On June 23, 2022, in two separate orders, this Court granted the motion to dismiss of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, and Christina R. Fagnoli and the motion to dismiss of Defendants Barrett R. Brewer and the Brewer Law Firm, LLC. The orders disposed of all of Plaintiffs' claims in the Second Amended Complaint. On July 5, 2022, Plaintiffs filed their Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. The Court has considered the motion, pleadings, arguments of counsel, and governing legal authority at issue. Following its review and consideration of the issues, the Court finds that Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss should be DENIED.

AND IT IS SO ORDERED.

October ____, 2023

Orangeburg, South Carolina

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court**RECEIVED****Nov 14 2023****SC Court of Appeals**
Appendix0358



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fargnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

Electronically signed on 2023-10-23 11:43:06 page 2 of 2

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.;
Barrett R. Brewer, Esq.; and
Brewer Law Firm, LLC,

Defendants.

Case No. 2021-CP-10-01343

**ORDER GRANTING
MOTION TO DISMISS
FOR DEFENDANTS
BARRETT R. BREWER AND
BREWER LAW FIRM, LLC**

This Court heard a Motion to Dismiss¹ on March 2, 2022 filed by Defendants Barrett R. Brewer and Brewer Law Firm, LLC ("Brewer Defendants"). Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC appeared at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu ("Plaintiffs")². R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC appeared at the hearing for the Brewer Defendants. James A. Dedman, Esquire, of Gallivan, White & Boyd, PA appeared at the hearing for Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. ("Clawson Fagnoli Defendants"). Following the hearing, this Court took the Motion to Dismiss under advisement. Upon review of the Second Amended

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Nov 14 2023

SC Court of Appeals

¹ The Clawson Fagnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their clients. This order will focus solely on the Brewer Defendants' representation of Plaintiff Andrew Pampu.

² By Order dated March 4, 2022, the Court granted Defendants' motions to prohibit Plaintiffs from proceeding anonymously and ordered the Plaintiffs to proceed in this case in their proper true names.

Complaint and relevant case law, along with memoranda submitted by the parties, the Motion to Dismiss is **GRANTED**.

FACTUAL BACKGROUND

This case arises out of Plaintiff's allegations of legal professional negligence and breach of fiduciary duty against the Brewer Defendants and Clawson Fargnoli Defendants which stems in part from their representation of Plaintiff Andrew Pampu in a federal court lawsuit. Specifically, Plaintiffs' complaint contained allegations of legal professional negligence, breach of contract, and breach of fiduciary duty against Defendants.

On November 2, 2017, Defendants agreed to represent Plaintiff Andrew Pampu in two related, ongoing lawsuits. Plaintiffs filed the first suit in the United States District Court for the District of South Carolina (the "Federal Lawsuit") and asserted Title IX and related claims against Clemson University. Plaintiffs filed the second suit in the Pickens County Court of Common Pleas (the "State Lawsuit") and asserted claims for defamation, civil conspiracy, and other causes of action arising out of accusations of sexual misconduct submitted to Clemson University against Plaintiff Andrew Pampu. (See Second Am. Compl. at ¶ 13). These accusations spurred the Title IX investigation which was the subject of the Federal Lawsuit. Notably, neither Plaintiff Amanda Pampu nor Plaintiff John Pampu were parties to the Federal Lawsuit or State Lawsuit.

The underlying facts are taken from the Complaint. While attending Clemson University in the Fall of 2015, a female student accused Plaintiff Andrew Pampu of sexual misconduct. (See Second Am. Compl. at ¶ 19). After conducting an administrative hearing, the University found Plaintiff Andrew Pampu to have engaged in "nonconsensual sexual activities" and suspended him. (*Id.*). Plaintiff Andrew Pampu appealed this

determination, which only resulted in the University issuing heavier disciplinary action, including an additional suspension. (*Id.*, ¶ 20-21). Plaintiff Andrew Pampu subsequently sued the University in the Federal Lawsuit. After the Brewer Defendants substituted as counsel for Andrew, the Brewer Defendants represented Plaintiff Andrew Pampu in a court-ordered mediation on March 21, 2018. (*Id.*, ¶ 16, 37).

On March 2, 2018, prior to the mediation, Plaintiffs sent the Brewer Defendants an email containing the supposed goals for the mediation which included:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University's future treatment of [Andrew Pampu's] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(*Id.*, ¶ 36). When the mediation session concluded, Plaintiff Andrew Pampu signed a written settlement agreement³ on March 21, 2018 with Clemson University, but he soon developed "buyer's remorse" and attempted to abandon the settlement. (*Id.*, ¶ 39). Plaintiffs contend the settlement conflicted with the goals outlined in their aforementioned email to the Brewer Defendants and the goals of the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41). Plaintiffs terminated their attorney-client relationship with the Brewer Defendants on or about May 8, 2018 and sought new counsel. (*Id.*, ¶ 47-48).

³ Because Amanda Pampu and John Pampu were not parties to the Federal Lawsuit, they did not sign the settlement agreement. (*Id.*, ¶ 39).

Meanwhile, the University filed a motion to enforce the settlement, which the district court ultimately granted. (*Id.*, ¶ 55-57).

PROCEDURAL BACKGROUND

Plaintiffs initially filed a Complaint in the Charleston County Court of Pleas on March 19, 2021, without any affidavit as required by S.C. Code Ann. § 15-36-100. Plaintiffs then filed an Amended Complaint on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. When Defendants filed motions to dismiss the first Amended Complaint, Plaintiffs then filed the Second Amended Complaint on June 16, 2021 to address arguments raised by the Brewer Defendants and Clawson Fargnoli Defendants' initial Motions to Dismiss directed to the deficiencies of the expert's affidavit filed with the first Amended Complaint. The Brewer Defendants filed the instant motion to dismiss on June 30, 2021.

STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 12(b)(6) provides that, upon a defendant's motion, a court may dismiss a plaintiff's claim for "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss, the court must base its decision on the plaintiff's allegations, as set forth in the complaint." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The question for the Court is whether the pleadings, taken in the light most favorable to the plaintiff, articulate a valid claim for relief. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A Rule 12(b)(6) motion must be granted if the facts alleged and the inferences reasonably deducible from the pleadings show that the plaintiff could not prevail on any theory of the case. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

DISCUSSION

A. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

Plaintiffs' claims are dismissed for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiffs' "buyer's remorse" is not proper grounds for legal malpractice. Plaintiffs only allege facts demonstrating their unhappiness with the settlement agreement that Plaintiff Andrew Pampu voluntarily signed. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Brewer Defendants committed professional error in advising him whether or not to accept the settlement. Nor does the Second Amended Complaint present any allegation that Plaintiff Andrew Pampu was improperly induced by the Brewer Defendants to sign the agreement.

Plaintiffs claimed in their response to the Motion to Dismiss that the Brewer Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Brewer Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Brewer Defendants. Second, there is no allegation (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second

Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

B. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs' claims are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rules of Civil Procedure 12(b)(1) as neither Amanda Pampu or John Pampu have standing to assert these claims. Neither Amanda Pampu nor John Pampu were parties to the State Lawsuit or Federal Lawsuit, and because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.

Plaintiffs' argue that their allegations the Brewer Defendants undertook representation of all named Plaintiffs (See Second Am. Compl. at ¶ 13) in this action. Such allegations are insufficient to confer subject matter jurisdiction. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Brewer Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar. Plaintiffs have provided no evidence of the existence of either an attorney-client relationship or fiduciary duty between Plaintiffs Amanda Pampu and John Pampu and the Brewer Defendants. As such, no legal malpractice action can stand.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu should be dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). Brewer Defendants' motion to dismiss is hereby **GRANTED**.

C. Plaintiffs' required expert witness affidavit was untimely and is insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed because the required expert witness affidavit was untimely and is insufficient as a matter of law. Plaintiffs filed their initial complaint against the Brewer Defendants on March 19, 2021 but did not include an expert witness affidavit. South Carolina law requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

S.C. Code Ann. § 15-36-100(B). Plaintiffs' original Complaint, although it alleged professional negligence, contained no reference to the lack of an expert affidavit required by section 15-36-100.

Plaintiffs then amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints.⁴ However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the

⁴ Legal malpractice claims are subject to three-year statute of limitations under South Carolina Code § 15-3-535.

requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

Furthermore, even if Plaintiffs had fully complied with the contemporaneous filing requirement or any of its exceptions, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id. In his affidavit, Plaintiffs' proposed expert witness, Mr. Dillon, holds himself out as having expert knowledge of proper attorney action to be undertaken in South Carolina district court litigation. There are several reasons why his claims of expertise in this area are insufficient. First, Mr. Dillon has never been licensed to practice law in South Carolina state or federal courts, nor is he licensed in the Fourth Circuit Court of Appeals. Second,

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

Mr. Dillon makes no claim to have obtained *pro hac vice* admission to any court in South Carolina. Third, Mr. Dillon makes no mention of familiarity with the nature of federal practice in the district courts of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Lastly, Mr. Dillon notes he has reviewed few materials related to the underlying facts at issue.

Though Plaintiff is correct in stating the Rules do not require an expert to be a South Carolina barred attorney, it is the Brewer Defendants' advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit for a South Carolina case that is at the heart of Plaintiffs' legal malpractice claims. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

D. Plaintiffs' claim for breach of fiduciary duty is duplicative.

"Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the

Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs' Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney-client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore "encompassed by the claim for legal malpractice." *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. See *also* Rule 12(f), SCRPC (authorizing the court to strike any redundant matter).

Therefore, the Brewer Defendants' Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

E. Plaintiffs' claims are averse to public policy.

Plaintiffs' claims will also be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case

in both the state and federal courts of South Carolina. See, e.g., Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met, because mediation is about compromising to reach a solution that all parties can tolerate. Here, the allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. In response, Plaintiffs argue the Brewer Defendants did not cite to any controlling law and that an attorney's negligent representation in settlement agreements can give rise to legal malpractice lawsuits. But as previously stated, Plaintiffs failed to allege facts showing the Brewer Defendants committed professional error in advising or representing Plaintiff Andrew Pampu in the relevant matters, and the Plaintiffs' claims against the Brewer Defendants are merely that the settlement agreement did not accomplish all of their goals.

If this Court were to permit Plaintiffs' "buyer's remorse" masquerading as a malpractice claim to continue against Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Plaintiffs' claims are little more than a thinly veiled attempt to relitigate the validity of the underlying settlement – an issue that has already been litigated and ruled on by the federal courts of South Carolina. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

CONCLUSION

The Court has considered all of the arguments made by the parties, including Plaintiffs' written memoranda in opposition, and the oral arguments they set forth at the

hearing on the Motion. To the extent such arguments are not discussed hereinabove, the court has considered them and rules in favor of the Brewer Defendants on the motion to dismiss. Therefore, for the reasons stated above, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

AND IT IS SO ORDERED.

Electronic signature on following page
The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2022-06-23 10:20:31 page 13 of 13

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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

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.

PROOF OF SERVICE

The undersigned hereby certifies that on November 14, 2023, a copy of the Notice of Appeal filed on behalf of Appellants/Plaintiffs, 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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November 14, 2023

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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.

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Statement of Issues

- I. Whether the trial court erred by failing to consider the well-pled fact allegations in the Pampus' Second Amended Complaint supporting the legal malpractice claims against their former lawyers stemming from an insufficient settlement in the underlying matter.
- II. Whether the trial court erred by disregarding well-pled fact allegations establishing a claim for breach of fiduciary duty, particularly where the facts alleged demonstrate breaches of loyalty and confidentiality resulting in actual losses.
- III. Whether the trial court erred by disregarding fact allegations that showed the existence of a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand, and the Lawyers, one the other, thereby providing the Pampus with standing to sue.
- IV. Whether the trial court erred by disregarding specific fact allegations supporting the Pampus' breach of contract claim and dismissing those claims without making any findings of fact or conclusions of law on the breach of contract claim.
- V. Whether the trial court erred by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.
- VI. Whether the trial court erred by deeming Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims as untimely and insufficient as a matter of law.
- VII. Whether the trial court erred by failing to consider the timeliness of Mr. Dillon's expert affidavit, which was filed in accordance with S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to cure alleged defects.
- VIII. Whether Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.
- IX. Whether the trial court erred by disregarding established South Carolina jurisprudence supporting legal malpractice claims arising from lawyers' errors during mediation and disregarding the exception to the ADR Rules on confidentiality permitting disclosure in a legal malpractice claim of otherwise confidential communications during mediation, in favor of public policy arguments supporting mediation and settlement.

Statement of the Case

On March 19, 2021, Appellants, Andrew Pampu; Amanda Pampu; and John Pampu (collectively “the Pampus”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, asserting claims for professional negligence, breach of fiduciary duty, and breach of contract against Respondents, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (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”). The Lawyers are the attorneys and Members of the Law Firms whose errors 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.

The Pampus’ Complaint alleged 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 without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to Andrew Pampu 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; and 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. One or more of these negligent actions or related omissions 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. These same acts and omissions by the Lawyers form the basis for the Pampus' claim for breach of contract against the Law Firms.

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.

On April 30, 2021, the Pampus filed an Amended Complaint 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. (Amended Complaint, ROA ____).

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), SCRCF and Rule 12 (b)(1), SCRCF. (Motions to Dismiss Amended Complaint, ROA ____). The Respondents' motions both asserted that because no facts were 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. (Sec. Amend. Complaint, ROA ____). The Second Amended Complaint is the operative pleading for this appeal.

On June 28, 2021 and June 30, 2021, respectfully, the Respondents filed motions to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6), SCRCF and Rule 12(b)(1), SCRCF, asserting that the Second Amended 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.

On March 2, 2022, a WebEx hearing on the motions to dismiss was held before the Honorable Edgar W. Dickson, during which the Second Amended Complaint, legal memoranda, and arguments of counsel were presented, and after which an Orders were entered on June 23, 2022 (collectively “the Orders”), granting the motions and dismissing the lawsuit. (Orders dismissing Sec. Amend. Complaint, ROA ____).

On July 5, 2022, the Pampus timely filed a Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended Complaint. (Motion for Reconsideration and to Alter or Amended Orders Dismissing Sec. Amend. Complaint, ROA ____).

On October 23, 2023, Honorable Edgar W. Dickson entered an Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended Complaint. (Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended, ROA ____) (“the Reconsideration Order”).

The Pampus’ Notice of Appeal was timely filed thereafter.

Facts

On or around November 2, 2017, the Lawyers accepted the representation of the Pampus to provide legal advice, services, and representation of the Pampus in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Pampus in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against Andrew Pampu, which led to a disciplinary action that was mishandled by the University. (Sec. Amend. Complaint, p. 4 at ¶ 13, ROA ____).

On or about November 2, 2017, Respondent Law Firms entered into a contract with Mr. and Mrs. Pampu to represent the Pampus in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” (Sec. Amend. Complaint, p. 4 at ¶ 14; ROA ____).

At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months. (Sec. Amend. Complaint, p. 5 at ¶ 15; ROA ____). In the Federal Case, Andrew Pampu’s lawsuit against the University and several related defendants (collectively “the University Defendants”) alleged claims for violation of Title IX of the Education Amendments of 1972, failing to provide Andrew Pampu with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Sec. Amend.

Complaint, p. 5 at ¶ 16; ROA ____). The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived Andrew Pampu of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that Andrew Pampu had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to Andrew Pampu’s appeal. (Sec. Amend. Complaint, p. 5 at ¶ 17; ROA ____). The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming Andrew Pampu engaged in nonconsensual sexual activity with her; and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims. (Sec. Amend. Complaint, p. 5 at ¶ 18; ROA ____).

Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, Andrew Pampu was found to have engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension. (Sec. Amend. Complaint, pp. 5-6 at ¶ 19; ROA ____). Thereafter Andrew Pampu followed the University’s appeal process to appeal the incorrect administrative hearing decision. (Sec. Amend. Complaint, p. 6 at ¶ 20; ROA ____). The appeals process actually resulted in greater sanctions imposed by the University upon Andrew Pampu, including an additional year of suspension. (Sec. Amend. Complaint, p. 6 at ¶ 21; ROA ____). On or about January 14, 2017, Charles Doe sent Andrew Pampu text messages admitting that he and Jane Doe lied regarding Jane Doe’s allegations, both during the investigation of those allegations and at the hearing regarding

those allegations. (Sec. Amend. Complaint, p. 6 at ¶ 22; ROA ____). Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 23; ROA ____).

On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe's father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. (Sec. Amend. Complaint, p. 6 at ¶ 24; ROA ____). The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University's Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 24; ROA ____). These three defendants will be collectively referred to as the "State Case Defendants").

By November 27, 2017, the Federal Court substituted the Lawyers for Andrew Pampu's previous counsel. (Sec. Amend. Complaint, p. 6 at ¶ 26; ROA ____). During the Lawyers' representation of the Pampus, the Lawyers drafted and, upon information and belief, disclosed to third parties an "apology letter" purportedly from Andrew Pampu to one of the State Case Defendants falsely conceding critical matters. (Sec. Amend. Complaint, p. 7 at ¶ 27; ROA ____). During the Lawyers' representation of the Pampus, the Lawyers served discovery requests tailored to personal injury claims when representing the Pampus on slander and defamation claims. (Sec. Amend. Complaint, p. 7, ¶ 28; ROA ____). During the Respondents' representation of the Pampus, the Lawyers did not provide the Pampus with copies of materials obtained during discovery. (Sec.

Amend. Complaint, p. 7 at ¶ 29; ROA ____). Following extensive written discovery, the parties to the Federal Case scheduled a mediation. (Sec. Amend. Complaint, p. 7 at ¶ 30; ROA ____).

In February of 2018, the Lawyers and the Pampus received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the “Swinton Report”), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe’s allegations and Andrew Pampu’s prosecution. (Sec. Amend. Complaint, p. 7 at ¶ 31; ROA ____). Based on the text messages from Charles Doe and the content of the Swinton Report, the Lawyers knew or should have known that Andrew Pampu’s claims against the University Defendants and the claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision. (Sec. Amend. Complaint, pp. 7-8 at ¶¶ 32-35; ROA ____).

Before the mediation, the Lawyers received an email from the Pampus stating their mediation goals, including:

- a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University’s future treatment of Andrew Pampu’s academic records;
- b. The State Case remain separate and unaffected by any settlement of the Federal Case;
- c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and
- d. Andrew Pampu’s arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(Sec. Amend. Complaint, p. 8 at ¶ 36; ROA ____).

On March 21, 2018, the Lawyers, the Pampus, and the University Defendants and their counsel participated in a mediation for the Federal Case. (Sec. Amend. Complaint, p. 8 at ¶ 37;

ROA ____). After a grueling eleven (11) hour mediation, the terms that the parties allegedly came to agree upon were memorialized in a short-form “Settlement Agreement,” which the Lawyers approved and strongly urged Andrew Pampu to sign. (Sec. Amend. Complaint, p. 8 at ¶ 38; ROA ____). To accomplish their objective to have the Pampus agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when Appellant, John V. Pampu (Andrew Pampu’s Father) and Appellant, Amanda C. Pampu (Andrew Pampu’s Mother) were out of the room to forcefully urge Andrew Pampu to agree to the University’s proposed settlement terms. (Sec. Amend. Complaint, pp. 8-9 at ¶ 38; ROA ____). Andrew Pampu (and later Andrew Pampu’s parents) conceded to the Lawyers’ pressure to settle and signed a “Settlement Agreement.” (Sec. Amend. Complaint, p. 9 at ¶ 38; ROA ____).

On March 23, 2018, the Lawyers received an email from the Pampus explaining Andrew Pampu’s unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement. (Sec. Amend. Complaint, p. 9 at ¶ 40; ROA ____). The Pampus explained that the Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case. (Sec. Amend. Complaint, p. 9 at ¶ 41; ROA ____). The Settlement Agreement the Lawyers convinced the Pampus to sign 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 or should have known were the Pampus’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and the Settlement Agreement did not address many other issues necessary to resolve the underlying dispute with the University. (Sec. Amend. Complaint, p. 9 at ¶ 42; ROA ____).

On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties an opportunity to consummate the settlement and providing either side sixty (60) days to file a petition to enforce the settlement. (Sec. Amend. Complaint, p. 10 at ¶ 46; ROA ____).

On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers as per the terms of the Settlement Agreement. (Sec. Amend. Complaint, p. 10 at ¶ 47; ROA ____). That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants. (Sec. Amend. Complaint, p. 10 at ¶ 47; ROA ____). On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of the Pampus had been terminated and that the Pampus had not yet retained new counsel. (Sec. Amend. Complaint, p. 10 at ¶ 48; ROA ____). On May 9, 2018, the Lawyers memorialized the Pampus' May 8, 2018, termination of their representation in a letter to the Pampus, with language impliedly recognized the Pampus' terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause. (Sec. Amend. Complaint, p. 10 at ¶ 49; ROA ____). On May 10, 2018, counsel for the University Defendants sent Andrew Pampu a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal. (Sec. Amend. Complaint, pp. 10-11 at ¶ 50; ROA ____).

On May 11, 2018, Andrew Pampu emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new

attorneys would be in contact early the following week. (Sec. Amend. Complaint, p. 11 at ¶ 51; ROA ____). On May 16, 2018, newly retained counsel (“Successor Counsel”) for the Pampus contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions. (Sec. Amend. Complaint, p. 11 at ¶ 52; ROA ____). On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for Andrew Pampu. (Sec. Amend. Complaint, p. 11 at ¶ 53; ROA ____). On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants. (Sec. Amend. Complaint, p. 11 at ¶ 54; ROA ____).

On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement. (Sec. Amend. Complaint, p. 11 at ¶ 55; ROA ____). Thereafter, the Pampus expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed Andrew Pampu to sign and oppose its enforcement because of the Lawyers’ errors and omissions. (Sec. Amend. Complaint, p. 11 at ¶ 56; ROA ____).

The Federal Court’s “Redacted Order” upheld and enforced the Settlement Agreement against Andrew Pampu, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Pampus’ representations the University promised more during the settlement negotiations. (Sec. Amend. Complaint, p. 12 at ¶ 57; ROA ____).

The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records;
- b. contained language leading to results contrary to what the Respondents knew were the Pampus' desires and objectives, which was a key component of the Pampus' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether Andrew Pampu's identity would be safeguarded.

(Sec. Amend. Complaint, p. 12 at ¶ 58; ROA ____).

On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019. (Sec. Amend. Complaint, p. 12 at ¶ 59; ROA ____). The Settlement Agreement had a negative impact on the State Case, where the Pampus have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement. (Sec. Amend. Complaint, p. 12 at ¶ 60; ROA ____).

On February 28, 2019, the Lawyers sent a letter to the mediator *and counsel for all parties in the State Case and other third parties* asserting an alleged lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case. (Sec. Amend. Complaint, pp. 12-13 at ¶ 61; ROA ____). On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, 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 the Pampus. (Sec. Amend. Complaint, p. 13 at ¶ 62; ROA ____).

The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupted the negotiations, and disadvantaged Andrew Pampu's positions. (Sec. Amend. Complaint, p. 13 at ¶ 63; ROA ____). Thereafter, the Pampus spent several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation because the Pampus' positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to Andrew Pampu's position in the State Case. (Sec. Amend. Complaint, p. 13 at ¶ 65; ROA ____). The Lawyers have continued to assert a charging lien for legal fees against the Pampus' settlement proceeds from the University, despite Andrew Pampu having terminated the Fee Agreement with the Respondents for cause, thereby generating additional expenses for Andrew Pampu to contest those allegations. (Sec. Amend. Complaint, p. 13 at ¶ 66; ROA ____).

As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, the Pampus suffered damages, including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' acts and omissions. (Sec. Amend. Complaint, pp. 13-14 at ¶ 67; ROA ____).

Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice Andrew Pampu in the State Court mediation and litigation, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 68; ROA ____). Had the Lawyers met the fiduciary standard of

conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 69; ROA ____). The Pampus suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Respondents' actions and inactions. (Sec. Amend. Complaint; p. 14 at ¶ 70; ROA ____).

Legal Standards

A. Motions to Dismiss.

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the [circuit] court.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). *See also, Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”); *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (*quoting Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” *Id.* “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to be true.” *Id.* at 635, 699 S.E.2d at 705 (internal quotation marks omitted).

Since “a judgment on the pleadings is considered to be a drastic measure,” a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006); *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

B. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. A party usually is allowed to ask the trial court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79.

Rule 59(e) provides that a “motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the order,” it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCP. The South Carolina Supreme Court has established that, “a party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.*, 361 S.C. at 24, 602 S.E.2d at 780. If a lower court fails to rule on an issue raised before it, a party must file a Rule 59(e) motion to preserve that issue for later appeal. *E.g., Bodkin v. Bodkin*, 388 S.C. 203, 219, 694 S.E.2d 230, 239 (Ct. App. 2010).

C. Factual Allegations Required to State Facts Sufficient to Support a Legal Malpractice Claim.

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012).

D. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Fiduciary Duty.

“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.* 399 S.C. at 335-36, 732 S.E.2d at 173.

E. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Contract.

“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012).

F. Requirement for an expert affidavit to be filed with the pleadings.

South Carolina Code Section 15-36-100 requires a plaintiff to present expert testimony regarding the alleged “negligent act or omission” by a professional, including lawyers, to support a claim for professional negligence.

Arguments

I. The trial court committed reversible error by ignoring well-pled fact allegations stating claims for legal malpractice claims against their former lawyers based on an insufficient settlement in the underlying matter.

The thrust of the Pampus' legal malpractice claim is the Lawyers' acts and omissions below the standard of care directly resulted in financial losses to the settlement value of the Federal Lawsuit and the State Lawsuit, as well as losses associated with the failure to require the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records, and the legal fees the Pampus subsequently incurred. As to loss of settlement value, this Court has held,

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case. Stated otherwise, "the client need not show a perfect claim. But the client must show at least that he has lost a *probability* of success as a result of the attorney's negligence."

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005) (emphasis added) (quoting David A. Barry, *Legal Malpractice in Massachusetts: Recent Developments*, 78 Mass. L. Rev. 74, 79 (1993)). See also, *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (The former client "could satisfy the 'most probably' requirement and defeat [the lawyer's] summary judgment motion by establishing he 'most probably' would have received a larger settlement than [the settlement obtained by the lawyer] or that he 'most probably' would have prevailed on the underlying claim at trial.").

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the [Respondents] committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no

allegations of professional error on the part of the [Respondents] in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the [Respondents] induced Plaintiff Andrew Pampu into signing the mediation agreement.

(Orders granting Respondents' motions to dismiss, p. 5, filed on June 23, 2022).

The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing for the purposes of the Motions to Dismiss clearly supporting the Pampus' professional negligence claims. The fact allegations in Paragraph 1 standing by themselves state claims against the Lawyers for legal professional negligence and are patently inconsistent with the trial court's findings:

¶1. [] 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 without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to [Andrew Pampu] 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; and 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]. One or more of these negligent actions or related omissions resulted in 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.

(Sec. Amend. Complaint, pp. 1-2, ¶ 1; ROA ____).

The trial court erred in ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon's expert affidavit establishing for the purposes of the Motions to Dismiss the following fact allegations and expert opinions clearly supporting the Pampus' professional negligence claims:

¶6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe's disciplinary record regarding the sexual misconduct and related findings that Clemson had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.

b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a clean record, but that they would affirmatively agree to a dirty one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.

c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr. Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.

d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.

e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

(Expert Affidavit by Justin Dillon, Esq., pp. 2-4, ¶ 6, Ex. 1 to Second Amended Complaint; ROA ____).

The trial court's Orders dismissing the Pampus' Second Amended Complaint did not accept the facts alleged as true and failed to view the facts and inferences drawn from the facts alleged in the Second Amended Complaint in the light most favorable to the Pampus.

The trial court also erred in creating its own "fact" allegations. On page 3 of the Order granting the Respondents' motions to dismiss, the trial court "found" that "Plaintiff Andrew Pampu developed 'buyer's remorse' in the days after the mediation and attempted to abandon the settlement." (Orders granting Respondents motion to dismiss, p. 3). There are no such allegations of fact in the Second Amended Complaint.

The facts alleged in Paragraph 1 of the Second Amended Complaint and Mr. Dillon's expert opinions state facts supporting a "valid claim for relief" under South Carolina's legal malpractice jurisprudence. The trial court's Orders dismissing the Pampus' Second Amended Complaint should be reversed and this matter should be remanded for trial.

II. The trial court committed reversible error by ignoring well-pled fact allegations stating claims under established South Carolina law permitting former clients to bring breach of fiduciary duty claims when the facts alleged show the fiduciary breached duties of loyalty and confidentiality causing actual losses.

The Pampus' Second Amended Complaint alleges the Lawyers breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without the Pampus' knowledge or consent that caused financial losses. The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing the Pampus' breach of fiduciary duty claims.

In the Orders granting the Respondents’ motions to dismiss, the trial court made the following findings:

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the [Respondents] committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the [Respondents]’ assertion of a lien for their attorney’s fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu’s position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

(Orders granting Respondents’ motions to dismiss, p. 6, filed on June 23, 2022).

It was error for the trial court to conclude that “asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]” because there are no such allegations anywhere in the Second Amended Complaint.

The fact allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims against the Lawyers:

¶2. 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, including disclosing information related to their representation of the [Pampus] to counsel for the opposing parties without the [Pampus]’ consent.

¶61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney’s fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney’s fees allegedly owed from the work performed by the Lawyers in the State Case.

¶62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case’s opposing counsel and mediation mediator, 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].

(Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61, and 62; ROA ____) (emphasis in original).

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, all establish a proximate link between the Lawyers’ actions and the Pampus’ damages.

Fiduciary duties are duties of the highest standard required by law of any agent relative to his/her/its principal, which include the duties of loyalty, disclosure, confidentiality, obedience, reasonable care and diligence, and full accounting. *See, e.g.,* Henry Campbell Black, *et al.*, BLACK’S LAW DICTIONARY 625 (6th ed. 1990); *see generally* Ernest Weinrib, *The Fiduciary Obligation*, 25 U. Toronto L.J. 1, 5-6 (1975) (discussing judicial determination of fiduciary relationship). Fiduciary law encompasses the specific set of actors who furnish services to others and who are subject to a legal doctrine that embodies remedial measures intended to prohibit fiduciaries from misappropriating or misusing entrusted property or power. Likewise, when a fiduciary breaches the duty of loyalty, not only is the beneficiary permitted to recover actual damages, but an additional distinctive remedy is available to the beneficiary – disgorgement of the benefit that the fiduciary obtained through the breach. *See, e.g., Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) (proof of actual damages not necessary to obtain disgorgement of fees due to lawyers’ breach of fiduciary duty to client); *Estate of Re v. Kornstein Veisz & Wexler*, 958 F. Supp. 907 (S.D.N.Y. 1997) (Sotomayor, J.) (client can maintain breach of fiduciary duty action against lawyers despite dismissal of malpractice and contract claims).

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another, *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004), and a client-lawyer relationship is by its nature a fiduciary relationship. *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012); *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011); *Holtz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991).

As fiduciaries, lawyers owe their clients a duty of loyalty and a duty of confidence, which is separate from their professional duties of competence and care. *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 17 (Ct. App. 2005). *See also*, *First Am. Corp. v. Al-Nahyan*, 17 F. Supp.2d 10, 27 (D.D.C.1998); *BCCI Holdings v. Clifford*, 964 F. Supp. 468, 481 (D.D.C.1997). The allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims based on the Lawyers' letter to third-parties asserting an alleged charging lien wreaked havoc in the Pampus' attempts to resolve their claims against the University defendants in the Federal Lawsuit. The information contained in the Lawyers' letter was confidential and his disclosure was a breach of the Lawyers' fiduciary duties of loyalty and confidentiality.

"One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Davis v. Greenwood School Dist.* 50, 365 S.C. 629, 620 S.E.2d 65 (2005); *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010); *Smith v. Hastie*, 367 S.C. at 417, 626 S.E.2d at 17; *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). *See also*, RESTATEMENT (SECOND) OF TORTS § 874 (1979) ("One standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.").

To recover on a claim for breach of fiduciary duty, the plaintiff must prove by a preponderance of the evidence that a fiduciary duty existed between the parties, that the defendant violated that fiduciary obligation, and that the plaintiff suffered damages resulting from the violation. *Walbeck v. I’On Co., LLC*, 439 S.C. 568, 585, 889 S.E.2d 537, 546 (2023), *reh’g denied* (July 26, 2023); *Smith*, 367 S.C. at 417, 626 S.E.2d at 17. There is no requirement that the plaintiff show “he or she most probably would have been successful in the underlying suit”. *Smith*, 367 S.C. at 417, 626 S.E.2d at 17.

The trial court committed reversible error by ignoring well-pled fact allegations in the Second Amended Complaint stating claims for breach of fiduciary duty to recover damages caused by the Lawyers’ breach of their duties of loyalty and confidentiality. The Orders granting the Respondents’ motions to dismiss should be reversed and this case should be remanded.

III. The trial court committed reversible error by ignoring specific fact allegations establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu and the Lawyers that provided standing to sue.

The trial court dismissed the claims by Mr. and Ms. Pampu for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP. This ruling constitutes reversible error, because the trial court ignored the specific allegations in the Complaint establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand as clients, and the Lawyers, on the other as the attorneys concerning the “Federal Case” and the “State Case.” See (Sec. Amend. Complaint, ¶¶ 1, 2, 13-14, 28-29, 36-37, 40, 49, 56, 61, and 66). Here a few examples:

¶1. This case seeks recovery of damages caused by the Lawyers’ errors during their representation of *the [Pampus]* in a) a federal lawsuit against ... The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University’s future treatment of John Doe’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 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]*. One or more of these negligent actions or related omissions resulted in substantial financial losses to *the [Pampus]*, ...

¶12. 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, including disclosing information related to their representation of *the [Pampus]* to counsel for the opposing parties without *the [Pampus]*' consent.

¶13. On or around November 2, 2017, the Lawyers accepted the representation of *the [Pampus]* to provide legal advice, services, and representation of *the [Pampus]* in a lawsuit

¶14. On or about November 2, 2017, [the Law Firms] contracted to represent *the [Pampus]* in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

The trial court's findings on pages 6-7 of the Orders that Mr. and Ms. Pampu lacked standing were premised on the fact that neither Mr. Pampu nor Ms. Pampu were parties to the Federal Lawsuit or the State Lawsuit. 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. Taking the allegations in the Second Amended Complaint is true, Mr. Pampu and Ms. Pampu specifically alleged they were clients of the Lawyers and parties to contracts of representation with the Law Firms.

It was clear error by the trial court to dismiss the claims asserted by Mr. Pampu and Ms. Pampu for alleged lack of subject matter jurisdiction under Rule 12(b)(1), SCRCF. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

IV. The trial court committed reversible error by ignoring specific fact allegations establishing the Pampus' breach of contract claim.

The Orders summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law. The Orders did not

properly treat the specific allegations in the Second Amended Complaint that established, for the purposes of a motion to dismiss, a contractual relationship between Mr. Pampu and Ms. Pampu and the Law Firms for the Law Firm to provide legal services to pursue the Pampus' claims in "Federal Case" and the "State Case." These allegations provide standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint.

The Second Amended Complaint contains these allegations of fact concerning the Pampus' breach of contract claim:

¶14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶99. Law Firms breached the contract by failing to provide such services.

¶100. The [Pampus] satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

¶101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the [Pampus] sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

The trial court erred in ignoring the specific allegations in the Complaint that Mr. Pampu and Ms. Pampu entered into a contract of representation with the Law Firms, thereby providing standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint. *See* (Sec. Amend. Complaint, pp. 4, 19-20, ¶¶ 14, 98-101, and Wherefore clause on p. 20). This result should be reversed, and the entire matter should be remanded to the Circuit Court.

V. The trial court committed reversible error by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.

The Orders should be reversed and allow the Pampus to proceed with their breach of fiduciary duty claim because the Second Amended Complaint alleges facts supporting their breach of fiduciary duty claim as argued above. Notwithstanding the fact that the Pampus' Second Amended Complaint states facts sufficient to support a breach of fiduciary duty claim, the Pampus should be permitted to pursue that claim, along with their legal malpractice claim and breach of fiduciary duty claim because Rule 8(a), SCRCF permits filing alternative claims. See Rule 8(a), SCRCF ("Relief in the alternative or of several different types may be demanded."); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (finding the pleadings appropriately alleged alternative theories of liability). The trial court's findings effectively take away a legal malpractice plaintiff's ability to assert alternative claims in their pleadings as Rule 8(a) permits for all other litigants.

In addition, the trial court's reliance on the Supreme Court's opinion, *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, 732 S.E.2d 166, 173 (S.C. 2012), does not support the ruling as that case dealt with a motion made at trial, and not before trial under Rule 12, SCRCF. Similarly, the trial court's reliance on the Supreme Court's opinion in *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019), is also misplaced because that matter was before the trial court on a motion for summary judgment, and not a motion to dismiss. In addition, this Court previously recognized the propriety of pleadings alleging a legal malpractice claim and a breach of fiduciary duty claim. See *Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) ("We therefore hold Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.") (Emphasis added).

Based on the express language in Rule 8(a), SCRCF, it was error for the trial court to conclude that the Pampus' breach of fiduciary duty claim was duplicative of their professional negligence claim. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

VI. The trial court committed reversible error by concluding Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims were untimely and insufficient as a matter of law.

Mr. Dillon has substantial experience in representing clients on Title IX matters and in litigating disputes under Title IX. Mr. Dillon's expert affidavit was timely filed with the Amended Complaint, and also with the Second Amended Complaint under S.C. CODE ANN. § 15-36-100(E).

A. The trial court committed reversible error by ignoring the allegations in the Second Amended Complaint showing Mr. Dillon's expert affidavit was timely filed under S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to be filed to cure alleged defects.

The trial court erred in ignoring the dates of filing and the statements in the Second Amended Complaint establishing for the purposes of a motion to dismiss the fact that Mr. Dillon's expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100(C)(1).

The trial court also erred in ignoring the specific allegations in Paragraph 103 in the Second Amended Complaint, which should have been taken as true for the purposes of the Lawyers' Motions:

¶103. In February and early March 2021, *the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers.* As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. *Because of time constraints, an affidavit of an expert could not be prepared in*

time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

It was reversible error for the trial court to conclude that Mr. Dillon's expert affidavit was not timely filed. This ruling should be reversed, and the matter should be remanded.

B. Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.

The Orders did not accept as true Mr. Dillon's qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The standard of review under Rule 12(b)(6), SCRCF, required the trial court to accept all such allegations as true and all inferences from those allegations in favor of the Pampus.

The trial court erred in refusing to accept Mr. Dillon's opinions in the expert affidavit because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious legal malpractice claim. *See Ranucci v. Crain*, 409 S.C. 493, 508, 763 S.E.2d 189, 196–97 (2014) (“As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz–Marx's affidavit, we find this is not an appropriate ground to affirm the circuit court's order because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious medical malpractice claim.”).

The provisions in S.C. CODE ANN. § 15-36-100(E) do not permit the trial court to address the substance of an expert's opinions. The trial court erred in ignoring Mr. Dillon's qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The trial court erred in accepting the Lawyers' arguments challenging the weight of Mr. Dillon's experience, and not the lack thereof, because S.C. CODE ANN. § 15-36-100(E) does not permit challenging an expert's the substance of an expert's opinions.

The trial court erred in accepting the Lawyers' arguments that Mr. Dillon is not qualified

to serve as an expert because he has not actually practiced in South Carolina federal or state court when the Order acknowledges federal Title IX claims were involved in Lawyers' underlying representation of the Pampus and ignores Mr. Dillon's vast experience handling Title IX litigation. In addition, South Carolina has long since abandoned the "locality rule" in the context of expert opinions for legal malpractice claims. *See, Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996) (the fact that Professor Gregory B. Adams was not licensed to practice law in this state and is not regularly handle real estate matters did not disqualify him as an expert).

The trial court incorrectly found that "Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation." There is no such statement in any materials filed with the Complaint, Amended Complaint, or Second Amended Complaint.

The trial court erred in incorrectly imposing a "sufficiently related" standard for an expert witness affidavit filed in a professional liability matter under S.C. CODE ANN. § 15-36-100, which is not stated in the Statute or in any case law interpreting the Statute. *See* (Orders on p. 9; "Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint.").

This ruling should be reversed, and the matter should be remanded.

VII. It was error for the trial court to ignore South Carolina jurisprudence under the guise of public policy arguments in support of mediation and settlement.

The trial court's public policy basis to dismiss the Pampus' claims arguably founded on concerns about protecting the "finality" of mediation are misplaced and contrary to controlling

South Carolina law. Notwithstanding the cases permitting clients to bring legal malpractice claims based on their former lawyers' errors in handling a settlement, *e.g.*, *Doe v. Howe*, the South Carolina Rules for Alternative Dispute Resolution have specific controlling provisions permitting communications during a mediation to be disclosed, for the purpose of a professional malpractice proceeding. See Rule 8(c)(3), SCADR Confidentiality ("There is no confidentiality attached to information that is disclosed during a mediation: (3) **offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding[.]**") (Emphasis added). The provisions in Rule 8(c)(3), SCADR creating an exception to the general confidentiality provisions contemplate legal malpractice lawsuits based on lawyers' conduct during a mediation that adversely affects their clients. The South Carolina Supreme Court would not have included this provision in the "finality" of mediation was sacrosanct in its view.

The trial court's rulings on this basis should be reversed, and this matter should be remanded.

CONCLUSION

Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, respectfully request this Court to reverse the trial court's ruling dismissing their Second Amended Complaint with prejudice and remanding the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

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Apr 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

Appellate Case No. 2023-001779

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

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

RESPONDENTS' JOINT INITIAL BRIEF

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Statement of Issues on Appeal

1. Are the trial court orders from which Appellants attempt to appeal immediately appealable?
2. Did the trial court correctly hold that Appellants failed to state a claim for legal malpractice?
3. Did the trial court correctly hold that Appellants failed to state a claim for breach of fiduciary duty?
4. Did the trial court correctly hold that Appellant John Pampu and Appellant Amanda Pampu lack standing?
5. Did the trial court correctly hold that Appellants failed to state a claim for breach of contract?
6. Did the trial court correctly hold that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim?
7. Did the trial court correctly hold that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law?
8. Did the trial court correctly find Appellants' claims against public policy?
9. Did Appellants fail to correct the record relating to their recusal argument in their Motion for Reconsideration?

Statement of the Case

Appellants initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [See Complaint, ROA ____]. That same day, Appellants filed a Motion to Proceed Anonymously Under Pseudonyms. [See Motion to Proceed Anonymously Under Pseudonyms, ROA ____]. Appellants amended their Complaint on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [See Amended Complaint, ROA ____; *and* Expert Affidavit by Justin Dillon, Esq., ROA ____]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed motions to

dismiss, asking the trial court to dismiss Appellants' Amended Complaint in its entirety. [See Clawson Fagnoli Motion to Dismiss Amended Complaint, ROA ____; and Brewer Motion to Dismiss Amended Complaint, ROA ____]. On those same dates, Respondents also filed motions to prohibit Appellants from using pseudonyms. [See Clawson Fagnoli Motion to Prohibit Pseudonyms, ROA ____; and Brewer Motion to Prohibit Pseudonyms, ROA ____].

In response to Respondents' motions to dismiss, Appellants amended their complaint again on June 16, 2021. [See Second Amended Complaint, ROA ____]. Appellants' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents answered the Second Amended Complaint and asserted counterclaims against Appellants for breach of contract and unjust enrichment related to fees owed to them for their work on one of the underlying lawsuits. [See Clawson Fagnoli Answer to Second Amended Complaint and Counterclaims, ROA ____; and Brewer Answer to Second Amended Complaint and Counterclaims, ROA ____]. On those same dates, Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. [See Brewer Motion to Dismiss Second Amended Complaint, ROA ____; and Clawson Fagnoli Motion to Dismiss Second Amended Complaint, ROA ____]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, ROA ____; and Reply to Clawson Fagnoli Counterclaims, ROA ____]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [See Respondents' Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, ROA ____]. On December 15, 2021, Appellants submitted a response in

opposition to Respondents' memorandum. [See Combined Memorandum in Opposition to Motions to Dismiss Second Amended Complaint, ROA ____].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents' motions to dismiss and motions to prohibit use of pseudonyms. [See Transcript, ROA ____]. On March 4, 2022, the trial court issued an order granting Respondents' motions to prohibit use of pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, ROA ____]. On June 23, 2022, the trial court issued separate orders granting Respondents' respective motions to dismiss and dismissing Appellants' Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, ROA ____]. Thereafter, on July 5, 2022, Appellants filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss [see ROA ____]. On October 23, 2023, the trial court denied the motion. [See Order Denying Motion for Reconsideration, ROA ____].

On November 14, 2023, Appellants served a Notice of Appeal [see ROA ____]. Appellants seek to appeal three orders issued by the trial court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Respondents, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) October 23, 2023 Order Denying Appellants' Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. [Notice of Appeal, ROA ____].

Standard of Review

I. Failure to State a Claim

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP.” *Cap. City Ins. Co. v. BP Staff*,

Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

II. Subject Matter Jurisdiction

“The question of subject matter jurisdiction is a question of law for the court.” *Cap. City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 632 (Ct. App. 1993)). This Court is “free to decide questions of law with no deference to the trial court.” *Id.* (citing *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 522, 642 S.E.2d 751, 752 (2007)).

Argument

I. Statement of Facts

This case stems from Appellants’ allegations of legal professional negligence, breach of fiduciary duty, and breach of contract against Respondents Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“the Clawson Fagnoli Respondents”) and Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“the Brewer Respondents”) (collectively, “Respondents”). On November 2, 2017, Respondents agreed to represent Appellant Andrew Pampu in two preexisting lawsuits: one pending in the U.S. District Court for the District of

South Carolina (the “Federal Case”)¹ asserting Title IX and other claims against his university (the “University”) and another pending in a Court of Common Pleas in South Carolina (the “State Case”)² asserting defamation, civil conspiracy, and other tort claims against an accuser who submitted to the University claims of sexual misconduct against Appellant Andrew Pampu. [See Second Amended Complaint, p. 4, ¶ 13, ROA ____]. Notably, neither Appellant Amanda Pampu nor Appellant John Pampu were parties to either the Federal Case or State Case, nor were they signatories to any settlement agreement.

Prior to the institution of the Federal Case and the State Case, Appellant Andrew Pampu was accused of and ultimately found by the University at an administrative hearing to have engaged in “nonconsensual sexual activities” and punished with suspension. [See Second Amended Complaint, pp. 5-6, ¶ 19, ROA ____]. Appellant Andrew Pampu thereafter appealed the University’s administrative hearing decision. [See Second Amended Complaint, p. 6, ¶ 20, ROA ____]. The appeals process resulted in the imposition of heavier sanctions against Appellant Andrew Pampu, including increasing his suspension period. [See Second Amended Complaint, p. 6, ¶ 21, ROA ____]. Appellant Andrew Pampu thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide [Andrew Pampu] with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.” [Second Amended Complaint, p. 5, ¶ 16, ROA ____].

¹ See *John Doe v. Clemson University et. al.*, Case No. 8:16-cv-01957, in the United States District Court for the District of South Carolina, Anderson Division.

² See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina.

As part of the Federal Case, Respondents represented Appellant Andrew Pampu at a court-ordered mediation on March 21, 2018. [See Second Amended Complaint, p. 8, ¶ 37, ROA ____]. Before the mediation, Respondents purportedly received an email from Appellants stating Appellant Andrew Pampu’s mediation goals, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University’s future treatment of [Andrew Pampu’s] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu’s] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

[Second Amended Complaint, p. 8, ¶ 36, ROA ____]. At the conclusion of the mediation session, “[Appellant Andrew Pampu] signed the ‘Settlement Agreement.’” [Second Amended Complaint, p. 9, ¶ 39, ROA ____; *see also* Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, Exhibit A, ROA ____]. There are no allegations that Mr. Pampu was subject to duress or was otherwise forced to sign the settlement agreement.

Appellants contend that “[t]he Settlement Agreement conflicted with the goals explained in the March 2, 2018 email and conflicted with the goals of both the Federal Case and the State Case.” [Second Amended Complaint, p. 9, ¶ 41, ROA ____]. After the settlement agreement was reached on mutually agreeable terms at the mediation in the Federal Case, however, Appellant Andrew Pampu developed “buyer’s remorse” and attempted to abandon the settlement. [See Second Amended Complaint, pp. 9, 11-12, ¶¶ 40, 54-57, ROA ____]. On or about May 8, 2018, Appellants terminated their attorney-client relationship with Respondents and sought new counsel. [See Second Amended Complaint, p. 10, ¶¶ 47-48, ROA ____]. The University filed a

motion to enforce the settlement, which was ultimately granted by the Court. [See Second Amended Complaint, pp. 11-12, ¶¶ 55-57, ROA ____].

Approximately one year after filing the Federal Case, Appellant Andrew Pampu sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. [See Second Amended Complaint, p. 6, ¶ 24, ROA ____]. While the Federal Case resolved at mediation, the State Case remained pending at the time Appellants filed their Second Amended Complaint. On March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. All parties have filed notices of appeal in the State Case, and that appeal remains pending. [*Id.*].³ This Court may take judicial notice of the filings in the Federal Case and the State Case (including the appeal). See *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”) (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) (alteration in original)).

Counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) [see ROA ____] and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint) [see ROA ____]. However, when Appellants filed their initial

³ See *Andrew Pampu v. Erin Wingo et al.*, South Carolina Appellate Case No. 2022-001332. Respondents direct the Court to the Record on Appeal in the State Case—specifically, the verdict and judgment.

Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, ROA ____]. Instead, Appellants alleged that pursuant to S.C. Code Ann. § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, p. 20, ¶ 103, ROA ____]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, ROA ____]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to the expert affidavit issue. [See Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Appellants further claimed that they were filing their Second Amended Complaint under S.C. Code Ann. § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, p. 21, ¶ 103, ROA ____].

In the instant action, Appellants have asserted claims for legal professional negligence, breach of fiduciary duty, and breach of contract. They allege:

The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the [Pampus] to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the [Pampus]; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

[Second Amended Complaint, p. 17, ¶ 83, ROA ____]. Appellants initially filed this action under pseudonyms. [See Complaint, ROA ____; *and* Motion to Proceed Anonymously Under Pseudonyms, ROA ____]. However, on March 4, 2022, the trial court granted Respondents' respective motions seeking to prohibit Appellants from using pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, ROA ____]. Appellants did not appeal this decision.⁴

On June 28, 2021 and June 30, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [See Brewer Counterclaims, ROA ____; *and* Clawson Fargnoli Counterclaims, ROA ____]. On those same dates, Respondents also filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. Respondents asserted the following grounds for their motions:

1. Appellants' claims failed to state a claim upon which relief could be granted;
2. Appellants John Pampu and Amanda Pampu lacked standing;
3. Appellants failed to timely provide an expert witness affidavit as required by S.C. Code Ann. § 15-36-100, and the exceptions found in § 15-36-100(C)(1) were inapplicable;
4. The credentials of Appellants' purported expert were insufficient under § 15-36-100(A)(3);
5. The gravamen of Appellants' Second Amended Complaint was simply post-mediation "buyer's remorse"; and

⁴ See *Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356 (Ct. App. 2004) (holding that the denial of a motion to proceed anonymously is immediately appealable).

6. Appellants' cause of action for breach of fiduciary duty was duplicative of its cause of action for legal malpractice.

[See Clawson Fagnoli Motion to Dismiss, ROA ____; and Brewer Motion to Dismiss, ROA ____]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, ROA ____; and Reply to Clawson Fagnoli Counterclaims, ROA ____].

The trial court held a virtual hearing on Respondents' respective motions to dismiss and motions to prohibit use of pseudonyms on March 2, 2022. [See Transcript, ROA ____]. Thereafter, the trial court granted Respondents' motions to prohibit use of pseudonyms. [Order Granting Motions to Prohibit Pseudonyms, ROA ____]. The trial court further granted Respondents' motions to dismiss and dismissed all Appellants' causes of action. [See Order Granting Brewer Motion to Dismiss, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, ROA ____]. Appellants thereafter filed a motion for reconsideration and to alter or amend the orders granting Respondents' motions to dismiss. [See Motion for Reconsideration, ROA ____]. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, p. 6, ¶ 17, ROA ____]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will

make that known to the judge at the outset of the hearing on the motion.” [January 18, 2023 email from Thomas Pendarvis, ROA ____]. However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court.

Following the denial of their motion for reconsideration [see Order Denying Motion for Reconsideration, ROA ____], Appellants filed this appeal [see Notice of Appeal, ROA ____]. Respondents’ counterclaims remain pending.

II. The trial court orders from which Appellants attempt to appeal are not immediately appealable, and, therefore, this Court lacks jurisdiction.

As an initial matter, the trial court orders from which Appellants attempt to appeal are not immediately appealable. Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330. This Court has explained:

Section 14-3-330 provides that only final judgments and certain interlocutory orders are immediately appealable. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.

Richardson v. Halcyon Real Est. Servs., LLP, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (internal quotation marks and citations omitted). “The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (citing *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005)).

Here, Appellants seek to appeal three orders issued by the trial court: (1) Order Granting Motion to Dismiss for the Brewer Respondents, (2) Order Granting Motion to Dismiss for the

Clawson Fargnoli Respondents, and (3) Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. [Notice of Appeal, ROA ____]. While these orders effectively dismissed all Appellants’ causes of action, Appellants fail to consider the fact that Respondents’ counterclaims remain pending. Notably, Appellants do not address the jurisdiction issue or mention Respondents’ counterclaims in their initial brief. [See *generally* Appellants’ Initial Brief]. As noted above, on June 28, 2021 and June 30, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [Brewer Counterclaims, ROA ____; Clawson Fargnoli Counterclaims, ROA ____]. Those counterclaims should be litigated to a final conclusion before any appeal is ripe. Appellants’ counsel takes the unsupported position that the counterclaim portion of the case is stayed pending appeal. [See March 25, 2024 email from Thomas Pendarvis, ROA ____].⁵

Because Respondents’ counterclaims remain pending, Appellants’ attempt to make a “piecemeal” appeal is improper. Therefore, this Court lacks jurisdiction, and this appeal should be dismissed.

III. The trial court correctly held that Appellants failed to state a claim for legal malpractice.

The trial court correctly held that Appellants failed to state a claim for legal malpractice. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and

⁵ There are no South Carolina cases specifically addressing whether an order dismissing a plaintiff’s claims is immediately appealable where counterclaims remain pending. While not binding on this Court, in the absence of South Carolina authority regarding immediate appealability where counterclaims remain pending, North Carolina law is instructive. *See, e.g., Pawlik v. Fortunati*, 183 N.C. App. 490, 645 S.E.2d 231 (2007) (“Because defendants’ counterclaims are still pending, and plaintiff has failed to demonstrate that this interlocutory appeal is properly before the Court, we dismiss the appeal.”).

(4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 645, 675 S.E.2d 431, 432 (2009)).

Appellants first argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint . . . clearly supporting [their] professional negligence claims.” [Appellants’ Initial Brief, p. 18]. Specifically, Appellants point to paragraph 1 of the Second Amended Complaint, in which Appellants allege that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Appellants further argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon’s expert affidavit.” [Appellants’ Initial Brief, p. 18]. Appellants argue that the court failed to accept these allegations as true and view them in the light most favorable to them. [Appellants’ Initial Brief, p. 20]. Appellants contend that, taken as true, these allegations establish a claim for legal malpractice. Finally, Appellants argue that the trial court “create[ed] its own ‘fact’ allegations” by stating that Appellant Andrew Pampu “developed buyer’s remorse in the days after the mediation and attempted to abandon the mediation.” [Appellants’ Initial Brief, p. 20; *see also* Order Granting Brewer Motion to Dismiss, p. 3, ROA ____ and Order Granting Clawson Fagnoli Motion to Dismiss, p. 3, ROA ____].

In support of their arguments, Appellants cite *Doe v. Howe* for the proposition that loss of settlement value can form the basis for a legal malpractice claim. [Appellants’ Initial Brief, p. 17

(citing 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005))). However, while this Court contemplated in *Howe* that such a claim might be viable under certain circumstances, this Court affirmed the trial court's grant of summary judgment in favor of the respondents on the appellant's legal malpractice claim. *Howe*, 367 S.C. at 437, 626 S.E.2d at 27. In doing so, this Court referenced the trial court's holding that appellant's expert "never explicitly stated [appellant] most probably would have recovered more than the \$88,000 he received in his settlement" *Id.*, 367 S.C. at 445, 626 S.E.2d at 31. While this Court acknowledged that the trial court "was not imposing an additional requirement for [appellant's] *prima facie* case," it confirmed that a legal malpractice plaintiff must "prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care." *Id.*, 367 S.C. at 446, 626 S.E.2d at 32. In affirming the trial court's grant of summary judgment as to the legal malpractice claim, this court explained, "Notably absent from the record in this case, however, is any mention of settlement value from [any expert] that was brought to the trial judge's attention." *Id.*

While the present case involves motions to dismiss and a motion for reconsideration rather than a motion for summary judgment, Appellants still must allege facts in their complaint that, if true, could support that they "would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care." *See id.* Instead, the Second Amended Complaint contains merely conclusory allegations that Respondents were negligent in allowing Appellant Andrew Pampu to sign the settlement agreement and purportedly failing to explain to him the implications of it. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Other jurisdictions have recognized that a former client simply alleging that his former attorney failed to clearly explain settlement documents before the former client signed them and that the former

client expected to receive more than the settlement documents identified is insufficient as a matter of law to state a claim for legal malpractice. *See, e.g., Tarrant v. Ramunno*, 171 A.3d 138 (Del. 2017) (“Even if we accept [appellant/former client’s] allegation that [respondent/former attorney] failed in his duties to her by failing to adequately explain the terms of the settlement documents that she signed, her complaint failed to allege any resulting loss.”).⁶

The Second Amended Complaint further contains merely conclusory allegations that Respondents were negligent in the manner in which they prosecuted the State Case. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. In fact, at the time the Second Amended Complaint was filed, the State Case remained pending. [See generally *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. Appellants cannot bring legal malpractice claims for alleged conduct related to a pending lawsuit, as they cannot reasonably allege that any purported conduct resulted in a loss of settlement and/or claim value.⁷ The Supreme Court of South Carolina has held that in “a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice, . . . there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). Because there was

⁶ The elements of a legal malpractice claim in Delaware are substantially similar to those in South Carolina. *See id.* (“To state a claim for legal malpractice, a plaintiff must allege and prove the following elements: (a) the employment of a lawyer, (b) the lawyer’s neglect of a professional obligation, and (c) resulting loss. To prove a resulting loss, the plaintiff must show that the underlying lawsuit would have been successful but for the lawyer’s negligence.”).

⁷ Notably, on March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina].

no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. Further, even if the \$5.3 million judgment had been obtained at that time, Appellants could not reasonably argue that a more favorable judgement could have been obtained but for Respondents’ alleged professional negligence. Accordingly, the trial court correctly dismissed these claims.

The Second Amended Complaint also contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation. [See Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Again, Appellants did not articulate in their Second Amended Complaint how Respondents were negligent in concluding their representation or what alleged loss resulted. Moreover, Appellants terminated Respondents, which forced Respondents to conclude the representation. [See Second Amended Complaint, pp. 10, 13, ¶¶ 48-49, 66]. Appellants cannot now argue that Respondents were negligent in doing so. Accordingly, the trial court correctly dismissed these claims.

Moreover, the trial court correctly ruled that Appellants’ expert witness affidavit was both untimely and insufficient as a matter of law.⁸ Notwithstanding the same, the affidavit is simply a rehash of Appellants’ allegations in their Second Amended Complaint that they were unhappy with the settlement agreement that Appellant Andrew Pampu signed. Therefore, the

⁸ This argument is discussed in depth in Section VIII, *infra*.

allegations in the expert witness affidavit did not give rise to a cause of action against Respondents for professional negligence.⁹

Finally, the trial court correctly recognized that Appellants' allegations are largely premised on Appellant Andrew Pampu not getting everything Appellants wanted at mediation, and they only alleged legal malpractice once they realized the settlement could not be undone. The trial court did not create facts by referring to these allegations as "buyer's remorse." Rather, the trial court merely acknowledged that Appellants did not identify any acts or omissions on the part of Respondents other than that Appellant Andrew Pampu did not get everything Appellants wanted at mediation.

The trial court correctly ruled that no allegations in the Second Amended Complaint give rise to a colorable claim that Respondents could be liable for legal malpractice. Accordingly, this Court should affirm the trial court's holding that Appellants failed to state a claim for legal malpractice.

IV. The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty.

The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty. "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co.*

⁹ Moreover, the expert affidavit contains no allegations whatsoever regarding Respondents' conduct in the State Case or any other post-mediation conduct. Accordingly, for that reason alone, this Court should affirm the trial court's dismissal of Appellants' professional negligence claim as it relates to the State Case and/or any other post-mediation conduct pursuant to S.C. Code Ann. § 15-36-100 ("[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.").

v. Tinsley & Adams L.L.P., 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)).

Appellants first argue the trial court ignored their allegations that Respondents “breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without [Appellants’] knowledge or consent that caused financial losses.” [Appellants’ Initial Brief, p. 20]. Specifically, Appellants point to paragraphs 2, 61, and 62 of their Second Amended Complaint, which generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants’ consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants’ successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant Andrew Pampu’s position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61-62, ROA ____]. Appellants further argue that Respondents’ lien letter “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit.” [Appellants’ Initial Brief, p. 23].

As an initial matter, Appellants alleged in their Second Amended Complaint that Respondents sent the lien letter on February 28, 2019—after the mediation in the Federal Case. [Second Amended Complaint, pp. 12-13, ¶ 61]. Indeed, Appellants alleged that the lien letter was based, in part, on the fees Respondents allege they are owed due to the outcome of the Federal Case. [*Id.*]. A lien letter sent after the Federal Case settled at mediation could not have “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit” as Appellants allege. [See Appellants’ Initial Brief, p. 23].

Moreover, to the extent that Appellants contend that Respondents' lien letter disadvantaged Appellant Andrew Pampu's position in the State Case, such an allegation is both baseless and premature. As discussed above in the context of Appellants' legal malpractice claims related to the State Case, because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. *See Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494. For the same reason, Appellants cannot reasonably claim that Respondents' lien letter disadvantaged Mr. Pampu's position in the State Case. Appellants cannot articulate—and, in fact, have not articulated—what damages they allegedly suffered related to the State Case, because the State Case remained pending at the time they filed their Second Amended Complaint. Accordingly, the trial court correctly held that “[t]o the extent [Appellants] claim that [Appellant] Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.” [Order Granting Brewer Motion to Dismiss, pp. 5-6, ROA ____; Order Granting Clawson Fargnoli Motion to Dismiss, p. 6, ROA ____]. Therefore, the trial court correctly dismissed Appellants' breach of fiduciary duty claim, and this Court should affirm that ruling.

V. The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu lack standing.

The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu (“the Pampu Parents”) lack standing.

Appellants argue that the trial court ignored allegations establishing a client-lawyer relationship between the Pampu Parents and Respondents related to the Federal Case and the

State Case. [Appellant’s Initial Brief, p. 24]. Specifically, Appellants point to several paragraphs in their Second Amended Complaint generally alleging that Respondents represented “the [Pampus]” in the Federal Case and caused financial losses to “the [Pampus].” [Appellant’s Initial Brief, pp. 24-25]. The trial court held that “because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.” [Order Granting Brewer Motion to Dismiss, p. 6, ROA ____; Order Granting Clawson Fargnoli Motion to Dismiss, p. 6, ROA ____].

Appellants contend that the trial court erred because “[t]he 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.” [Appellants’ Initial Brief, p. 25]. However, regardless of whether the Pampu Parents and Respondents had an attorney-client relationship, they lack standing to assert the claims they allege, as they had no legal interest in the State Case or the Federal Case. As discussed above, in support of their legal malpractice claim, Appellants allege that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, pp. 1-2, ¶ 1, ROA ____]. Further, in support of their breach of fiduciary duty claim, Appellants generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants’ consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants’ successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted

negotiations, and disadvantaged Appellant Andrew Pampu's position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61-62, ROA ____]. Finally, in support of their breach of contract claim, Appellants allege that Respondents "entered into a Contract with the [Pampus] agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and 'any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits'" and that Respondents breached this agreement by "failing to provide such services." [Second Amended Complaint, pp. 19-20, ¶¶ 98-99]. In sum, the damages Appellants allege resulted from all their causes of action are a loss of settlement value in the Federal Case and a disadvantaged position in the State Case. Because the Pampu Parents were not parties to either case and had no legal interest in either case, they cannot reasonably claim that they were somehow damaged by any loss of settlement value in the Federal Case or disadvantaged position in the State Case.

Further, to the extent that the trial court erred in holding that the Pampu Parents lacked standing to assert their claims, such error was harmless, as those claims still fail as a matter of law for the reasons discussed herein. Accordingly, this Court should affirm the trial court's holding. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial.").

VI. The trial court correctly held that Appellants failed to state a claim for breach of contract.

The trial court correctly held that Appellants failed to state a claim for breach of contract. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App.

2019) (quoting *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015)).

Appellants argue that the trial court “summarily dismissed the Pampus’ claims for breach of contract without making or identifying any findings of fact or specific conclusions of law.” [Appellants’ Initial Brief, p. 25]. Appellants further argue that the trial court failed to consider their allegations purportedly establishing a contractual relationship between the Pampu Parents and Respondents to provide legal services related to the Federal Case and the State Case. [Appellants’ Initial Brief, p. 26]. Specifically, Appellants point to paragraphs 14 and 98 through 101 of their Second Amended Complaint, which generally allege that Respondents entered a contract with Appellants to provide legal services related to the Federal Case and the State Case and that Respondents breached this agreement by failing to provide such services. [Second Amended Complaint, pp. 4, 19-20, ¶¶ 14, 98-101, ROA ____]. Appellants contend that these allegations establish that the Pampu Parents have standing to assert the breach of contract claim. [Appellants’ Initial Brief, p. 26].

While the orders granting Respondents’ motions to dismiss did not explicitly address Appellants’ breach of contract claim, the trial court correctly dismissed the claim. Appellants’ breach of contract claim fails for the same reasons that their legal malpractice and breach of fiduciary duty claims fail—namely, because Appellants failed to articulate in their Second Amended Complaint how Respondents allegedly breached any agreement (other than a conclusory allegation that Respondents “fail[ed] to provide such services,” which is clearly not the case) or how any alleged breach proximately caused damages to Appellants (and in particular, the Pampu Parents). Moreover, Appellants’ breach of contract claim is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims and is, therefore,

duplicative of those claims. *See, e.g., Gen. Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP*, 357 F. Supp. 2d 951, 961 (E.D. Va. 2005) (holding that because the plaintiffs’ legal malpractice claim was barred, their breach of fiduciary duty and breach of contract claims were also barred because “they are mere disguises for plaintiffs’ legal malpractice claims,” as “[t]he breach alleged in both the breach of contract and breach of fiduciary duty claims is the same failure to provide adequate legal services that is the crux of the legal malpractice claims.”). Accordingly, the trial court properly dismissed this claim.¹⁰

The trial court correctly dismissed Appellants’ breach of contract claim. Accordingly, this Court should affirm the trial court’s ruling as to Appellants’ breach of contract claim.

VII. The trial court correctly held that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim.

The trial court correctly held that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim.

Appellants argue that they should be able to pursue both claims pursuant to South Carolina Rule of Civil Procedure 8(a), which provides that “[r]elief in the alternative or of several different types may be demanded.” [Appellants’ Initial Brief, p. 27; S.C. R. CIV. P. 8(a)]. Appellants further argue that the trial court’s reliance on *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.* and *Gibson v. Epting* do not support its ruling, as those cases dealt with a motion made at later stages in litigation. [Appellants’ Initial Brief, p. 27 (citing *RFT Mgmt. Co.*, 399 S.C. 322, 732 S.E.2d 166 (2012); and *Gibson*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019))].

In *RFT Management Co.*, RFT sued its former attorney and his law firm based on their representation of RFT in a transaction involving two real estate investment properties. 399 S.C.

¹⁰ To the extent that the trial court erred by not explicitly addressing Appellants’ breach of contract claim in the orders granting Respondents’ motions to dismiss, such error was harmless. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

at 327, 732 S.E.2d at 168. RFT alleged multiple claims against the respondents, including legal malpractice and breach of fiduciary duty. *Id.* At trial, at the close of evidence, the trial court merged RFT’s breach of fiduciary duty claim into its legal malpractice claim and granted the respondents’ motion for a directed verdict as to RFT’s other claims; therefore, only the legal malpractice claim went to the jury. *Id.*, 399 S.C. at 330, 732 S.E.2d at 170. The jury returned a verdict in favor of the respondents, and the trial court denied RFT’s post-trial motions. *Id.* On appeal, RFT argued, in part, that the trial court erred in “failing to charge the jury on breach of fiduciary duty and merging this cause of action with its first cause of action for legal malpractice.” *Id.* In affirming the trial court’s decision to merge the two causes of action, the Supreme Court of South Carolina explained:

A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship. . . . In the current matter, however, RFT’s claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT’s claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client. . . . Although RFT now argues a breach of fiduciary claim *could* be distinguishable from legal malpractice, RFT does not set forth any specific facts that demonstrate its breach of fiduciary duty claim *is* distinguishable because it arises out of a duty *other than* one created by the attorney-client relationship or because it is based on different material facts. Consequently, we hold the breach of fiduciary duty claim is duplicative.

Id., 399 S.C. at 336–37, 732 S.E.2d at 173 (internal citation omitted) (emphasis in original).

Similarly, in *Gibson*, the appellants (an individual and several of her companies) sued the respondents (several attorneys and their respective law firms) for multiple claims, including legal malpractice and breach of fiduciary duty, related to the attorneys’ representation of them in a real estate matter. 426 S.C. at 350, 827 S.E.2d at 180. The trial court granted summary judgment in favor of the respondents. *Id.* In affirming the trial court’s decision, this Court noted, “[Appellant] asserts Respondents breached their fiduciary duty to her in numerous ways, all of which

duplicate her legal malpractice claim because the duties arose out of the attorney-client relationship and she alleges the same facts as to both claims. . . . Accordingly, we only address [Appellant’s] claim for legal malpractice.” *Id.*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173).

Here, Appellants allege that Respondents breached the fiduciary duties of confidentiality and loyalty. [See Second Amended Complaint, pp. 18-19, ¶¶ 87-96]. Those duties are inherent in the attorney-client relationship. Moreover, Appellants’ breach of fiduciary duty claim is premised on the same factual allegations as their legal malpractice claim. [See Second Amended Complaint, pp. 16-19, ¶¶ 79-96, ROA ____]. Therefore, Appellants’ claim for legal malpractice necessarily encompasses an alleged breach of the fiduciary duty that attorneys have to their clients. See *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173; and *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182. Therefore, Appellants’ breach of fiduciary duty claim is duplicative, and the trial court’s reliance on *RFT Management Co.* and *Gibson* was not in error.

Instead, Appellants contend that *Smith v. Hastie* is more applicable to the present case. [Appellants’ Initial Brief, p. 27 (citing *Smith*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005))]. There, Smith sued her former attorney for several claims, including breach of fiduciary duty and professional negligence, arising from the attorney’s creation of a family limited partnership for the appellant and her family. *Smith*, 367 S.C. at 413, 626 S.E.2d at 14. The trial court granted summary judgment in favor of the lawyer and dismissed all of Smith’s claims with prejudice, holding that “(1) Smith failed to commence her lawsuit within the applicable limitations period; (2) Smith’s malpractice claims failed for lack of evidence; and (3) Smith’s claims were barred by the doctrine of collateral estoppel.” *Id.*, 367 S.C. at 415, 626 S.E.2d at 16. While this Court disagreed with the trial court’s grant of summary judgment on Smith’s claims for negligence and

breach of fiduciary duty, the opinion contains no discussion about duplicity or merger of these claims, as that was not an issue before this Court. *See id.*, 367 S.C. at 417–21, 626 S.E.2d at 16–18. Accordingly, *Smith* is not relevant in determining whether the trial court here erred in holding that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim. For the reasons discussed above, it did not.¹¹

The trial court correctly dismissed Appellants’ breach of fiduciary duty claim. Accordingly, this Court should affirm the trial court’s ruling as to Appellants’ breach of fiduciary duty claim.

VIII. The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law.

The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law. Pursuant to S.C. Code Ann. § 15-36-100, the plaintiff in a professional negligence action “must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B).

A. Timeliness

The trial court correctly held that the affidavit of Justin Dillon was untimely as a matter of law. “If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable

¹¹ To the extent that the trial court did err in holding that Appellants’ breach of fiduciary duty claim is duplicative of their legal malpractice claim, such error is harmless, as Appellants failed to state a claim for either cause of action for the reasons discussed herein. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.” S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, ROA ____]. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, p. 20, ¶ 103, ROA ____]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, ROA ____]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. [See Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, pp. 20-21, ¶ 103, ROA ____]. Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, p. 21, ¶ 103, ROA ____]. Appellants now argue that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. [Appellants’ Initial Brief, pp. 28-29].

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E).¹² Stated differently, this section allows a plaintiff to cure an alleged defect *in the affidavit* by amending *the affidavit* within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending *the pleadings* to include an affidavit. *See id.* Accordingly, Appellants' reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing **and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.**” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no such allegation in their initial Complaint. [*See generally* Complaint, ROA ____].¹³ Further, allowing plaintiffs to circumvent the requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court correctly held that Appellants' expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants' legal malpractice

¹² “**If a plaintiff files an affidavit which is allegedly defective**, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective.” *Id.* (emphasis added).

¹³ Moreover, Respondents note that counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) [*see* ROA ____] and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint) [*see* ROA ____]. Accordingly, Respondents could not have reasonably alleged that an affidavit could not be prepared due to time constraints.

claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

B. Sufficiency

Further, regardless of whether the expert affidavit was timely filed, the trial court correctly held that the affidavit of Justin Dillon was insufficient as a matter of law. Section 15-36-100(A) requires that the expert be “qualified as to the acceptable conduct of the professional whose conduct is at issue” and lists several additional requirements. *See* S.C. Code Ann. § 15-36-100(A). “The defendant is entitled to challenge the sufficiency of the expert’s credentials pursuant to subsection (E).” *Id.*

The trial court made the following findings regarding Mr. Dillon’s credentials:

- Mr. Dillon has never been licensed (or admitted pro hac vice) to practice law in the state or federal courts or South Carolina, nor is he licensed in the Fourth Circuit Court of Appeals;
- Mr. Dillon does not claim to be familiar with the nature of federal practice in the U.S. District Court for the District of South Carolina, its Local Civil Rules, or the nature or manner of mediations conducted in South Carolina; and
- Mr. Dillon reviewed few of the voluminous materials related to the underlying facts at issue.¹⁴

¹⁴ Mr. Dillon stated in his affidavit that he only reviewed 13 documents in rendering his opinion, which primarily consisted of the pleadings in the underlying lawsuits. [See Second Amended Complaint, Exhibit 1, ROA ____].

[See Order Granting Brewer Motion to Dismiss, pp. 8-9, ROA ____; *and* Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. The trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case and that because Mr. Dillon’s purported experience related mainly to Title IX claims but not South Carolina federal or state court procedures or litigation, his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [Order Granting Brewer Motion to Dismiss, p. 9, ROA ____; Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____].

Appellants argue that the trial court erred by not accepting as true Mr. Dillon’s qualifications as stated in his curriculum vitae, which was included with his affidavit. [Appellants’ Initial Brief, p. 30]. Specifically, Appellants contend that Mr. Dillon’s CV “identifies his specialized, technical knowledge regarding the Title IX and related matter at issue in the underlying lawsuits.” [Appellants’ Initial Brief, p. 30]. However, while Mr. Dillon’s CV listed his purported experience related to Title IX claims, it indicated no such experience with South Carolina federal or state court statutes, rules, procedures, or standards of care.

Appellants further argue that the affidavit is facially sufficient because it identifies a potentially meritorious legal malpractice claim and that § 15-36-100(E) does not permit the trial court to address the substance of those opinions. [Appellants’ Initial Brief, p. 30]. However, the trial court did not address the substance of Mr. Dillon’s opinions. Rather, the trial court addressed Mr. Dillon’s credentials—specifically, his lack of relevant South Carolina legal expertise and, implicitly, his inability to offer expert opinions relating to the application of South Carolina standards of care for South Carolina attorneys (as distinguished from the substance of any such opinions). [See Order Granting Brewer Motion to Dismiss, pp. 8-9, ROA ____; *and*

Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. Accordingly, Appellants' arguments regarding the substance of Mr. Dillon's opinions are not at issue on appeal.

Next, Appellants argue that the trial court improperly held that Mr. Dillon's credentials were inadequate "because he has not actually practiced in South Carolina federal or state court." [Appellants' Initial Brief, pp. 30-31]. However, the trial court made no such holding. In fact, the trial court acknowledged that there is no requirement that the expert witness in a legal malpractice action be a South Carolina-barred attorney. [See Order Granting Brewer Motion to Dismiss, p. 9, ROA ____; and Order Granting Clawson Fagnoli Motion to Dismiss, p. 9, ROA ____]. Rather, the trial court explained that the crux of Appellants' legal malpractice claim is Respondents' advice to Appellant Andrew Pampu during the mediation of the Federal Case. [*Id.*]. Because Mr. Dillon's purported experience related mainly to Title IX claims, but not South Carolina federal or state court statutes, rules, procedures, or standards of care, the trial court determined that his experience was not sufficiently related to Appellants' legal malpractice claims as pled in their Second Amended Complaint. [*Id.*].

In support of their argument, Appellants cite *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996). However, *Smith* was decided in 1996, while § 15-56-100 became effective in 2005. Accordingly, *Smith* is irrelevant for purposes of assessing the sufficiency of an expert affidavit pursuant to § 15-56-100. Notably, while the court held that the expert's lack of a South Carolina law license did not disqualify him as an expert (in the context of a motion to exclude), the court also ruled regarding the "locality rule":

In the context of legal malpractice, most courts which originally adopted a strict locality rule have expanded the relevant geographical region to create a **statewide** standard of care. The rationale for this development is that **attorneys are generally regulated on a statewide basis, with state rules of procedure and different substantive laws**. Accordingly, we adopt the majority view and rule

that the standard to be applied in determining legal malpractice issues is **statewide**.

Smith, 322 S.C. at 437–38, 472 S.E.2d at 614 (emphasis added) (internal citations omitted). Accordingly, Appellants’ references to the locality rule—and their implied contention that the trial court applied it—is inapposite. Rather, the trial court properly held that Mr. Dillon did not have the requisite qualifications regarding South Carolina federal or state court statutes, rules, procedures, or standards of care pursuant to § 15-56-100(A)(2).

Appellants also argue that the trial court erred in stating that “Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation.” [Appellants’ Initial Brief, p. 31]. While Mr. Dillon may not have explicitly stated so in his affidavit, he purported to state opinions regarding alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation, implicitly holding himself out as an expert in that area.

Finally, Appellants contend that the trial court incorrectly imposed a “sufficiently related” standard that is absent from § 15-56-100. [Appellants’ Initial Brief, p. 31]. While the phrase “sufficiently related” is not present in the statute, it does require that the expert have “actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given.” S.C. Code Ann. § 15-56-100(A)(2)(b).

The trial court correctly determined that Mr. Dillon—who has never practiced or taught in South Carolina—does not have the requisite expertise to testify as to alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation. Accordingly, the trial court properly dismissed Appellants’ legal malpractice claim on this independent basis. *See* S.C. Code Ann. § 15-36-100(E) (“If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed

contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim . . .").

IX. The trial court correctly found Appellants' claims against public policy.

The trial court correctly found that Appellants' claims were against public policy. The trial court properly held that Appellants' claims "violate the important public policy on the finality of mediation in civil cases." [Order Granting Brewer Motion to Dismiss, pp. 10-11, ROA ____; Order Granting Clawson Fagnoli Motion to Dismiss, p. 11, ROA ____]. The trial court further explained that Appellants' allegations "center almost exclusively on the fact that [Appellant] Andrew Pampu did not get everything that he wanted at mediation." [*Id.*].

Appellants argue that the trial courts' holding regarding public policy is contrary to South Carolina law. [Appellants' Initial Brief, pp. 31-32]. Specifically, Appellants point to Rule 8(c)(3) of the South Carolina Rules for Alternative Dispute Resolution, which provides that "[t]here is no confidentiality attached to information that is disclosed during a mediation . . . offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding." SCRADR 8(c)(3). Appellants contend that this rule contemplates legal malpractice lawsuits based on lawyers' conduct at mediations. [Appellants' Initial Brief, p. 32]. However, Appellants ignore Rule 8(g), which explicitly states, "The mediator **shall not** be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential." SCRADR 8(g) (emphasis added). Similarly, Rule 16.10(E) of the Local Civil Rules for the United States District Court for the District of South Carolina provides:

Except when ordered by the court for exceptional circumstances shown, the mediator **shall not** be listed or called as a witness or be compelled by subpoena or

otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

LCvR 16.10 (emphasis added). These rules clearly suggest that these types of claims are against public policy because the mediator would be the key witness, as he could testify objectively to what occurred at the mediation. Therefore, the trial court properly dismissed these claims as against public policy, and this Court should affirm that holding.

X. Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration.

Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, p. 6, ¶ 17, ROA ____]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion." [January 18, 2023 email from Thomas Pendarvis, ROA ____]. However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court,

thereby perpetuating this falsehood. Accordingly, this Court should order that those statements be stricken from the record in this matter.

Conclusion

For these reasons, Respondents respectfully request that this Court affirm the trial court's orders in their entirety.

April 12, 2024

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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' INITIAL REPLY BRIEF

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REPLY ARGUMENTS

I. The trial court's Orders dismissing all of Appellants' causes of action with prejudice "involve the merits" and are immediately appealable.

Respondents' arguments claiming the trial court's orders are interlocutory should be rejected on multiple grounds. The Orders a) dismiss the Appellants' claims asserted in their Second Amended Complaint ("Complaint") with prejudice and b) contain findings that will adversely affect the Appellants' defenses to the Respondents' counterclaims. The existence of Respondents' counterclaims has no effect on whether the Orders are subject to an immediate appeal.

A. The trial court's Orders "involve the merits."

The trial court's Orders are ripe for appellate review and are not interlocutory because those Orders contain findings dismissing all Appellants' causes of action asserted against Respondents. An order granting a dispositive motion is immediately appealable. See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 3-6, 393 S.E.2d 176, 177-79 (1990) (explaining an order dismissing one of multiple claims is immediately appealable).

Section 14-3-330 of the South Carolina Code addresses appellate jurisdiction and provides in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed therefrom any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

Intermediate orders involving the merits may be immediately appealed pursuant to subsection 14-3-330(1). “An order involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. Stone v. Thompson, 426 S.C. 291, 294-95, 826 S.E.2d 868, 869-70 (2019) (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (“An order involving the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’”). An order “involves the merits,” for purposes of exception to the final judgment rule of appealability, when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017); Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).

In this case, the trial court’s Orders granting Respondents’ motions to dismiss finally determined a substantial matter forming all of the Appellants’ causes of action and, therefore, involved the merits. See Stone, 426 S.C. at 295, 826 S.E.2d at 870.

The Respondents’ citation and substantial reliance on this Court’s findings in Richardson v. Halcyon Real Estate Services, LLP,¹ as its primary authority supporting its claim that the Appellants’ appeal is interlocutory is quite remarkable, because unlike the trial court in this case, none of the orders issued by the trial court in Richardson disposed of any claims or counterclaims, but instead dealt with depositions and discovery sanctions. 439 S.C. at 423, 887 S.E.2d at 155.

Interlocutory orders affecting a substantial right may be immediately appealed pursuant to subsection 14-3-330(2). Orders affecting a substantial right “discontinue an action, prevent an

¹ 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023).

appeal, grant or refuse a new trial, or strike out an action or defense.” MidState Distribs., Inc., 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.

There is nothing “piecemeal” about the Appellants’ appeal in this case. The trial court’s Orders “involve the merits” and finally dismissed all the Appellants’ causes of action against Respondents. This appeal is appropriate and ripe for review.

B. Incorrect findings in the trial court’s Orders will adversely affect Appellants’ defenses to Respondents’ counterclaims.

Findings in the trial court’s Orders will materially affect the Appellants’ ability to assert the Respondents were terminated “for cause,” thereby adversely affecting their defenses to the Respondents’ counterclaims for fees. The Appellants’ Complaint alleges the Respondents were terminated “for cause”. R. ____; Complaint, ¶¶ 49 and 66.

C. Respondents’ counterclaims are stayed during the appeal because the appeal directly affects those matters.

“Generally, serving [the] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.” Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal.” (citing Rule 205, SCACR)).

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR.

The reference in Rules 205 and 241(a) to the “jurisdiction” of the lower courts does not refer to subject matter jurisdiction. Rather, the rules govern the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or “matter,” during the pendency of the appeal.

Tillman v. Oakes, 398 S.C. 245, 256 n.3, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012).

“When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.” Id., 398 S.C. at 254-55, 728 S.E.2d at 50.

The matters included in the Appellants’ appeal include whether the Respondents were terminated “for cause” as alleged in Paragraphs 49 and 66 in the Appellants’ Complaint. R. ____.

If the trial court’s Orders are reversed on appeal and if the finder of fact agrees with Appellants’ arguments, such findings would prevent the Respondents from recovering on their claims for legal fees. See e.g., Est. of McClain v. Killmer, Lane & Newman, LLP, ____ P.3d ____, 2024 WL 2066330, *9 (Colo. App. May 9, 2024) (“[A] quantum meruit fee is not permitted when a client terminates the lawyer for cause and the fee agreement lacks a conversion clause.”); Maher v. Quality Bus Service, LLC, 144 A.D.3d 990, 42 N.Y.S.3d 43 (2d Dep’t 2016) (lawyer discharged

for cause is not entitled to compensation).

These Orders are not interlocutory, and the appeal should continue.

II. The Respondents' arguments on the Appellants' legal malpractice claims ignore specific fact allegations in the Complaint showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care.

The Respondents argue that the trial court's Orders properly dismissed the Appellants' legal malpractice claims because they failed to allege specific facts showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care. On page 16 of their Brief, the Respondents' summary description of the trial court's errors in dismissing the Appellants' legal malpractice/professional negligence claims as outlined in the Appellants' Brief, followed by its interpretation of this Court's rulings in Doe v. Howe.²

However, the Respondents carefully avoid mentioning the Appellants' allegations in Paragraphs 68-71 in their Complaint containing specific allegations of fact on how they would have obtained a better result had the Respondents met the standard of care. The Respondents urge this Court to conclude that the "Appellants still must allege facts in their complaint that, if true, would support that they 'would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care.'" Respondents Brief at 17 citing Doe v. Howe and then referring *only* to Paragraph 1 in the Appellants' Complaint. The problem with Respondents' arguments (and the trial court's rulings) is that the Appellants did allege facts in their Complaint which, if taken as true, would support that they "would have obtained a better result in the underlying matter if Respondents had exercised reasonable care." The trial court's rulings ignoring these allegations constitutes reversible error.

In Paragraphs 67-71 of their Complaint, the Appellants alleged

² 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005).

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions before and after their being relieved as counsel, [Appellants] suffered damages, including ***loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the [Respondents]' actions and inactions.***

Had the [Respondents] met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice [Appellant, Andrew Pampu] in the State Court mediation and litigation, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

Had the [Respondents] met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions ***in the Federal Case*** and its mediation, the [Appellants] suffered damages, including ***loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm*** caused by the [Respondents]' actions and inactions.

Had the [Respondents] met the standard of care by properly, accurately or timely advising [Appellant, Andrew Pampu] before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by [Appellant, Andrew Pampu] (recounted throughout this Complaint) should have been avoided.

R. ____, Complaint, ¶¶ 67-71 (emphasis added).

While the Respondents' Brief accurately states that the State Case was pending when the Complaint was filed, it completely ignores the impact the Respondents' acts and omissions had on the Federal Case, notwithstanding the specific allegations in Paragraphs 69-71.

The arguments in the Respondents' Brief that the Appellants' Complaint. "contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation" ignores the actual pleadings. Like the trial court, Respondents ignore the

allegations about the adverse consequences resulting from Respondents' actions in sending correspondence to opposing counsel and other third parties asserting their alleged "charging lien." Although the Supreme Court's last pronouncement on this issue was in an unpublished opinion, their view is that opposing counsel and other third parties are not subject to any duties to protect a "charging lien" asserted by counsel for the opposing party. See Byrd v. Wausau Underwriters Ins. Cos., No. 2011-MO-002, 2011 WL 11748258, at *1 (S.C. Jan. 7, 2011). Therefore, the allegations in the Appellants' pleadings that the Respondents' sending a lien letter to third parties who had no duties to protect their alleged lien was improper and interfered with the mediation process and settlement negotiations, which caused the Appellants to "spend several hundred thousand dollars litigating" because the matter was not resolved at or shortly after the federal court mediation.

The Respondents did not have the Appellants' permission to disclose information related to the representation of the Appellants to third parties without the Appellants' consent, and the Respondents' breach of those duties are alleged in the Complaint to have caused damages to the Appellants. The Appellants' Complaint states claims for breach of fiduciary duty and the trial court's Orders dismissing this cause of action should be reversed.

The allegations in the Complaint sufficiently state facts on which relief can be granted. Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) ("If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper."). The trial court's Orders granting the motions dismissing the Appellants' cause of action for legal malpractice/professional negligence were reversible errors.

III. The trial court's Orders and Respondents' Brief misapprehend South Carolina's fiduciary duty jurisprudence recognizing a fiduciary's liability for breach of their duties of confidentiality and loyalty.

Neither the trial court's Orders nor the Respondents' Brief dispute a fiduciary's liability for disclosing confidential information. Cf., McCormick v. England, 328 S.C. 627, 630, 494 S.E.2d 431, 432 (Ct. App. 1997) (physician can be liable for breach of a duty of confidentiality). Instead, the Respondents' Brief simply disputes whether the Appellants actually suffered any damages and not whether the Complaint states facts sufficient to show damages. The Respondents' Brief pays little to no attention to the allegations in the Complaint alleging damages the Respondents caused to the Appellants' Federal Case, including damages caused by disclosing confidential information to third parties in breach of their fiduciary duties. It was a reversible error for the trial court to grant the motions dismissing the Appellants' breach of fiduciary duty claims.

IV. John Pampu and Amanda Pampu have standing to pursue their breach of contract claims against the Respondents.

Both the trial court and the Respondents' Brief ignore specific allegations in the Complaint alleging 1) the existence of the client-lawyer relationship between the Respondents, as counsel, and John Pampu and Amanda Pampu, as clients, and 2) a contractual relationship in which the Respondents were to provide legal services without regard to whether a client-lawyer relationship existed. The trial court committed reversible error when it disregarded the allegations in Paragraphs 14 and 98 of the Complaint, which state:

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Appellants] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

98. Law Firms entered into a Contract with the [Appellants] agreeing and contracting to provide legal services to represent the [Appellants] in the Federal

Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

R. ___, Complaint ¶¶ 14 and 98.

One can reasonably infer John Pampu and Amanda Pampu, as the parents of Andrew Pampu, were paying the legal fees and costs associated with the Respondents’ representation in the underlying matters. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (“A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and *inferences reasonably deducible therefrom* would entitle the plaintiff to any relief on any theory of the case.”) (emphasis added); Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“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.”).

John Pampu and Amanda Pampu have standing to assert breach of contract claims against the Respondents because they were the parties to the contract who were paying the legal fees. Jaffe v. Gibbons, 290 S.C. 468, 472, 351 S.E.2d 343, 345 (Ct. App. 1986) (“The general rule is that where both parties have signed a contract, the signing by the first party is in effect his proposal or offer, and the signing by the second party is his acceptance thereof; the writing then represents or evidences the bargain between them.”); Fabian v. Lindsay, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014) (“Generally, one *not in privity of contract* with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third-party is not, as such, recoverable by the plaintiff.”) (emphasis added).

The Respondents’ Brief—like the trial court’s Orders—fails to consider as true the Appellants’ allegations that the Respondents agreed and contracted “to provide legal services to

represent the Does in the Federal Case, the State Case, and ‘any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits[,]’” and breached the contract by “failing to provide such services,” which for the purposes of a motion to dismiss or required to be taken as true. See R. ___, Complaint, ¶¶ 98 and 99. The Complaint states a breach of contract claim on behalf of John Pampu and Amanda Pampu.

The Respondents’ arguments that the Appellants’ breach of contract claim “is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims” should be rejected. Rule 8(a), SCRCP, permits “[r]elief in the alternative, or of several different types may be demanded” in a pleading. See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (“We find it is entirely appropriate for Skydive to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even to plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties.”) (citing Rule 8(a), SCRCP). The trial court’s rulings in its Orders were not “harmless error” as argued by the Respondents. John Pampu and Amanda Pampu have legitimate and viable breach of contract claims, which they should be permitted to litigate on the merits.

V. The Respondents’ Brief fails to address the trial court’s reversible error in not permitting the Appellants to plead in the alternative as provided under Rule 8(a) of the South Carolina Rules of Civil Procedure.

Nowhere in the four pages of arguments in the Respondents’ Brief do they make any argument supporting the trial court’s rulings that were contrary to Rule 8(a), SCRCP, which prevented the Appellants from pleading in the alternative. The Appellants’ Brief explains why this was a reversible error by the trial court because the rulings in RFT Management Co. v. Tinsley &

Adams, L.L.P.³ and Gibson v. Epting⁴ were not applicable to the trial court’s rulings on a motion to dismiss. Nothing in the Respondents’ Brief defeats those arguments.

In the light most favorable to the Appellants, there Complaint alleges specific facts supporting claims for professional negligence, see e.g., R. ___, Complaint ¶¶ 28, 29, 38, and 41-42, and also alleges specific facts supporting claims for breach of the fiduciary duties of loyalty and confidentiality. See e.g., R. ___, Complaint ¶¶ 47, 61, 63, and 66. The Appellants’ breach of fiduciary duty claim is **not** “premised on the same factual allegations as their legal malpractice claim” as argued on page 28 of the Respondents’ Brief. Applying Rule 8(a), SCRPC, permitting pleading in the alternative should have controlled the trial court’s rulings, especially given the separate factual allegations supporting each of these two independent claims, legal malpractice, and breach of fiduciary duty.

The Respondents’ Brief argues this Court’s rulings in Smith v. Hastie⁵ are not relevant in determining whether the trial court made an error in this case because that opinion “contains no discussion about duplicity or merger of these claims.” Respondents Brief at pp. 28-29. The problem with the Respondents’ argument is this Court’s ruling in Smith v. Hastie is grounded on the concept that parties are permitted to plead in the alternative, which eliminated the need for any discussion about duplicity or merger of claims. It was error for the trial court to hold that Appellants’ breach of fiduciary duty claim was duplicative of their legal malpractice claim based on the specific factual allegations supporting each of these claims, and based on Rule 8(a), SCRPC, specifically permitting parties to plead in the alternative.

³ 399 S.C. 322, 732 S.E.2d 166 (2012).

⁴ 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019).

⁵ 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005).

VI. The affidavit by the Appellants' expert was timely filed and sufficient to satisfy all statutory requirements.

The statements of fact in Paragraph 103 in the Appellants' Complaint concerning the filing of the expert's affidavit explain the events leading to the timely filing of the affidavit as permitted under S.C. CODE ANN. § 15-36-100, including all subparts. The substance of Justin Dillon, Esq.'s affidavit, including his CV showing the wealth of his experience in federal courts on Title IX matters, demonstrates why he is "qualified as to the acceptable conduct of the professional whose conduct is at issue." The Appellants' Title IX claims that the Respondents "strongly urged" the Appellant, Andrew Pampu, to release as part of the defective settlement agreement are a significant part of the Appellants' legal malpractice claims. Mr. Dillon is eminently qualified to provide expert opinions on the Respondents' failure to meet the standard of care in prosecuting those Title IX claims. Title IX claims are Title IX claims regardless of whether they are being litigated in South Carolina or other jurisdictions. The Respondents' contrary arguments should be rejected and the trial court's rulings should be reversed. Mr. Dillon's affidavit sufficiently and succinctly identified one negligent act by the Respondents.

While, like the amended complaint, this affidavit is generic in some ways, it too contains the minimal information necessary to survive a motion to dismiss. Our supreme court has held that section 15-36-100 requires only that the affidavit specify the "breach" element of malpractice. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012). This affidavit does that.

Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. at 752, 869 S.E.2d at 892.

The trial court erred in concluding that Mr. Dillon's expert affidavit was not timely filed and insufficient as a matter of law. Those rulings should be reversed, and this matter should be remanded for trial.

VII. The Respondents' Brief and the trial court's Orders misapprehend South Carolina's public policy permitting legal malpractice claims based on a lawyer's errors during a mediation.

It is understandable why the Respondents' Brief does not address why Rule 8(c)(3), SCADR, defeats the trial court's findings that the Appellants' claims are against public policy. This is because there would be no reason for the South Carolina Supreme Court to include Rule 8(c)(3) in the South Carolina Rules of Alternative Dispute Resolution if South Carolina public policy did not permit lawsuits based on alleged "professional malpractice occurring during the mediation" as expressly stated in Rule 8(c)(3). The Respondents' arguments about Rule 8(g), SCADR, concerning motions to compel disclosures by a mediator simply have no bearing on the trial court's rulings on South Carolina public policy or this appeal. The plain language in Rule 8(c)(3), SCADR, demonstrates why the trial court's rulings on South Carolina public policy should be reversed.

CONCLUSION

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully request that this Court reverse the trial court's ruling dismissing their Complaint with prejudice and remand the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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May 22 2024

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.

PROOF OF SERVICE

The undersigned hereby certifies that on May 22, 2024, a copy of the Appellants Initial Reply Brief 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 documents to each counsel's individual AIS email addresses as follows:

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May 22, 2024

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Jul 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

Appellate Case No. 2023-001779

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

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC..... Respondents

RESPONDENTS' FINAL BRIEF

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Statement of Issues on Appeal

1. Are the trial court orders from which Appellants attempt to appeal immediately appealable?
2. Did the trial court correctly hold that Appellants failed to state a claim for legal malpractice?
3. Did the trial court correctly hold that Appellants failed to state a claim for breach of fiduciary duty?
4. Did the trial court correctly hold that Appellant John Pampu and Appellant Amanda Pampu lack standing?
5. Did the trial court correctly hold that Appellants failed to state a claim for breach of contract?
6. Did the trial court correctly hold that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim?
7. Did the trial court correctly hold that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law?
8. Did the trial court correctly find Appellants' claims against public policy?
9. Did Appellants fail to correct the record relating to their recusal argument in their Motion for Reconsideration?

Statement of the Case

Appellants initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [See Complaint, R. pp. 36-56]. That same day, Appellants filed a Motion to Proceed Anonymously Under Pseudonyms. [See Motion to Proceed Anonymously Under Pseudonyms, R. pp. 32-34]. Appellants amended their Complaint on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [See Amended Complaint, R. pp. 58-78; and Expert Affidavit by Justin Dillon, Esq., R. pp. 79-87]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fargnoli Respondents and the Brewer Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Amended Complaint in its entirety.

[See Clawson Fagnoli Motion to Dismiss Amended Complaint, R. pp. 88-91; *and* Brewer Motion to Dismiss Amended Complaint, R. pp. 95-98]. On those same dates, Respondents also filed motions to prohibit Appellants from using pseudonyms. [See Clawson Fagnoli Motion to Prohibit Pseudonyms, R. pp. 92-94; *and* Brewer Motion to Prohibit Pseudonyms, R. pp. 99-102].

In response to Respondents' motions to dismiss, Appellants amended their complaint again on June 16, 2021. [See Second Amended Complaint, R. pp. 110-41]. Appellants' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents answered the Second Amended Complaint and asserted counterclaims against Appellants for breach of contract and unjust enrichment related to fees owed to them for their work on one of the underlying lawsuits. [See Clawson Fagnoli Answer to Second Amended Complaint and Counterclaims, R. pp. 142-68; *and* Brewer Answer to Second Amended Complaint and Counterclaims, R. pp. 176-93]. On those same dates, Respondents filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. [See Brewer Motion to Dismiss Second Amended Complaint, R. pp. 194-97; *and* Clawson Fagnoli Motion to Dismiss Second Amended Complaint, R. pp. 169-72]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, R. pp. 198-202; *and* Reply to Clawson Fagnoli Counterclaims, R. pp. 203-07]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [See Respondents' Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, R. pp. 241-63]. On December 15, 2021, Appellants submitted a response in opposition to Respondents' memorandum. [See Combined Memorandum in Opposition to Motions to Dismiss Second Amended Complaint, R. pp. 264-76].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents’ motions to dismiss and motions to prohibit use of pseudonyms. [See Transcript, R. pp. 285-337]. On March 4, 2022, the trial court issued an order granting Respondents’ motions to prohibit use of pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. On June 23, 2022, the trial court issued separate orders granting Respondents’ respective motions to dismiss and dismissing Appellants’ Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, R. pp. 6-18; and Order Granting Clawson Fagnoli Motion to Dismiss, R. pp. 19-30]. Thereafter, on July 5, 2022, Appellants filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants’ Motions to Dismiss [see R. pp. 277-84]. On October 23, 2023, the trial court denied the motion. [See Order Denying Motion for Reconsideration, R. pp. 1-2].

On November 14, 2023, Appellants served a Notice of Appeal. Appellants seek to appeal three orders issue by the trial court: (1) June 23, 2022 Order Granting Motion to Dismiss for the Brewer Respondents, (2) June 23, 2022 Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) October 23, 2023 Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders.

Standard of Review

I. Failure to State a Claim

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of

a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

II. Subject Matter Jurisdiction

“The question of subject matter jurisdiction is a question of law for the court.” *Cap. City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 632 (Ct. App. 1993)). This Court is “free to decide questions of law with no deference to the trial court.” *Id.* (citing *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 522, 642 S.E.2d 751, 752 (2007)).

Argument

I. Statement of Facts

This case stems from Appellants’ allegations of legal professional negligence, breach of fiduciary duty, and breach of contract against Respondents Clawson Fagnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fagnoli, Esq. (“the Clawson Fagnoli Respondents”) and Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“the Brewer Respondents”) (collectively, “Respondents”). On November 2, 2017, Respondents agreed to represent Appellant Andrew Pampu in two preexisting lawsuits: one pending in the U.S. District Court for the District of South Carolina (the “Federal Case”)¹ asserting Title IX and other claims against his university (the “University”) and another pending in a Court of Common Pleas in South Carolina (the “State Case”)² asserting defamation, civil conspiracy, and other tort claims against an accuser who

¹ See *John Doe v. Clemson University et. al.*, Case No. 8:16-cv-01957, in the United States District Court for the District of South Carolina, Anderson Division.

² See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina.

submitted to the University claims of sexual misconduct against Appellant Andrew Pampu. [See Second Amended Complaint, R. p. 113, ¶ 13]. Notably, neither Appellant Amanda Pampu nor Appellant John Pampu were parties to either the Federal Case or State Case, nor were they signatories to any settlement agreement.

Prior to the institution of the Federal Case and the State Case, Appellant Andrew Pampu was accused of and ultimately found by the University at an administrative hearing to have engaged in “nonconsensual sexual activities” and punished with suspension. [See Second Amended Complaint, R. pp. 114-15, ¶ 19]. Appellant Andrew Pampu thereafter appealed the University’s administrative hearing decision. [See Second Amended Complaint, R. p. 115, ¶ 20]. The appeals process resulted in the imposition of heavier sanctions against Appellant Andrew Pampu, including increasing his suspension period. [See Second Amended Complaint, R. p. 115, ¶ 21]. Appellant Andrew Pampu thereafter sued the University in the Federal Case, “alleging, among other things, violation of Title IX of the Education Amendments of 1972, failure to provide [Andrew Pampu] with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment.” [Second Amended Complaint, R. p. 114, ¶ 16].

As part of the Federal Case, Respondents represented Appellant Andrew Pampu at a court-ordered mediation on March 21, 2018. [See Second Amended Complaint, R. p. 117, ¶ 37]. Before the mediation, Respondents purportedly received an email from Appellants stating Appellant Andrew Pampu’s mediation goals, including:

- (a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University’s future treatment of [Andrew Pampu’s] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms;

and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

[Second Amended Complaint, R. p. 117, ¶ 36]. At the conclusion of the mediation session, “[Appellant Andrew Pampu] signed the ‘Settlement Agreement.’” [Second Amended Complaint, R. p. 118, ¶ 39; *see also* Joint Memorandum in Support of Motion to Dismiss Second Amended Complaint, Exhibit A, R. pp. 226-]. There are no allegations that Mr. Pampu was subject to duress or was otherwise forced to sign the settlement agreement.

Appellants contend that “[t]he Settlement Agreement conflicted with the goals explained in the March 2, 2018 email and conflicted with the goals of both the Federal Case and the State Case.” [Second Amended Complaint, R. p. 118, ¶ 41]. After the settlement agreement was reached on mutually agreeable terms at the mediation in the Federal Case, however, Appellant Andrew Pampu developed “buyer’s remorse” and attempted to abandon the settlement. [See Second Amended Complaint, R. pp. 118, 120-21, ¶¶ 40, 54-57]. On or about May 8, 2018, Appellants terminated their attorney-client relationship with Respondents and sought new counsel. [See Second Amended Complaint, R. p. 119, ¶¶ 47-48]. The University filed a motion to enforce the settlement, which was ultimately granted by the Court. [See Second Amended Complaint, R. pp. 120-21, ¶¶ 55-57].

Approximately one year after filing the Federal Case, Appellant Andrew Pampu sued his accuser in the State Case, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. [See Second Amended Complaint, R. p. 115, ¶ 24]. While the Federal Case resolved at mediation, the State Case remained pending at the time Appellants filed their Second Amended Complaint. On March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a

total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. All parties have filed notices of appeal in the State Case, and that appeal remains pending. [*Id.*].³ This Court may take judicial notice of the filings in the Federal Case and the State Case (including the appeal). See *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”) (quoting *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) (alteration in original)).

Counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint). However, when Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [See *generally* Complaint, R. pp. 36-56]. Instead, Appellants alleged that pursuant to S.C. Code Ann. § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, R. p. 55, ¶ 013]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [See Amended Complaint, R. pp. 58-87]. In response to Respondents’ respective motions to dismiss, which raised Appellants’

³ See *Andrew Pampu v. Erin Wingo et al.*, South Carolina Appellate Case No. 2022-001332. Respondents direct the Court to the Record on Appeal in the State Case—specifically, the verdict and judgment.

untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to the expert affidavit issue. [See Second Amended Complaint, R. pp. 129-30, ¶ 103]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, R. pp. 129-30, ¶ 103]. Appellants further claimed that they were filing their Second Amended Complaint under S.C. Code Ann. § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, R. p. 130, ¶ 103].

In the instant action, Appellants have asserted claims for legal professional negligence, breach of fiduciary duty, and breach of contract. They allege:

The Lawyers failed to meet the minimum standard of care thereby breaching professional duties to the [Pampus] to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the [Pampus]; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

[Second Amended Complaint, R. p. 126, ¶ 83]. Appellants initially filed this action under pseudonyms. [See Complaint, R. pp. 36-56; *and* Motion to Proceed Anonymously Under Pseudonyms, R. pp. 32-34]. However, on March 4, 2022, the trial court granted Respondents' respective motions seeking to prohibit Appellants from using pseudonyms. [See Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. Appellants did not appeal this decision.⁴

⁴ See *Doe v. Howe*, 362 S.C. 212, 217, 607 S.E.2d 354, 356 (Ct. App. 2004) (holding that the denial of a motion to proceed anonymously is immediately appealable).

On June 28, 2021 and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees owed to them for their work on the Federal Case. [See Brewer Counterclaims, R. pp. 188-93; and Clawson Fagnoli Counterclaims, R. pp. 163-70]. On those same dates, Respondents also filed motions to dismiss, asking the trial court to dismiss Appellants' Second Amended Complaint in its entirety. Respondents asserted the following grounds for their motions:

1. Appellants' claims failed to state a claim upon which relief could be granted;
2. Appellants John Pampu and Amanda Pampu lacked standing;
3. Appellants failed to timely provide an expert witness affidavit as required by S.C. Code Ann. § 15-36-100, and the exceptions found in § 15-36-100(C)(1) were inapplicable;
4. The credentials of Appellants' purported expert were insufficient under § 15-36-100(A)(3);
5. The gravamen of Appellants' Second Amended Complaint was simply post-mediation "buyer's remorse"; and
6. Appellants' cause of action for breach of fiduciary duty was duplicative of its cause of action for legal malpractice.

[See Brewer Motion to Dismiss Second Amended Complaint, R. pp. 194-97; and Clawson Fagnoli Motion to Dismiss Second Amended Complaint, R. pp. 169-72]. On July 28, 2021, Appellants replied to Respondents' respective counterclaims. [See Reply to Brewer Counterclaims, R. pp. 198-202; and Reply to Clawson Fagnoli Counterclaims, R. pp. 203-07].

The trial court held a virtual hearing on Respondents' respective motions to dismiss and motions to prohibit use of pseudonyms on March 2, 2022. [See Transcript, R. pp. 285-337].

Thereafter, the trial court granted Respondents' motions to prohibit use of pseudonyms. [Order Granting Motions to Prohibit Pseudonyms, R. pp. 3-5]. The trial court further granted Respondents' motions to dismiss and dismissed all Appellants' causes of action. [See Order Granting Brewer Motion to Dismiss, R. pp. 6-18; *and* Order Granting Clawson Fagnoli Motion to Dismiss, R. pp. 19-33]. Appellants thereafter filed a motion for reconsideration and to alter or amend the orders granting Respondents' motions to dismiss. [See Motion for Reconsideration, R. pp. 277-84]. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, R. p. 282, ¶ 17]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, "[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion." However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court.

Following the denial of their motion for reconsideration [see Order Denying Motion for Reconsideration, R. pp. 1-2], Appellants filed this appeal. Respondents' counterclaims remain pending.

II. The trial court orders from which Appellants attempt to appeal are not immediately appealable, and, therefore, this Court lacks jurisdiction.

As an initial matter, the trial court orders from which Appellants attempt to appeal are not immediately appealable. Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330. This Court has explained:

Section 14-3-330 provides that only final judgments and certain interlocutory orders are immediately appealable. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.

Richardson v. Halcyon Real Est. Servs., LLP, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (internal quotation marks and citations omitted). “The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (citing *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005)).

Here, Appellants seek to appeal three orders issued by the trial court: (1) Order Granting Motion to Dismiss for the Brewer Respondents, (2) Order Granting Motion to Dismiss for the Clawson Fagnoli Respondents, and (3) Order Denying Appellants’ Motion for Reconsideration and to Alter and/or Amend the two aforementioned orders. While these orders effectively dismissed all Appellants’ causes of action, Appellants fail to consider the fact that Respondents’ counterclaims remain pending. Notably, Appellants do not address the jurisdiction issue or mention Respondents’ counterclaims in their initial brief. [See generally Appellants’ Initial Brief]. As noted above, on June 28, 2021 and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed counterclaims against Appellants related to fees

owed to them for their work on the Federal Case. [Brewer Counterclaims, R. pp. 188-93; Clawson Fagnoli Counterclaims, R. pp. 163-70]. Those counterclaims should be litigated to a final conclusion before any appeal is ripe. Appellants' counsel takes the unsupported position that the counterclaim portion of the case is stayed pending appeal.⁵

Because Respondents' counterclaims remain pending, Appellants' attempt to make a "piecemeal" appeal is improper. Therefore, this Court lacks jurisdiction, and this appeal should be dismissed.

III. The trial court correctly held that Appellants failed to state a claim for legal malpractice.

The trial court correctly held that Appellants failed to state a claim for legal malpractice. A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing *Rydde v. Morris*, 381 S.C. 643, 645, 675 S.E.2d 431, 432 (2009)).

Appellants first argue that the trial court erred in dismissing their claim for legal malpractice by "ignoring the specific allegations in the Second Amended Complaint . . . clearly supporting [their] professional negligence claims." [Appellants' Initial Brief, p. 18]. Specifically, Appellants point to paragraph 1 of the Second Amended Complaint, in which Appellants allege

⁵ There are no South Carolina cases specifically addressing whether an order dismissing a plaintiff's claims is immediately appealable where counterclaims remain pending. While not binding on this Court, in the absence of South Carolina authority regarding immediate appealability where counterclaims remain pending, North Carolina law is instructive. *See, e.g., Pawlik v. Fortunati*, 183 N.C. App. 490, 645 S.E.2d 231 (2007) ("Because defendants' counterclaims are still pending, and plaintiff has failed to demonstrate that this interlocutory appeal is properly before the Court, we dismiss the appeal.").

that Respondents were negligent in (1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, R. pp. 110-11, ¶ 1]. Appellants further argue that the trial court erred in dismissing their claim for legal malpractice by “ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon’s expert affidavit.” [Appellants’ Initial Brief, p. 18]. Appellants argue that the court failed to accept these allegations as true and view them in the light most favorable to them. [Appellants’ Initial Brief, p. 20]. Appellants contend that, taken as true, these allegations establish a claim for legal malpractice. Finally, Appellants argue that the trial court “create[ed] its own ‘fact’ allegations” by stating that Appellant Andrew Pampu “developed buyer’s remorse in the days after the mediation and attempted to abandon the mediation.” [Appellants’ Initial Brief, p. 20; *see also* Order Granting Brewer Motion to Dismiss, R. p. 8 *and* Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 21].

In support of their arguments, Appellants cite *Doe v. Howe* for the proposition that loss of settlement value can form the basis for a legal malpractice claim. [Appellants’ Initial Brief, p. 17 (citing 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005))]. However, while this Court contemplated in *Howe* that such a claim might be viable under certain circumstances, this Court affirmed the trial court’s grant of summary judgment in favor of the respondents on the appellant’s legal malpractice claim. *Howe*, 367 S.C. at 437, 626 S.E.2d at 27. In doing so, this Court referenced the trial court’s holding that appellant’s expert “never explicitly stated [appellant] most probably would have recovered more than the \$88,000 he received in his settlement” *Id.*, 367 S.C. at 445, 626 S.E.2d at 31. While this Court acknowledged that the trial court “was not imposing an

additional requirement for [appellant's] *prima facie* case," it confirmed that a legal malpractice plaintiff must "prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care." *Id.*, 367 S.C. at 446, 626 S.E.2d at 32. In affirming the trial court's grant of summary judgment as to the legal malpractice claim, this court explained, "Notably absent from the record in this case, however, is any mention of settlement value from [any expert] that was brought to the trial judge's attention." *Id.*

While the present case involves motions to dismiss and a motion for reconsideration rather than a motion for summary judgment, Appellants still must allege facts in their complaint that, if true, could support that they "would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care." *See id.* Instead, the Second Amended Complaint contains merely conclusory allegations that Respondents were negligent in allowing Appellant Andrew Pampu to sign the settlement agreement and purportedly failing to explain to him the implications of it. [See Second Amended Complaint, R. pp. 110-11, ¶ 1]. Other jurisdictions have recognized that a former client simply alleging that his former attorney failed to clearly explain settlement documents before the former client signed them and that the former client expected to receive more than the settlement documents identified is insufficient as a matter of law to state a claim for legal malpractice. *See, e.g., Tarrant v. Ramunno*, 171 A.3d 138 (Del. 2017) ("Even if we accept [appellant/former client's] allegation that [respondent/former attorney] failed in his duties to her by failing to adequately explain the terms of the settlement documents that she signed, her complaint failed to allege any resulting loss.").⁶

⁶ The elements of a legal malpractice claim in Delaware are substantially similar to those in South Carolina. *See id.* ("To state a claim for legal malpractice, a plaintiff must allege and prove the following elements: (a) the employment of a lawyer, (b) the lawyer's neglect of a professional obligation, and (c) resulting loss. To prove a resulting loss, the plaintiff must show that the underlying lawsuit would have been successful but for the lawyer's negligence.").

The Second Amended Complaint further contains merely conclusory allegations that Respondents were negligent in the manner in which they prosecuted the State Case. [See Second Amended Complaint, R. pp. 110-11, ¶ 1]. In fact, at the time the Second Amended Complaint was filed, the State Case remained pending. [See generally *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina]. Appellants cannot bring legal malpractice claims for alleged conduct related to a pending lawsuit, as they cannot reasonably allege that any purported conduct resulted in a loss of settlement and/or claim value.⁷ The Supreme Court of South Carolina has held that in “a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice, . . . there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). Because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. Further, even if the \$5.3 million judgment had been obtained at that time, Appellants could not reasonably argue that a more favorable judgement could have been obtained but for Respondents’ alleged professional negligence. Accordingly, the trial court correctly dismissed these claims.

The Second Amended Complaint also contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation. [See

⁷ Notably, on March 25, 2022, following a jury trial, a jury returned a verdict in favor of Appellant Andrew Pampu in the State Case and awarded him a total of \$5.3 million. After post-trial motions, the court entered judgment in favor of Mr. Pampu in the amount of \$2.3 million on July 11, 2022. [See *Andrew Pampu v. Erin Wingo et al.*, Case No. 2017-CP-39-00709, in the Court of Common Pleas in Pickens County, South Carolina].

Second Amended Complaint, R. pp. 110-11, ¶ 1]. Again, Appellants did not articulate in their Second Amended Complaint how Respondents were negligent in concluding their representation or what alleged loss resulted. Moreover, Appellants terminated Respondents, which forced Respondents to conclude the representation. [See Second Amended Complaint, R. pp. 119, 122, ¶¶ 48-49, 66]. Appellants cannot now argue that Respondents were negligent in doing so. Accordingly, the trial court correctly dismissed these claims.

Moreover, the trial court correctly ruled that Appellants' expert witness affidavit was both untimely and insufficient as a matter of law.⁸ Notwithstanding the same, the affidavit is simply a rehash of Appellants' allegations in their Second Amended Complaint that they were unhappy with the settlement agreement that Appellant Andrew Pampu signed. Therefore, the allegations in the expert witness affidavit did not give rise to a cause of action against Respondents for professional negligence.⁹

Finally, the trial court correctly recognized that Appellants' allegations are largely premised on Appellant Andrew Pampu not getting everything Appellants wanted at mediation, and they only alleged legal malpractice once they realized the settlement could not be undone. The trial court did not create facts by referring to these allegations as "buyer's remorse." Rather, the trial court merely acknowledged that Appellants did not identify any acts or omissions on the part

⁸ This argument is discussed in depth in Section VIII, *infra*.

⁹ Moreover, the expert affidavit contains no allegations whatsoever regarding Respondents' conduct in the State Case or any other post-mediation conduct. Accordingly, for that reason alone, this Court should affirm the trial court's dismissal of Appellants' professional negligence claim as it relates to the State Case and/or any other post-mediation conduct pursuant to S.C. Code Ann. § 15-36-100 ("[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.").

of Respondents other than that Appellant Andrew Pampu did not get everything Appellants wanted at mediation.

The trial court correctly ruled that no allegations in the Second Amended Complaint give rise to a colorable claim that Respondents could be liable for legal malpractice. Accordingly, this Court should affirm the trial court's holding that Appellants failed to state a claim for legal malpractice.

IV. The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty.

The trial court correctly held that Appellants failed to state a claim for breach of fiduciary duty. "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36, 732 S.E.2d 166, 173 (2012) (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)).

Appellants first argue the trial court ignored their allegations that Respondents "breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without [Appellants'] knowledge or consent that caused financial losses." [Appellants' Initial Brief, p. 20]. Specifically, Appellants point to paragraphs 2, 61, and 62 of their Second Amended Complaint, which generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants' consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants' successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant

Andrew Pampu’s position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, R. pp. 111, 121-22, ¶¶ 2, 61-62]. Appellants further argue that Respondents’ lien letter “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit.” [Appellants’ Initial Brief, p. 23].

As an initial matter, Appellants alleged in their Second Amended Complaint that Respondents sent the lien letter on February 28, 2019—after the mediation in the Federal Case. [Second Amended Complaint, pp. 12-13, ¶ 61]. Indeed, Appellants alleged that the lien letter was based, in part, on the fees Respondents allege they are owed due to the outcome of the Federal Case. [*Id.*]. A lien letter sent after the Federal Case settled at mediation could not have “wreaked havoc on [Appellants’] attempts to resolve their claims against the University defendants in the Federal Lawsuit” as Appellants allege. [See Appellants’ Initial Brief, p. 23].

Moreover, to the extent that Appellants contend that Respondents’ lien letter disadvantaged Appellant Andrew Pampu’s position in the State Case, such an allegation is both baseless and premature. As discussed above in the context of Appellants’ legal malpractice claims related to the State Case, because there was no verdict, judgment, or ruling—adverse or not—in the State Case at the time Appellants filed their Second Amended Complaint, there are no allegations in the Second Amended Complaint that could give rise to a legal malpractice claim based on any alleged conduct of Respondents in the State Case. See *Stokes-Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494. For the same reason, Appellants cannot reasonably claim that Respondents’ lien letter disadvantaged Mr. Pampu’s position in the State Case. Appellants cannot articulate—and, in fact, have not articulated—what damages they allegedly suffered related to the State Case, because the State Case remained pending at the time they filed their Second Amended Complaint. Accordingly, the trial court correctly held that “[t]o the extent [Appellants] claim that [Appellant]

Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm." [Order Granting Brewer Motion to Dismiss, R. pp. 10-11; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 24]. Therefore, the trial court correctly dismissed Appellants' breach of fiduciary duty claim, and this Court should affirm that ruling.

V. The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu lack standing.

The trial court correctly held that Appellant John Pampu and Appellant Amanda Pampu ("the Pampu Parents") lack standing.

Appellants argue that the trial court ignored allegations establishing a client-lawyer relationship between the Pampu Parents and Respondents related to the Federal Case and the State Case. [Appellant's Initial Brief, p. 24]. Specifically, Appellants point to several paragraphs in their Second Amended Complaint generally alleging that Respondents represented "the [Pampus]" in the Federal Case and caused financial losses to "the [Pampus]." [Appellant's Initial Brief, pp. 24-25]. The trial court held that "because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims." [Order Granting Brewer Motion to Dismiss, R. p. 11; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 24].

Appellants contend that the trial court erred because "[t]he 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." [Appellants' Initial Brief, p. 25]. However, regardless of whether the Pampu Parents and Respondents had an attorney-client relationship, they lack standing to assert the claims they allege, as they had no legal interest in the State Case or the Federal Case. As discussed above, in support of their legal malpractice claim, Appellants allege that Respondents were negligent in

(1) allowing Appellant Andrew Pampu to sign the settlement agreement, (2) failing to explain to Appellant Andrew Pampu the full implications of signing the settlement agreement, (3) the manner in which they prosecuted the State Case, and (4) the manner in which they concluded the representation. [Second Amended Complaint, R. pp. 110-11, ¶ 1]. Further, in support of their breach of fiduciary duty claim, Appellants generally allege that (1) after the conclusion of the representation, Respondents disclosed information related to the representation to counsel for the opposing parties without Appellants' consent, (2) Respondents sent a letter to the mediator and counsel for all parties in the State Case and other third parties asserting a lien on any settlement proceeds, and (3) Appellants' successor counsel sent a letter to Respondents stating that the lien letter interfered with the mediation process, disrupted negotiations, and disadvantaged Appellant Andrew Pampu's position in the mediation, which caused damages to Mr. Pampu. [Second Amended Complaint, R. pp. 111, 121-22, ¶¶ 2, 61-62]. Finally, in support of their breach of contract claim, Appellants allege that Respondents "entered into a Contract with the [Pampus] agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and 'any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits'" and that Respondents breached this agreement by "failing to provide such services." [Second Amended Complaint, R. pp. 128-29, ¶¶ 98-99]. In sum, the damages Appellants allege resulted from all their causes of action are a loss of settlement value in the Federal Case and a disadvantaged position in the State Case. Because the Pampu Parents were not parties to either case and had no legal interest in either case, they cannot reasonably claim that they were somehow damaged by any loss of settlement value in the Federal Case or disadvantaged position in the State Case.

Further, to the extent that the trial court erred in holding that the Pampu Parents lacked standing to assert their claims, such error was harmless, as those claims still fail as a matter of law for the reasons discussed herein. Accordingly, this Court should affirm the trial court's holding. *See Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("Error is harmless where it could not reasonably have affected the result of the trial.").

VI. The trial court correctly held that Appellants failed to state a claim for breach of contract.

The trial court correctly held that Appellants failed to state a claim for breach of contract. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019) (quoting *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015)).

Appellants argue that the trial court "summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law." [Appellants' Initial Brief, p. 25]. Appellants further argue that the trial court failed to consider their allegations purportedly establishing a contractual relationship between the Pampu Parents and Respondents to provide legal services related to the Federal Case and the State Case. [Appellants' Initial Brief, p. 26]. Specifically, Appellants point to paragraphs 14 and 98 through 101 of their Second Amended Complaint, which generally allege that Respondents entered a contract with Appellants to provide legal services related to the Federal Case and the State Case and that Respondents breached this agreement by failing to provide such services. [Second Amended Complaint, R. pp. 113, 128-29, ¶¶ 14, 98-101]. Appellants contend that these allegations establish that the Pampu Parents have standing to assert the breach of contract claim. [Appellants' Initial Brief, p. 26].

While the orders granting Respondents' motions to dismiss did not explicitly address Appellants' breach of contract claim, the trial court correctly dismissed the claim. Appellants' breach of contract claim fails for the same reasons that their legal malpractice and breach of fiduciary duty claims fail—namely, because Appellants failed to articulate in their Second Amended Complaint how Respondents allegedly breached any agreement (other than a conclusory allegation that Respondents “fail[ed] to provide such services,” which is clearly not the case) or how any alleged breach proximately caused damages to Appellants (and in particular, the Pampu Parents). Moreover, Appellants' breach of contract claim is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims and is, therefore, duplicative of those claims. *See, e.g., Gen. Sec. Ins. Co. v. Jordan, Coyne & Savits, LLP*, 357 F. Supp. 2d 951, 961 (E.D. Va. 2005) (holding that because the plaintiffs' legal malpractice claim was barred, their breach of fiduciary duty and breach of contract claims were also barred because “they are mere disguises for plaintiffs' legal malpractice claims,” as “[t]he breach alleged in both the breach of contract and breach of fiduciary duty claims is the same failure to provide adequate legal services that is the crux of the legal malpractice claims.”). Accordingly, the trial court properly dismissed this claim.¹⁰

The trial court correctly dismissed Appellants' breach of contract claim. Accordingly, this Court should affirm the trial court's ruling as to Appellants' breach of contract claim.

VII. The trial court correctly held that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim.

The trial court correctly held that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim.

¹⁰ To the extent that the trial court erred by not explicitly addressing Appellants' breach of contract claim in the orders granting Respondents' motions to dismiss, such error was harmless. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

Appellants argue that they should be able to pursue both claims pursuant to South Carolina Rule of Civil Procedure 8(a), which provides that “[r]elief in the alternative or of several different types may be demanded.” [Appellants’ Initial Brief, p. 27; S.C. R. Civ. P. 8(a)]. Appellants further argue that the trial court’s reliance on *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.* and *Gibson v. Epting* do not support its ruling, as those cases dealt with a motion made at later stages in litigation. [Appellants’ Initial Brief, p. 27 (citing *RFT Mgmt. Co.*, 399 S.C. 322, 732 S.E.2d 166 (2012); and *Gibson*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019))].

In *RFT Management Co.*, RFT sued its former attorney and his law firm based on their representation of RFT in a transaction involving two real estate investment properties. 399 S.C. at 327, 732 S.E.2d at 168. RFT alleged multiple claims against the respondents, including legal malpractice and breach of fiduciary duty. *Id.* At trial, at the close of evidence, the trial court merged RFT’s breach of fiduciary duty claim into its legal malpractice claim and granted the respondents’ motion for a directed verdict as to RFT’s other claims; therefore, only the legal malpractice claim went to the jury. *Id.*, 399 S.C. at 330, 732 S.E.2d at 170. The jury returned a verdict in favor of the respondents, and the trial court denied RFT’s post-trial motions. *Id.* On appeal, RFT argued, in part, that the trial court erred in “failing to charge the jury on breach of fiduciary duty and merging this cause of action with its first cause of action for legal malpractice.” *Id.* In affirming the trial court’s decision to merge the two causes of action, the Supreme Court of South Carolina explained:

A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship. . . . In the current matter, however, RFT’s claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT’s claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client. . . . Although RFT now argues a breach of fiduciary claim *could* be distinguishable from legal malpractice, RFT does not set forth any specific facts that demonstrate its breach of fiduciary duty claim *is* distinguishable because it arises out of a duty *other than* one created by the attorney-client

relationship or because it is based on different material facts. Consequently, we hold the breach of fiduciary duty claim is duplicative.

Id., 399 S.C. at 336–37, 732 S.E.2d at 173 (internal citation omitted) (emphasis in original).

Similarly, in *Gibson*, the appellants (an individual and several of her companies) sued the respondents (several attorneys and their respective law firms) for multiple claims, including legal malpractice and breach of fiduciary duty, related to the attorneys’ representation of them in a real estate matter. 426 S.C. at 350, 827 S.E.2d at 180. The trial court granted summary judgment in favor of the respondents. *Id.* In affirming the trial court’s decision, this Court noted, “[Appellant] asserts Respondents breached their fiduciary duty to her in numerous ways, all of which duplicate her legal malpractice claim because the duties arose out of the attorney-client relationship and she alleges the same facts as to both claims. . . . Accordingly, we only address [Appellant’s] claim for legal malpractice.” *Id.*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173).

Here, Appellants allege that Respondents breached the fiduciary duties of confidentiality and loyalty. [See Second Amended Complaint, pp. 18-19, ¶¶ 87-96]. Those duties are inherent in the attorney-client relationship. Moreover, Appellants’ breach of fiduciary duty claim is premised on the same factual allegations as their legal malpractice claim. [See Second Amended Complaint, R. pp. 125-28, ¶¶ 79-96]. Therefore, Appellants’ claim for legal malpractice necessarily encompasses an alleged breach of the fiduciary duty that attorneys have to their clients. See *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173; and *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182. Therefore, Appellants’ breach of fiduciary duty claim is duplicative, and the trial court’s reliance on *RFT Management Co.* and *Gibson* was not in error.

Instead, Appellants contend that *Smith v. Hastie* is more applicable to the present case. [Appellants’ Initial Brief, p. 27 (citing *Smith*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005))].

There, Smith sued her former attorney for several claims, including breach of fiduciary duty and professional negligence, arising from the attorney's creation of a family limited partnership for the appellant and her family. *Smith*, 367 S.C. at 413, 626 S.E.2d at 14. The trial court granted summary judgment in favor of the lawyer and dismissed all of Smith's claims with prejudice, holding that "(1) Smith failed to commence her lawsuit within the applicable limitations period; (2) Smith's malpractice claims failed for lack of evidence; and (3) Smith's claims were barred by the doctrine of collateral estoppel." *Id.*, 367 S.C. at 415, 626 S.E.2d at 16. While this Court disagreed with the trial court's grant of summary judgment on Smith's claims for negligence and breach of fiduciary duty, the opinion contains no discussion about duplicity or merger of these claims, as that was not an issue before this Court. *See id.*, 367 S.C. at 417–21, 626 S.E.2d at 16–18. Accordingly, *Smith* is not relevant in determining whether the trial court here erred in holding that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim. For the reasons discussed above, it did not.¹¹

The trial court correctly dismissed Appellants' breach of fiduciary duty claim. Accordingly, this Court should affirm the trial court's ruling as to Appellants' breach of fiduciary duty claim.

VIII. The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law.

The trial court correctly held that the affidavit of Justin Dillon was both untimely and insufficient as a matter of law. Pursuant to S.C. Code Ann. § 15-36-100, the plaintiff in a professional negligence action "must file as part of the complaint an affidavit of an expert witness

¹¹ To the extent that the trial court did err in holding that Appellants' breach of fiduciary duty claim is duplicative of their legal malpractice claim, such error is harmless, as Appellants failed to state a claim for either cause of action for the reasons discussed herein. *See Judy*, 384 S.C. at 646, 682 S.E.2d at 842.

which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B).

A. Timeliness

The trial court correctly held that the affidavit of Justin Dillon was untimely as a matter of law. “If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.” S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. [*See generally* Complaint, R. pp. 36-56]. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” [Complaint, R. p. 55, ¶ 103]. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. [*See* Amended Complaint, R. pp. 58-86]. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. [*See* Second Amended Complaint, R. pp. 129-30, ¶ 103]. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—

that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. [Second Amended Complaint, R. pp. 129-30, ¶ 103]. Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. [Second Amended Complaint, R. p. 130, ¶ 103]. Appellants now argue that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. [Appellants' Initial Brief, pp. 28-29].

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E).¹² Stated differently, this section allows a plaintiff to cure an alleged defect *in the affidavit* by amending *the affidavit* within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending *the pleadings* to include an affidavit. *See id.* Accordingly, Appellants' reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing **and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.**” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no

¹² “**If a plaintiff files an affidavit which is allegedly defective**, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective.” *Id.* (emphasis added).

such allegation in their initial Complaint. [*See generally* Complaint, R. pp. 36-56].¹³ Further, allowing plaintiffs to circumvent the requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court correctly held that Appellants’ expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants’ legal malpractice claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

B. Sufficiency

Further, regardless of whether the expert affidavit was timely filed, the trial court correctly held that the affidavit of Justin Dillon was insufficient as a matter of law. Section 15-36-100(A) requires that the expert be “qualified as to the acceptable conduct of the professional whose conduct is at issue” and lists several additional requirements. *See* S.C. Code Ann. § 15-36-100(A). “The defendant is entitled to challenge the sufficiency of the expert’s credentials pursuant to subsection (E).” *Id.*

The trial court made the following findings regarding Mr. Dillon’s credentials:

- Mr. Dillon has never been licensed (or admitted pro hac vice) to practice law in the state or federal courts or South Carolina, nor is he licensed in the Fourth Circuit Court of Appeals;

¹³ Moreover, Respondents note that counsel for Appellants sent a letter of representation on September 19, 2019 (approximately 18 months prior to the filing of their initial Complaint) and an additional letter of representation on February 26, 2021 (approximately three weeks prior to the filing of their initial Complaint). Accordingly, Respondents could not have reasonably alleged that an affidavit could not be prepared due to time constraints.

- Mr. Dillon does not claim to be familiar with the nature of federal practice in the U.S. District Court for the District of South Carolina, its Local Civil Rules, or the nature or manner of mediations conducted in South Carolina; and
- Mr. Dillon reviewed few of the voluminous materials related to the underlying facts at issue.¹⁴

[See Order Granting Brewer Motion to Dismiss, R. pp. 13-14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. The trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case and that because Mr. Dillon’s purported experience related mainly to Title IX claims but not South Carolina federal or state court procedures or litigation, his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [Order Granting Brewer Motion to Dismiss, R. 14; Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27].

Appellants argue that the trial court erred by not accepting as true Mr. Dillon’s qualifications as stated in his curriculum vitae, which was included with his affidavit. [Appellants’ Initial Brief, p. 30]. Specifically, Appellants contend that Mr. Dillon’s CV “identifies his specialized, technical knowledge regarding the Title IX and related matter at issue in the underlying lawsuits.” [Appellants’ Initial Brief, p. 30]. However, while Mr. Dillon’s CV listed his purported experience related to Title IX claims, it indicated no such experience with South Carolina federal or state court statutes, rules, procedures, or standards of care.

¹⁴ Mr. Dillon stated in his affidavit that he only reviewed 13 documents in rendering his opinion, which primarily consisted of the pleadings in the underlying lawsuits. [See Second Amended Complaint, Exhibit 1, R. pp. 133-41].

Appellants further argue that the affidavit is facially sufficient because it identifies a potentially meritorious legal malpractice claim and that § 15-36-100(E) does not permit the trial court to address the substance of those opinions. [Appellants’ Initial Brief, p. 30]. However, the trial court did not address the substance of Mr. Dillon’s opinions. Rather, the trial court addressed Mr. Dillon’s credentials—specifically, his lack of relevant South Carolina legal expertise and, implicitly, his inability to offer expert opinions relating to the application of South Carolina standards of care for South Carolina attorneys (as distinguished from the substance of any such opinions). [See Order Granting Brewer Motion to Dismiss, R. pp. 13-14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. Accordingly, Appellants’ arguments regarding the substance of Mr. Dillon’s opinions are not at issue on appeal.

Next, Appellants argue that the trial court improperly held that Mr. Dillon’s credentials were inadequate “because he has not actually practiced in South Carolina federal or state court.” [Appellants’ Initial Brief, pp. 30-31]. However, the trial court made no such holding. In fact, the trial court acknowledged that there is no requirement that the expert witness in a legal malpractice action be a South Carolina-barred attorney. [See Order Granting Brewer Motion to Dismiss, R. p. 14; *and* Order Granting Clawson Fargnoli Motion to Dismiss, R. p. 27]. Rather, the trial court explained that the crux of Appellants’ legal malpractice claim is Respondents’ advice to Appellant Andrew Pampu during the mediation of the Federal Case. [*Id.*]. Because Mr. Dillon’s purported experience related mainly to Title IX claims, but not South Carolina federal or state court statutes, rules, procedures, or standards of care, the trial court determined that his experience was not sufficiently related to Appellants’ legal malpractice claims as pled in their Second Amended Complaint. [*Id.*].

In support of their argument, Appellants cite *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996). However, *Smith* was decided in 1996, while § 15-56-100 became effective in 2005. Accordingly, *Smith* is irrelevant for purposes of assessing the sufficiency of an expert affidavit pursuant to § 15-56-100. Notably, while the court held that the expert’s lack of a South Carolina law license did not disqualify him as an expert (in the context of a motion to exclude), the court also ruled regarding the “locality rule”:

In the context of legal malpractice, most courts which originally adopted a strict locality rule have expanded the relevant geographical region to create a **statewide** standard of care. The rationale for this development is that **attorneys are generally regulated on a statewide basis, with state rules of procedure and different substantive laws**. Accordingly, we adopt the majority view and rule that the standard to be applied in determining legal malpractice issues is **statewide**.

Smith, 322 S.C. at 437–38, 472 S.E.2d at 614 (emphasis added) (internal citations omitted). Accordingly, Appellants’ references to the locality rule—and their implied contention that the trial court applied it—is inapposite. Rather, the trial court properly held that Mr. Dillon did not have the requisite qualifications regarding South Carolina federal or state court statutes, rules, procedures, or standards of care pursuant to § 15-56-100(A)(2).

Appellants also argue that the trial court erred in stating that “Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation.” [Appellants’ Initial Brief, p. 31]. While Mr. Dillon may not have explicitly stated so in his affidavit, he purported to state opinions regarding alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation, implicitly holding himself out as an expert in that area.

Finally, Appellants contend that the trial court incorrectly imposed a “sufficiently related” standard that is absent from § 15-56-100. [Appellants’ Initial Brief, p. 31]. While the phrase “sufficiently related” is not present in the statute, it does require that the expert have “actual

professional knowledge and experience in the area of practice or specialty in which the opinion is to be given.” S.C. Code Ann. § 15-56-100(A)(2)(b).

The trial court correctly determined that Mr. Dillon—who has never practiced or taught in South Carolina—does not have the requisite expertise to testify as to alleged acts or omissions of South Carolina attorneys during a South Carolina federal court mediation. Accordingly, the trial court properly dismissed Appellants’ legal malpractice claim on this independent basis. *See* S.C. Code Ann. § 15-36-100(E) (“If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff’s complaint is subject to dismissal for failure to state a claim . . .”).

IX. The trial court correctly found Appellants’ claims against public policy.

The trial court correctly found that Appellants’ claims were against public policy. The trial court properly held that Appellants’ claims “violate the important public policy on the finality of mediation in civil cases.” [Order Granting Brewer Motion to Dismiss, R. pp. 15-16; Order Granting Clawson Fagnoli Motion to Dismiss, R. p. 29]. The trial court further explained that Appellants’ allegations “center almost exclusively on the fact that [Appellant] Andrew Pampu did not get everything that he wanted at mediation.” [*Id.*].

Appellants argue that the trial courts’ holding regarding public policy is contrary to South Carolina law. [Appellants’ Initial Brief, pp. 31-32]. Specifically, Appellants point to Rule 8(c)(3) of the South Carolina Rules for Alternative Dispute Resolution, which provides that “[t]here is no confidentiality attached to information that is disclosed during a mediation . . . offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding.” SCRADR 8(c)(3). Appellants contend that this rule

contemplates legal malpractice lawsuits based on lawyers' conduct at mediations. [Appellants' Initial Brief, p. 32]. However, Appellants ignore Rule 8(g), which explicitly states, "The mediator **shall not** be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential." SCRADR 8(g) (emphasis added). Similarly, Rule 16.10(E) of the Local Civil Rules for the United States District Court for the District of South Carolina provides:

Except when ordered by the court for exceptional circumstances shown, the mediator **shall not** be listed or called as a witness or be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports, and other documents received or created by the mediator while serving in that capacity shall be confidential.

LCvR 16.10 (emphasis added). These rules clearly suggest that these types of claims are against public policy because the mediator would be the key witness, as he could testify objectively to what occurred at the mediation. Therefore, the trial court properly dismissed these claims as against public policy, and this Court should affirm that holding.

X. Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration.

Appellants have failed to correct the record relating to their recusal argument in their Motion for Reconsideration. Appellants concluded their motion by making troubling allegations that the trial judge did not recuse himself when his impartiality might be questioned. Specifically, Appellants alleged that the trial judge had a personal bias in favor of Respondent Samuel R. Clawson, Jr., Esq. based on an alleged long-term law partnership with Respondent Clawson's father. [Motion for Reconsideration, R. p.282, ¶17]. However, those allegations were categorically false, as Respondent Clawson's father had never had a professional or personal

association with the trial judge, aside from perhaps appearing before the judge, as had many attorneys in this state. When confronted with this fact, counsel for Appellants stated, “[Appellants] will accept your statement and will withdraw the statements contained in Paragraph 17 of the motion and will make that known to the judge at the outset of the hearing on the motion.” However, the trial court ruled on the motion without a hearing, and, to date, the statements have not been withdrawn. Appellants have failed to correct the record, which is now pending before this Court, thereby perpetuating this falsehood. Accordingly, this Court should order that those statements be stricken from the record in this matter.

Conclusion

For these reasons, Respondents respectfully request that this Court affirm the trial court’s orders in their entirety.

July 10, 2024

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Jul 11 2024

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.

BRIEF OF APPELLANTS

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Statement of Issues

- I. Whether the trial court erred by failing to consider the well-pled fact allegations in the Pampus' Second Amended Complaint supporting the legal malpractice claims against their former lawyers stemming from an insufficient settlement in the underlying matter.
- II. Whether the trial court erred by disregarding well-pled fact allegations establishing a claim for breach of fiduciary duty, particularly where the facts alleged demonstrate breaches of loyalty and confidentiality resulting in actual losses.
- III. Whether the trial court erred by disregarding fact allegations that showed the existence of a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand, and the Lawyers, one the other, thereby providing the Pampus with standing to sue.
- IV. Whether the trial court erred by disregarding specific fact allegations supporting the Pampus' breach of contract claim and dismissing those claims without making any findings of fact or conclusions of law on the breach of contract claim.
- V. Whether the trial court erred by dismissing the Pampus' breach of fiduciary duty claim as "duplicative" of their legal malpractice claim.
- VI. Whether the trial court erred by deeming Mr. Dillon's expert opinions supporting the Pampus' professional negligence claims as untimely and insufficient as a matter of law.
- VII. Whether the trial court erred by failing to consider the timeliness of Mr. Dillon's expert affidavit, which was filed in accordance with S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to cure alleged defects.
- VIII. Whether Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.
- IX. Whether the trial court erred by disregarding established South Carolina jurisprudence supporting legal malpractice claims arising from lawyers' errors during mediation and disregarding the exception to the ADR Rules on confidentiality permitting disclosure in a legal malpractice claim of otherwise confidential communications during mediation, in favor of public policy arguments supporting mediation and settlement.

Statement of the Case

On March 19, 2021, Appellants, Andrew Pampu; Amanda Pampu; and John Pampu (collectively “the Pampus”), filed a Summons and Complaint in the Court of Common Pleas for Charleston County, South Carolina, asserting claims for professional negligence, breach of fiduciary duty, and breach of contract against Respondents, CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; BREWER LAW FIRM, LLC; and Barrett R. Brewer, Esq. (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”). The Lawyers are the attorneys and Members of the Law Firms whose errors 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.

The Pampus’ Complaint alleged 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 without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to Andrew Pampu 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; and 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. 35-66; Complaint. One or more of these negligent actions or related omissions 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. These same acts and omissions by the Lawyers form the basis for the Pampus' claim for breach of contract against the Law Firms. R. 35-66; Complaint.

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.

On April 30, 2021, the Pampus filed an Amended Complaint 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. (Amended Complaint, R. 57-87).

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), SCRCF and Rule 12 (b)(1), SCRCF.

(Motions to Dismiss Amended Complaint, R. 88-91, 95-98). The Respondents' motions both asserted that because no facts were 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. (Sec. Amend. Complaint, R. 109-141). The Second Amended Complaint is the operative pleading for this appeal.

On June 28, 2021 and June 30, 2021, respectfully, the Respondents filed motions to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6), SCRPC and Rule 12(b)(1), SCRPC, asserting that the Second Amended 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.

On March 2, 2022, a WebEx hearing on the motions to dismiss was held before the Honorable Edgar W. Dickson, during which the Second Amended Complaint, legal memoranda, and arguments of counsel were presented, and after which an Orders were entered on June 23, 2022 (collectively "the Orders"), granting the motions and dismissing the lawsuit. (Orders dismissing Sec. Amend. Complaint, R. 6-31).

On July 5, 2022, the Pampus timely filed a Motion for Reconsideration and to Alter or Amended Orders Dismissing the Second Amended Complaint. (Motion for Reconsideration and to Alter or Amended Orders Dismissing Sec. Amend. Complaint, R. 277-284).

On October 23, 2023, Honorable Edgar W. Dickson entered an Order Denying Plaintiff's Motion for Reconsideration and to Alter or Amended Orders Dismissing Second Amended

Complaint. (Order Denying Plaintiff’s Motion for Reconsideration and to Alter or Amended, R. 1-2) (“the Reconsideration Order”).

The Pampus’ Notice of Appeal was timely filed thereafter.

Facts

On or around November 2, 2017, the Lawyers accepted the representation of the Pampus to provide legal advice, services, and representation of the Pampus in a lawsuit pending in the United States District Court for the District of South Carolina (the “Federal Case”) asserting Title IX and other claims against a University (“the University”); and representing the Pampus in a lawsuit pending in a lawsuit pending in the Court of Common Pleas in a County in South Carolina (the “State Case”) asserting defamation, civil conspiracy, and other tort claims against individuals involved in submitting to the University false claims against Andrew Pampu, which led to a disciplinary action that was mishandled by the University. (Sec. Amend. Complaint, p. 4 at ¶ 13, R. 113).

On or about November 2, 2017, Respondent Law Firms entered into a contract with Mr. and Mrs. Pampu to represent the Pampus in the Federal Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.” (Sec. Amend. Complaint, p. 4 at ¶ 14; R. 113).

At the commencement of this representation, the Federal Case, with its Complaint filed on June 15, 2016, had been pending approximately a year and a half while the State Case, with its Complaint filed on June 15, 2017, had been pending for approximately six months. (Sec. Amend. Complaint, p. 5 at ¶ 15; R. 114). In the Federal Case, Andrew Pampu’s lawsuit against the University and several related defendants (collectively “the University Defendants”) alleged

claims for violation of Title IX of the Education Amendments of 1972, failing to provide Andrew Pampu with procedural due process, breach of contract, breach of covenant of good faith and fair dealing, negligence, promissory estoppel, and for a declaratory judgment. (Sec. Amend. Complaint, p. 5 at ¶ 16; R. 114). The primary claims against the University Defendants in the Federal Case were premised on theories the University Defendants deprived Andrew Pampu of due process and certain protections under Title IX of the Education Amendments of 1972 and related federal regulations during: the investigation the University Defendants undertook regarding false allegations by a female student (“Jane Doe”); the deliberating processes that the University Defendants applied to conclude that Andrew Pampu had engaged Jane Doe in nonconsensual sexual activity; and the appeals process the University Defendants applied to Andrew Pampu’s appeal. (Sec. Amend. Complaint, p. 5 at ¶ 17; R. 114). The Federal Case and the State Case involved common facts in that both concerned the allegations by Jane Doe claiming Andrew Pampu engaged in nonconsensual sexual activity with her and the allegations by a male student, “Charles Doe,” made during the University’s investigation allegedly corroborating Jane Doe’s claims. (Sec. Amend. Complaint, p. 5 at ¶ 18; R. 114).

Through a variety of errors and omissions by the University Defendants, in an administrative hearing conducted on February 26, 2016, Andrew Pampu was found to have engaged Jane Doe in nonconsensual sexual activities and punished with a one-semester suspension. (Sec. Amend. Complaint, pp. 5-6 at ¶ 19; R. 114-115). Thereafter, Andrew Pampu followed the University’s appeal process to appeal the incorrect administrative hearing decision. (Sec. Amend. Complaint, p. 6 at ¶ 20; R. 115). The appeals process actually resulted in greater sanctions imposed by the University upon Andrew Pampu, including an additional year of

suspension. (Sec. Amend. Complaint, p. 6 at ¶ 21; R. 115). On or about January 14, 2017, Charles Doe sent Andrew Pampu text messages admitting that he and Jane Doe lied regarding Jane Doe’s allegations, both during the investigation of those allegations and at the hearing regarding those allegations. (Sec. Amend. Complaint, p. 6 at ¶ 22; R. 115). Despite receiving notice of the January 2017 texts sent by Charles Doe, the University Defendants refused or failed to undertake additional action to address the content of those text messages from Charles Doe to Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 23; R. 115).

On or about June 15, 2017, the State Case was filed against Jane Doe, Charles Doe, and Richard Doe (Charles Doe’s father), asserting claims for defamation, intentional infliction of emotional distress, and civil conspiracy. (Sec. Amend. Complaint, p. 6 at ¶ 24; R. 115). The State Case also asserted a claim for abuse of process against Jane Doe and Charles Doe based on the two strategically utilizing the University’s Title IX process for an illegitimate objective, that is, to further harass, defame, retaliate against, and punish Andrew Pampu. (Sec. Amend. Complaint, p. 6 at ¶ 24; R. 115). These three defendants will be collectively referred to as the “State Case Defendants”).

By November 27, 2017, the Federal Court substituted the Lawyers for Andrew Pampu’s previous counsel. (Sec. Amend. Complaint, p. 6 at ¶ 26; R. 115). During the Lawyers’ representation of the Pampus, the Lawyers drafted and, upon information and belief, disclosed to third parties an “apology letter” purportedly from Andrew Pampu to one of the State Case Defendants falsely conceding critical matters. (Sec. Amend. Complaint, p. 7 at ¶ 27; R. 116). During the Lawyers’ representation of the Pampus, the Lawyers served discovery requests tailored to personal injury claims when representing the Pampus on slander and defamation claims. (Sec.

Amend. Complaint, p. 7, ¶ 28; R. 116). During the Respondents’ representation of the Pampus, the Lawyers did not provide the Pampus with copies of materials obtained during discovery. (Sec. Amend. Complaint, p. 7 at ¶ 29; R. 116). Following extensive written discovery, the parties to the Federal Case scheduled a mediation. (Sec. Amend. Complaint, p. 7 at ¶ 30; R. 116).

In February of 2018, the Lawyers and the Pampus received an eighty-page report from expert witness Daniel C. Swinton, Ed.D., J.D., B.A. (the “Swinton Report”), detailing a variety of errors and omissions by the University Defendants in the procedural, investigatory, and adjudicative processes the University Defendants applied regarding Jane Doe’s allegations and Andrew Pampu’s prosecution. (Sec. Amend. Complaint, p. 7 at ¶ 31; R. 116). Based on the text messages from Charles Doe and the content of the Swinton Report, the Lawyers knew or should have known that Andrew Pampu’s claims against the University Defendants and the claims against the State Case Defendants were meritorious and very valuable, whether settled or tried to a verdict or decision. (Sec. Amend. Complaint, pp. 7-8 at ¶¶ 32-35; R. 116-117).

Before the mediation, the Lawyers received an email from the Pampus stating their mediation goals, including:

- a. Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University’s future treatment of Andrew Pampu’s academic records;
- b. The State Case remain separate and unaffected by any settlement of the Federal Case;
- c. there be no confidentiality or silencing provisions restricting sharing of the settlement terms; and
- d. Andrew Pampu’s arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(Sec. Amend. Complaint, p. 8 at ¶ 36; R. 117).

On March 21, 2018, the Lawyers, the Pampus, and the University Defendants and their counsel participated in a mediation for the Federal Case. (Sec. Amend. Complaint, p. 8 at ¶ 37; R. 117). After a grueling eleven (11) hour mediation, the terms that the parties allegedly came to agree upon were memorialized in a short-form “Settlement Agreement,” which the Lawyers approved and strongly urged Andrew Pampu to sign. (Sec. Amend. Complaint, p. 8 at ¶ 38; R. 117-118). To accomplish their objective to have the Pampus agree to settle so they could get their contingent fee, the Lawyers took advantage of an opportunity when Appellant, John V. Pampu (Andrew Pampu’s Father) and Appellant, Amanda C. Pampu (Andrew Pampu’s Mother) were out of the room to forcefully urge Andrew Pampu to agree to the University’s proposed settlement terms. (Sec. Amend. Complaint, pp. 8-9 at ¶ 38; R. 117-118). Andrew Pampu (and later Andrew Pampu’s parents) conceded to the Lawyers’ pressure to settle and signed a “Settlement Agreement.” (Sec. Amend. Complaint, p. 9 at ¶ 38; R. 117-118).

On March 23, 2018, the Lawyers received an email from the Pampus explaining Andrew Pampu’s unawareness of the effect and import of the Settlement Agreement and the negative ramifications of the Settlement Agreement. (Sec. Amend. Complaint, p. 9 at ¶ 40; R. 118). The Pampus explained that the Settlement Agreement conflicted with the goals explained in the March 2, 2018, email and conflicted with the goals of both the Federal Case and the State Case. (Sec. Amend. Complaint, p. 9 at ¶ 41; R. 118). The Settlement Agreement the Lawyers convinced the Pampus to sign 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 or should have known were the Pampus’ desires and objectives, which was a key component of the Pampus’ “consideration” to settle, and the Settlement Agreement did not address

many other issues necessary to resolve the underlying dispute with the University. (Sec. Amend. Complaint, p. 9 at ¶ 42; R. 118).

On March 27, 2018, the District Court entered an Order of Dismissal in the Federal Case providing the parties an opportunity to consummate the settlement and providing either side sixty (60) days to file a petition to enforce the settlement. (Sec. Amend. Complaint, p. 10 at ¶ 46; R. 119).

On May 4, 2018, counsel for the University Defendants forwarded a proposed release to the Lawyers as per the terms of the Settlement Agreement. (Sec. Amend. Complaint, p. 10 at ¶ 47; R. 119). That same day, the Lawyers sent the Settlement Agreement with proposed revisions back to counsel for the University Defendants. (Sec. Amend. Complaint, p. 10 at ¶ 47; R. 119). On May 8, 2018, the Lawyers informed counsel for the University Defendants their representation of the Pampus had been terminated and that the Pampus had not yet retained new counsel. (Sec. Amend. Complaint, p. 10 at ¶ 48; R. 119). On May 9, 2018, the Lawyers memorialized the Pampus' May 8, 2018, termination of their representation in a letter to the Pampus, with language impliedly recognized the Pampus' terminated the attorney-client relationship for cause and attempting to refute some of the bases for termination of the representation for cause. (Sec. Amend. Complaint, p. 10 at ¶ 49; R. 119). On May 10, 2018, counsel for the University Defendants sent Andrew Pampu a letter with a five (5) day deadline for response enclosing a Settlement Agreement and Mutual Release ("Release"), a Stipulation of Dismissal with Prejudice, and a copy of the settlement check, which would be provided upon execution of the Release and the Stipulation of Dismissal. (Sec. Amend. Complaint, pp. 10-11 at ¶ 50; R. 119-120).

On May 11, 2018, Andrew Pampu emailed counsel for the University Defendants indicating he had received the May 8, 2018 letter, he wanted to make changes to the proposed Release, he was retaining new counsel, the five (5) day deadline was not feasible, and his new attorneys would be in contact early the following week. (Sec. Amend. Complaint, p. 11 at ¶ 51; R. 120). On May 16, 2018, newly retained counsel (“Successor Counsel”) for the Pampus contacted counsel for the University Defendants requesting the proposed Release document in Word format to make revisions. (Sec. Amend. Complaint, p. 11 at ¶ 52; R. 120). On May 18, 2018, upon consent motion, a text order was entered by the Federal Court this Court substituting Successor Counsel for the Lawyers as counsel of record for Andrew Pampu. (Sec. Amend. Complaint, p. 11 at ¶ 53; R. 120). On May 23, 2018, Successor Counsel submitted revisions to the Release to counsel for the University Defendants. (Sec. Amend. Complaint, p. 11 at ¶ 54; R. 120).

On May 24, 2018, counsel for the University Defendants contended that the revisions materially changed the terms of the Settlement Agreement reached in mediation and in response, the University Defendants moved the Federal Court to enforce the Settlement Agreement. (Sec. Amend. Complaint, p. 11 at ¶ 55; R. 120). Thereafter, the Pampus expended substantial funds by way of legal fees and expenses in the Federal Case attempting to void the Settlement Agreement the Lawyers had directed Andrew Pampu to sign and oppose its enforcement because of the Lawyers’ errors and omissions. (Sec. Amend. Complaint, p. 11 at ¶ 56; R. 120).

The Federal Court’s “Redacted Order” upheld and enforced the Settlement Agreement against Andrew Pampu, finding the Settlement Agreement terms were clear and unambiguous; and the plain and unambiguous language of the Settlement Agreement did not support the Pampus’ representations the University promised more during the settlement negotiations. (Sec. Amend.

Complaint, p. 12 at ¶ 57; R. 121).

The Settlement Agreement:

- a. did not contain the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records;
- b. contained language leading to results contrary to what the Respondents knew were the Pampus' desires and objectives, which was a key component of the Pampus' "consideration" to settle;
- c. did not address multiple issues necessary to resolve the underlying dispute with the University; and
- d. did not contain the necessary language addressing the University's ability to disclose any settlement agreement when confronted with a public records information request for same and, if so, whether Andrew Pampu's identity would be safeguarded.

(Sec. Amend. Complaint, p. 12 at ¶ 58; R. 121).

On January 1, 2019, the Federal Court entered an order by way of minute entry to the docket, requiring the University to make its counsel and an individual with decision-making authority available by telephone for an upcoming mediation in the State Court case, scheduled for March 1, 2019. (Sec. Amend. Complaint, p. 12 at ¶ 59; R. 121). The Settlement Agreement had a negative impact on the State Case, where the Pampus have been forced to expend additional funds to litigate that case because of the impact of the Settlement Agreement. (Sec. Amend. Complaint, p. 12 at ¶ 60; R. 121).

On February 28, 2019, the Lawyers sent a letter to the mediator *and counsel for all parties in the State Case and other third parties* asserting an alleged lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case. (Sec. Amend. Complaint, pp. 12-13 at ¶ 61; R. 121-122). On March 26, 2019, Successor Counsel forwarded a letter to the

Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case's opposing counsel and mediation mediator, 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 the Pampus. (Sec. Amend. Complaint, p. 13 at ¶ 62; R. 122).

The February 28, 2019, letter from the Lawyers interfered with the mediation process, disrupted the negotiations, and disadvantaged Andrew Pampu's positions. (Sec. Amend. Complaint, p. 13 at ¶ 63; R. 122). Thereafter, the Pampus spent several hundred-thousands of dollars litigating the State Court case that was not resolved at mediation because the Pampus' positions on law and facts in dispute were irreparably damaged by errors and omissions by the Lawyers at the mediation of the Federal Case that directly, proximately and foreseeably caused damage to Andrew Pampu's position in the State Case. (Sec. Amend. Complaint, p. 13 at ¶ 65; R. 122). The Lawyers have continued to assert a charging lien for legal fees against the Pampus' settlement proceeds from the University, despite Andrew Pampu having terminated the Fee Agreement with the Respondents for cause, thereby generating additional expenses for Andrew Pampu to contest those allegations. (Sec. Amend. Complaint, p. 13 at ¶ 66; R. 122).

As a direct, proximate and foreseeable result of the Lawyers' actions and inactions before and after their being relieved as counsel, the Pampus suffered damages, including loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the Lawyers' acts and omissions. (Sec. Amend. Complaint, pp. 13-14 at ¶ 67; R. 122-123).

Had the Lawyers met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice Andrew Pampu in the State Court mediation and litigation, a

substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 68; R. 123). Had the Lawyers met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, a substantial portion of the damages sustained by the Pampus should have been avoided. (Sec. Amend. Complaint, p. 14 at ¶ 69; R. 123). The Pampus suffered damages, including loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm caused by the Respondents' actions and inactions. (Sec. Amend. Complaint; p. 14 at ¶ 70; R. 123).

Legal Standards

A. Motions to Dismiss.

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCp, the appellate court applies the same standard of review as the [circuit] court.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 631, 699 S.E.2d 699, 703 (Ct. App. 2010). *See also, Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.”); *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 169, 763 S.E.2d 426, 430 (2014) (*quoting Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, state any valid claim for relief.” *Id.* “The [circuit] court and this [c]ourt on appeal must presume all well pled facts to

be true.” *Id.* at 635, 699 S.E.2d at 705 (internal quotation marks omitted).

Since “a judgment on the pleadings is considered to be a drastic measure,” a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle a plaintiff to any relief under any theory of the case. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006); *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

B. Motions to Reconsider

In South Carolina, Rule 59(e), SCRCP, motions have long been considered a vehicle to seek reconsideration of issues and arguments presented to the court. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. A party usually is allowed to ask the trial court to reconsider its decision, even if it means rehashing all or part of an argument previously presented. *Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79.

Rule 59(e) provides that a “motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the entry of the order,” it does not set forth a defined legal standard for reconsideration. Rule 59(e), SCRCP. The South Carolina Supreme Court has established that, “a party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.*, 361 S.C. at 24, 602 S.E.2d at 780. If a lower court fails to rule on an issue raised before it, a party must file a Rule 59(e) motion to preserve that issue for later appeal. *E.g., Bodkin v. Bodkin*, 388 S.C. 203, 219, 694 S.E.2d 230, 239

(Ct. App. 2010).

C. Factual Allegations Required to State Facts Sufficient to Support a Legal Malpractice Claim.

“A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012).

D. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Fiduciary Duty.

“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co.* 399 S.C. at 335-36, 732 S.E.2d at 173.

E. Factual Allegations Required to State Facts Sufficient to Support a Claim for Breach of Contract.

“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012).

F. Requirement for an expert affidavit to be filed with the pleadings.

South Carolina Code Section 15-36-100 requires a plaintiff to present expert testimony regarding the alleged “negligent act or omission” by a professional, including lawyers, to support a claim for professional negligence.

Arguments

I. The trial court committed reversible error by ignoring well-pled fact allegations stating claims for legal malpractice claims against their former lawyers based on an insufficient settlement in the underlying matter.

The thrust of the Pampus' legal malpractice claim is the Lawyers' acts and omissions below the standard of care directly resulted in financial losses to the settlement value of the Federal Lawsuit and the State Lawsuit, as well as losses associated with the failure to require the necessary language and terms dedicated to the University's future treatment of Andrew Pampu's academic records, and the legal fees the Pampus subsequently incurred. As to loss of settlement value, this Court has held,

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case. Stated otherwise, "the client need not show a perfect claim. But the client must show at least that he has lost a *probability* of success as a result of the attorney's negligence."

Doe v. Howe, 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005) (emphasis added) (quoting David A. Barry, *Legal Malpractice in Massachusetts: Recent Developments*, 78 Mass. L. Rev. 74, 79 (1993)). See also, *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (The former client "could satisfy the 'most probably' requirement and defeat [the lawyer's] summary judgment motion by establishing he 'most probably' would have received a larger settlement than [the settlement obtained by the lawyer] or that he 'most probably' would have prevailed on the underlying claim at trial.").

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to

accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the [Respondents] committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the [Respondents] in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the [Respondents] induced Plaintiff Andrew Pampu into signing the mediation agreement.

(Orders granting Respondents' motions to dismiss, p. 5, filed on June 23, 2022).

The trial court's Orders erred in ignoring the specific allegations in the Second Amended Complaint establishing for the purposes of the Motions to Dismiss clearly supporting the Pampus' professional negligence claims. The fact allegations in Paragraph 1 standing by themselves state claims against the Lawyers for legal professional negligence and are patently inconsistent with the trial court's findings:

¶1. [] 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 without addressing multiple other issues necessary to resolve the underlying dispute with the University; 2) failing to explain to [Andrew Pampu] 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; and 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]. One or more of these negligent actions or related omissions resulted in 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.

(Sec. Amend. Complaint, pp. 1-2, ¶ 1; R. 110-111).

The trial court erred in ignoring the specific allegations in the Second Amended Complaint that were contained in Mr. Dillon's expert affidavit establishing for the purposes of the Motions

to Dismiss the following fact allegations and expert opinions clearly supporting the Pampus' professional negligence claims:

¶6. The Lawyers failed to perform their duties and were professionally negligent in multiple ways, including but not limited to:

- a. Accepting a monetary settlement from Clemson University that contained no provision for cleaning up Mr. Doe's disciplinary record regarding the sexual misconduct and related findings that Clemson had made against him. I am not aware of any Title IX lawyer who believes that one files these lawsuits simply for money. What matters most, and certainly matters more than money, is cleaning up the student's disciplinary record. It is inconceivable to me that the attorneys who settled this case would have done so for only an amount of money (\$100,000.00) that, I suspect, constituted just a fraction of the Plaintiffs' actual litigation costs.
- b. Moreover, as far as I am aware, the original negative finding against Mr. Doe was never struck from Clemson's records, so there was no need to agree that it would be "reinstated," as the settlement agreement did. One need not reinstate something that was never "de-instated." So it was all the more strange to see that not only would the Lawyers fail to secure a clean record, but that they would affirmatively agree to a dirty one. It is the equivalent of steering the Titanic into the iceberg in exchange for free gas.
- c. Any attorney who practices in the Title IX area would be well aware of the downstream implications of a sexual misconduct finding and the paramount importance of a clean disciplinary record. Many schools to which a student might transfer will ask if he has ever been disciplined, as will most graduate or professional schools to which he applies. Moreover, there could be future professional-licensing implications of a negative finding for anyone who is interested in practicing medicine, law, or the like. My understanding is that Mr. Doe hopes to practice medicine and that the Lawyers knew that at the time—and that, indeed, they knew that safeguarding those hopes was the reason Plaintiffs sued in the first place. So the harm of a sexual misconduct finding to a future doctor or lawyer is potentially even worse than it is to a student who does not intend to pursue one of the professions—which is all the more reason why settling solely for money made so little sense in this case.
- d. Moreover, schools will often agree to clean up a student's record during settlement negotiations. Schools, like courts, can vacate and expunge disciplinary findings.
- e. It is particularly striking that the Lawyers settled the case without cleaning up Mr. Doe's disciplinary record given that Plaintiffs sent them a five-page, single-spaced written document, entitled "Mediator Proposed Mediation Terms," that contemplated exactly what such a resolution would

look like. The Lawyers appear to have ignored virtually that entire document and settled only for money—and, incredibly, for an amount of money that was a mere 25% of the \$400,000 contemplated in the document.

(Expert Affidavit by Justin Dillon, Esq., pp. 2-4, ¶ 6, Ex. 1 to Second Amended Complaint; R. 134-136).

The trial court's Orders dismissing the Pampus' Second Amended Complaint did not accept the facts alleged as true and failed to view the facts and inferences drawn from the facts alleged in the Second Amended Complaint in the light most favorable to the Pampus.

The trial court also erred in creating its own "fact" allegations. On page 3 of the Order granting the Respondents' motions to dismiss, the trial court "found" that "Plaintiff Andrew Pampu developed 'buyer's remorse' in the days after the mediation and attempted to abandon the settlement." (Orders granting Respondents motion to dismiss, p. 3). There are no such allegations of fact in the Second Amended Complaint.

The facts alleged in Paragraph 1 of the Second Amended Complaint and Mr. Dillon's expert opinions state facts supporting a "valid claim for relief" under South Carolina's legal malpractice jurisprudence. The trial court's Orders dismissing the Pampus' Second Amended Complaint should be reversed and this matter should be remanded for trial.

II. The trial court committed reversible error by ignoring well-pled fact allegations stating claims under established South Carolina law permitting former clients to bring breach of fiduciary duty claims when the facts alleged show the fiduciary breached duties of loyalty and confidentiality causing actual losses.

The Pampus' Second Amended Complaint alleges the Lawyers breached their duties of loyalty and confidentiality by disclosing information related to the representation to third parties without the Pampus' knowledge or consent that caused financial losses. The trial court's Orders

erred in ignoring the specific allegations in the Second Amended Complaint establishing the Pampus' breach of fiduciary duty claims.

In the Orders granting the Respondents' motions to dismiss, the trial court made the following findings:

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the [Respondents] committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the [Respondents]' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

(Orders granting Respondents' motions to dismiss, p. 6, filed on June 23, 2022).

It was error for the trial court to conclude that "asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the [Respondents]" because there are no such allegations anywhere in the Second Amended Complaint.

The fact allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims against the Lawyers:

¶2. 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, including disclosing information related to their representation of the [Pampus] to counsel for the opposing parties without the [Pampus]' consent.

¶61. On February 28, 2019, the Lawyers sent a letter to the mediator **and counsel for all parties in the State Case and other third parties** asserting a lien on settlement proceeds in a total amount of \$145,000; with \$40,000 of the total attributed to attorney's fees allegedly owed from the outcome of the Federal Case and \$105,000 of the total attributed to attorney's fees allegedly owed from the work performed by the Lawyers in the State Case.

¶62. On March 26, 2019, Successor Counsel forwarded a letter to the Lawyers noting that the February 28, 2019, letter, sent to several third parties, and the State Case’s opposing counsel and mediation mediator, 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].

(Second Amended Complaint, pp. 2, 12-13, ¶¶ 2, 61, and 62; R. 111, 121-122) (emphasis in original).

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, all establish a proximate link between the Lawyers’ actions and the Pampus’ damages.

Fiduciary duties are duties of the highest standard required by law of any agent relative to his/her/its principal, which include the duties of loyalty, disclosure, confidentiality, obedience, reasonable care and diligence, and full accounting. *See, e.g.,* Henry Campbell Black, *et al.*, BLACK’S LAW DICTIONARY 625 (6th ed. 1990); *see generally* Ernest Weinrib, *The Fiduciary Obligation*, 25 U. Toronto L.J. 1, 5-6 (1975) (discussing judicial determination of fiduciary relationship). Fiduciary law encompasses the specific set of actors who furnish services to others and who are subject to a legal doctrine that embodies remedial measures intended to prohibit fiduciaries from misappropriating or misusing entrusted property or power. Likewise, when a fiduciary breaches the duty of loyalty, not only is the beneficiary permitted to recover actual damages, but an additional distinctive remedy is available to the beneficiary – disgorgement of the benefit that the fiduciary obtained through the breach. *See, e.g., Burrow v. Arce*, 997 S.W.2d 229 (Tex. 1999) (proof of actual damages not necessary to obtain disgorgement of fees due to lawyers’

breach of fiduciary duty to client); *Estate of Re v. Kornstein Veisz & Wexler*, 958 F. Supp. 907 (S.D.N.Y. 1997) (Sotomayor, J.) (client can maintain breach of fiduciary duty action against lawyers despite dismissal of malpractice and contract claims).

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another, *Ellis v. Davidson*, 358 S.C. 509, 519, 595 S.E.2d 817, 822 (Ct. App. 2004), and a client-lawyer relationship is by its nature a fiduciary relationship. *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.*, 399 S.C. 321, 732 S.E.2d 170 (2012); *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011); *Holtz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991).

As fiduciaries, lawyers owe their clients a duty of loyalty and a duty of confidence, which is separate from their professional duties of competence and care. *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 17 (Ct. App. 2005). *See also*, *First Am. Corp. v. Al-Nahyan*, 17 F. Supp.2d 10, 27 (D.D.C.1998); *BCCI Holdings v. Clifford*, 964 F. Supp. 468, 481 (D.D.C.1997). The allegations in Paragraphs 2, 61, and 62 state facts sufficient to establish breach of fiduciary duty claims based on the Lawyers' letter to third-parties asserting an alleged charging lien wreaked havoc in the Pampus' attempts to resolve their claims against the University defendants in the Federal Lawsuit. The information contained in the Lawyers' letter was confidential and his disclosure was a breach of the Lawyers' fiduciary duties of loyalty and confidentiality.

"One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Davis v. Greenwood School Dist.* 50, 365 S.C. 629, 620 S.E.2d 65 (2005); *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010); *Smith v. Hastie*, 367 S.C. at 417, 626 S.E.2d at 17; *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). *See also*, RESTATEMENT (SECOND) OF TORTS § 874 (1979) ("One

standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation.”).

To recover on a claim for breach of fiduciary duty, the plaintiff must prove by a preponderance of the evidence that a fiduciary duty existed between the parties, that the defendant violated that fiduciary obligation, and that the plaintiff suffered damages resulting from the violation. *Walbeck v. I’On Co., LLC*, 439 S.C. 568, 585, 889 S.E.2d 537, 546 (2023), *reh’g denied* (July 26, 2023); *Smith*, 367 S.C. at 417, 626 S.E.2d at 17. There is no requirement that the plaintiff show “he or she most probably would have been successful in the underlying suit”. *Smith*, 367 S.C. at 417, 626 S.E.2d at 17.

The trial court committed reversible error by ignoring well-pled fact allegations in the Second Amended Complaint stating claims for breach of fiduciary duty to recover damages caused by the Lawyers’ breach of their duties of loyalty and confidentiality. The Orders granting the Respondents’ motions to dismiss should be reversed and this case should be remanded.

III. The trial court committed reversible error by ignoring specific fact allegations establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu and the Lawyers that provided standing to sue.

The trial court dismissed the claims by Mr. and Ms. Pampu for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCp. This ruling constitutes reversible error, because the trial court ignored the specific allegations in the Complaint establishing a client-lawyer relationship between Mr. Pampu and Ms. Pampu, on one hand as clients, and the Lawyers, on the other as the attorneys concerning the “Federal Case” and the “State Case.” See (Sec. Amend. Complaint, ¶¶ 1, 2, 13-14, 28-29, 36-37, 40, 49, 56, 61, and 66; R. 110-112, 113, 116-117, 118-121). Here a few examples:

¶1. This case seeks recovery of damages caused by the Lawyers’ errors during their

representation of *the [Pampus]* in a) a federal lawsuit against ... The Lawyers were negligent in 1) allowing their client, John Doe, to sign a deficient handwritten settlement agreement that did not contain necessary language and terms dedicated to the University's future treatment of John Doe'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 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]*. One or more of these negligent actions or related omissions resulted in substantial financial losses to *the [Pampus]*, ...

¶2. 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, including disclosing information related to their representation of *the [Pampus]* to counsel for the opposing parties without *the [Pampus]*' consent.

¶13. On or around November 2, 2017, the Lawyers accepted the representation of *the [Pampus]* to provide legal advice, services, and representation of *the [Pampus]* in a lawsuit

¶14. On or about November 2, 2017, [the Law Firms] contracted to represent *the [Pampus]* in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

(Sec. Amend. Complaint, ¶¶ 1, 2, 13-14; R. 110-112, 113).

The trial court's findings on pages 6-7 of the Orders that Mr. and Ms. Pampu lacked standing were premised on the fact that neither Mr. Pampu nor Ms. Pampu were parties to the Federal Lawsuit or the State Lawsuit. 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. Taking the allegations in the Second Amended Complaint is true, Mr. Pampu and Ms. Pampu specifically alleged they were clients of the Lawyers and parties to contracts of representation with the Law Firms.

It was clear error by the trial court to dismiss the claims asserted by Mr. Pampu and Ms. Pampu for alleged lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP. These findings

should be reversed, and the entire matter should be remanded to the Circuit Court.

IV. The trial court committed reversible error by ignoring specific fact allegations establishing the Pampus' breach of contract claim.

The Orders summarily dismissed the Pampus' claims for breach of contract without making or identifying any findings of fact or specific conclusions of law. The Orders did not properly treat the specific allegations in the Second Amended Complaint that established, for the purposes of a motion to dismiss, a contractual relationship between Mr. Pampu and Ms. Pampu and the Law Firms for the Law Firm to provide legal services to pursue the Pampus' claims in "Federal Case" and the "State Case." These allegations provide standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint.

The Second Amended Complaint contains these allegations of fact concerning the Pampus' breach of contract claim:

¶14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶98. Law Firms entered into a Contract with the Does agreeing and contracting to provide legal services to represent the [Pampus] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

¶99. Law Firms breached the contract by failing to provide such services.

¶100. The [Pampus] satisfied all necessary preconditions, if any, and performed their part of the contract, and/or was, at the appropriate time, able, ready, and willing to perform.

¶101. As a direct and proximate result of the Law Firms' breach of their contractual duties, the [Pampus] sustained actual, consequential and incidental damages in an amount to be determined by the jury at the trial of this case.

(Sec. Amend. Complaint, ¶¶ 14, 98-101; R. 113, 129).

The trial court erred in ignoring the specific allegations in the Complaint that Mr. Pampu

and Ms. Pampu entered into a contract of representation with the Law Firms, thereby providing standing for Mr. Pampu and Ms. Pampu to assert the breach of contract claims stated in the Second Amended Complaint. *See* (Sec. Amend. Complaint, pp. 4 and 19-20, ¶¶ 14, 98-101, and Wherefore clause on p. 20; R. 113, 128-129, 131). This result should be reversed, and the entire matter should be remanded to the Circuit Court.

V. The trial court committed reversible error by dismissing the Pampus’ breach of fiduciary duty claim as “duplicative” of their legal malpractice claim.

The Orders should be reversed and allow the Pampus to proceed with their breach of fiduciary duty claim because the Second Amended Complaint alleges facts supporting their breach of fiduciary duty claim as argued above. Notwithstanding the fact that the Pampus’ Second Amended Complaint states facts sufficient to support a breach of fiduciary duty claim, the Pampus should be permitted to pursue that claim, along with their legal malpractice claim and breach of fiduciary duty claim because Rule 8(a), SCRCF permits filing alternative claims. *See* Rule 8(a), SCRCF (“Relief in the alternative or of several different types may be demanded.”); *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (finding the pleadings appropriately alleged alternative theories of liability). The trial court’s findings effectively take away a legal malpractice plaintiff’s ability to assert alternative claims in their pleadings as Rule 8(a) permits for all other litigants.

In addition, the trial court’s reliance on the Supreme Court’s opinion, *RFT Mgmt. Co. v. Tinsley & Adams, LLC*, 732 S.E.2d 166, 173 (S.C. 2012), does not support the ruling as that case dealt with a motion made at trial, and not before trial under Rule 12, SCRCF. Similarly, the trial court’s reliance on the Supreme Court’s opinion in *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d

178, 182 (Ct. App. 2019), is also misplaced because that matter was before the trial court on a motion for summary judgment, and not a motion to dismiss. In addition, this Court previously recognized the propriety of pleadings alleging a legal malpractice claim and a breach of fiduciary duty claim. *See Smith v. Hastie*, 367 S.C. 410, 419, 626 S.E.2d 13, 18 (Ct. App. 2005) (“We therefore hold Smith presented adequate evidence on the merits of her claims for negligence and breach of fiduciary duty.”) (Emphasis added).

Based on the express language in Rule 8(a), SCRPC, it was error for the trial court to conclude that the Pampus’ breach of fiduciary duty claim was duplicative of their professional negligence claim. These findings should be reversed, and the entire matter should be remanded to the Circuit Court.

VI. The trial court committed reversible error by concluding Mr. Dillon’s expert opinions supporting the Pampu’s professional negligence claims were untimely and insufficient as a matter of law.

Mr. Dillon has substantial experience in representing clients on Title IX matters and in litigating disputes under Title IX. Mr. Dillon’s expert affidavit was timely filed with the Amended Complaint, and also with the Second Amended Complaint under S.C. CODE ANN. § 15-36-100(E).

A. The trial court committed reversible error by ignoring the allegations in the Second Amended Complaint showing Mr. Dillons’ expert affidavit was timely filed under S.C. CODE ANN. § 15-36-100(E) permitting an amended pleading with an expert affidavit to be filed to cure alleged defects.

The trial court erred in ignoring the dates of filing and the statements in the Second Amended Complaint establishing for the purposes of a motion to dismiss the fact that Mr. Dillon’s expert affidavit was timely filed and satisfied all aspects of S.C. CODE ANN. § 15-36-100(C)(1).

The trial court also erred in ignoring the specific allegations in Paragraph 103 in the Second Amended Complaint, which should have been taken as true for the purposes of the Lawyers’

Motions:

¶103. In February and early March 2021, *the Lawyers refused to enter into a statute of limitations tolling agreement to toll the statute of limitations on Plaintiffs' legal professional negligence claims against the Lawyers.* As stated in Paragraphs 37-39, a substantial portion of the Lawyers' liability arises from the Lawyers' acts and omissions during a mediation on March 21, 2018 in the Federal Case. As a result, Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs' legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. *Because of time constraints*, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Under S.C. CODE ANN. § 15-36-100(C)(1), included with the filing of the Amended Summons & Amended Complaint and marked as Exhibit 1 was the affidavit of Justin Dillon, Esq., an expert witness and lawyer licensed to practice law in the Commonwealth of Virginia and in the District of Columbia, which satisfies S.C. CODE ANN. § 15-36-100(A)(1) to qualify Mr. Dylan to serve as an expert in this matter. Another copy of Mr. Dillion's affidavit is filed with this Second Amended Summons & Amended Complaint as Exhibit 1. Mr. Dillon has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in the active practice litigating Title IX matters for at least three of the last five years immediately preceding his opinions, which satisfies S.C. CODE ANN. § 15-36-100(A)(2)(b)(i) to qualify Mr. Dylan to serve as an expert in this matter. Mr. Dillion has been invited to speak before organizations including the American Bar Association, the National Association of Criminal Defense Lawyers, the Association of Title IX Administrators, the Higher Education Consultants Association, the Colorado Bar Association, the Virginia State Bar, the District of Columbia Bar, and has guest lectured on Title IX matters at Harvard Law School, George Washington University, American University, and the University of Maryland. Mr. Dillion has other specialized knowledge in Title IX matters, which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of his study, experience, or both, which satisfies S.C. CODE ANN. § 15-36-100(A)(3) to qualify Mr. Dylan to serve as an expert in this matter.

Mr. Dillon's affidavit specifies at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of Mr. Dillion's affidavit.

This Second Amended Summons & Amended Complaint is being filed under S.C. CODE ANN. § 15-36-100(E), which permits an amended pleading to be filed to cure the alleged defects. This Second Amended Summons & Amended

Complaint is being filed based on the specious arguments contained in the Lawyers' respective Motions to Dismiss claiming Mr. Dillon's affidavit is defective because he is not licensed in South Carolina, when the Lawyers knew or should have known there is no such requirement under S.C. CODE ANN. § 15-36-100.

(Sec. Amend. Complaint, pp. 20-21, ¶ 103; R. 129-130).

It was reversible error for the trial court to conclude that Mr. Dillon's expert affidavit was not timely filed. This ruling should be reversed, and the matter should be remanded.

B. Mr. Dillon's qualifications and expertise in Title IX matters establish the legal sufficiency of his expert opinions.

The Orders did not accept as true Mr. Dillon's qualifications for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The standard of review under Rule 12(b)(6), SCRPC, required the trial court to accept all such allegations as true and all inferences from those allegations in favor of the Pampus.

The trial court erred in refusing to accept Mr. Dillon's opinions in the expert affidavit because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious legal malpractice claim. *See Ranucci v. Crain*, 409 S.C. 493, 508, 763 S.E.2d 189, 196–97 (2014) (“As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz–Marx's affidavit, we find this is not an appropriate ground to affirm the circuit court's order because the affidavit is facially sufficient given it is sworn and identifies a potentially meritorious medical malpractice claim.”).

The provisions in S.C. CODE ANN. § 15-36-100(E) do not permit the trial court to address the substance of an expert's opinions. The trial court erred in ignoring Mr. Dillon's qualifications

for serving as an expert as stated in his curriculum vitae included with his expert affidavit filed with the Amended Complaint and the Second Amended Complaint, which identifies his specialized, technical knowledge regarding the Title IX and related matters at issue in the underlying lawsuits. The trial court erred in accepting the Lawyers' arguments challenging the weight of Mr. Dillon's experience, and not the lack thereof, because S.C. CODE ANN. § 15-36-100(E) does not permit challenging an expert's the substance of an expert's opinions.

The trial court erred in accepting the Lawyers' arguments that Mr. Dillon is not qualified to serve as an expert because he has not actually practiced in South Carolina federal or state court when the Order acknowledges federal Title IX claims were involved in Lawyers' underlying representation of the Pampus and ignores Mr. Dillon's vast experience handling Title IX litigation. In addition, South Carolina has long since abandoned the "locality rule" in the context of expert opinions for legal malpractice claims. *See, Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 438, 472 S.E.2d 612, 614 (1996) (the fact that Professor Gregory B. Adams was not licensed to practice law in this state and is not regularly handle real estate matters did not disqualify him as an expert).

The trial court incorrectly found that "Mr. Dillon holds himself out to be an expert in legal malpractice claims in South Carolina district court litigation." There is no such statement in any materials filed with the Complaint, Amended Complaint, or Second Amended Complaint.

The trial court erred in incorrectly imposing a "sufficiently related" standard for an expert witness affidavit filed in a professional liability matter under S.C. CODE ANN. § 15-36-100, which is not stated in the Statute or in any case law interpreting the Statute. *See* (Orders on p. 9; R. 14) ("Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's

experience is not sufficiently related to Plaintiffs’ allegations of legal malpractice as contained in the Second Amended Complaint.”).

This ruling should be reversed, and the matter should be remanded.

VII. It was error for the trial court to ignore South Carolina jurisprudence under the guise of public policy arguments in support of mediation and settlement.

The trial court’s public policy basis to dismiss the Pampus’ claims arguably founded on concerns about protecting the “finality” of mediation are misplaced and contrary to controlling South Carolina law. Notwithstanding the cases permitting clients to bring legal malpractice claims based on their former lawyers’ errors in handling a settlement, *e.g.*, *Doe v. Howe*, the South Carolina Rules for Alternative Dispute Resolution have specific controlling provisions permitting communications during a mediation to be disclosed, for the purpose of a professional malpractice proceeding. See Rule 8(c)(3), SCADR Confidentiality (“There is no confidentiality attached to information that is disclosed during a mediation: (3) **offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding[.]**”) (Emphasis added). The provisions in Rule 8(c)(3), SCADR creating an exception to the general confidentiality provisions contemplate legal malpractice lawsuits based on lawyers’ conduct during a mediation that adversely affects their clients. The South Carolina Supreme Court would not have included this provision in the “finality” of mediation was sacrosanct in its view.

The trial court’s rulings on this basis should be reversed, and this matter should be remanded.

CONCLUSION

Appellants, Andrew Pampu; Amanda Pampu; and John Pampu, respectfully request this Court to reverse the trial court's ruling dismissing their Second Amended Complaint with prejudice and remanding the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

/s/ Thomas A. Pendarvis

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Jul 11 2024

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.

REPLY BRIEF OF APPELLANTS

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REPLY ARGUMENTS

I. The trial court's Orders dismissing all of Appellants' causes of action with prejudice "involve the merits" and are immediately appealable.

Respondents' arguments claiming the trial court's orders are interlocutory should be rejected on multiple grounds. The Orders a) dismiss the Appellants' claims asserted in their Second Amended Complaint ("Complaint") with prejudice and b) contain findings that will adversely affect the Appellants' defenses to the Respondents' counterclaims. The existence of Respondents' counterclaims has no effect on whether the Orders are subject to an immediate appeal.

A. The trial court's Orders "involve the merits."

The trial court's Orders are ripe for appellate review and are not interlocutory because those Orders contain findings dismissing all Appellants' causes of action asserted against Respondents. An order granting a dispositive motion is immediately appealable. See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 3-6, 393 S.E.2d 176, 177-79 (1990) (explaining an order dismissing one of multiple claims is immediately appealable).

Section 14-3-330 of the South Carolina Code addresses appellate jurisdiction and provides in part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed therefrom any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

Intermediate orders involving the merits may be immediately appealed pursuant to subsection 14-3-330(1). “An order involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. Stone v. Thompson, 426 S.C. 291, 294-95, 826 S.E.2d 868, 869-70 (2019) (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (“An order involving the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’”). An order “involves the merits,” for purposes of exception to the final judgment rule of appealability, when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (Ct. App. 2017); Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014).

In this case, the trial court’s Orders granting Respondents’ motions to dismiss finally determined a substantial matter forming all of the Appellants’ causes of action and, therefore, involved the merits. See Stone, 426 S.C. at 295, 826 S.E.2d at 870.

The Respondents’ citation and substantial reliance on this Court’s findings in Richardson v. Halcyon Real Estate Services, LLP,¹ as its primary authority supporting its claim that the Appellants’ appeal is interlocutory is quite remarkable, because unlike the trial court in this case, none of the orders issued by the trial court in Richardson disposed of any claims or counterclaims, but instead dealt with depositions and discovery sanctions. 439 S.C. at 423, 887 S.E.2d at 155.

Interlocutory orders affecting a substantial right may be immediately appealed pursuant to subsection 14-3-330(2). Orders affecting a substantial right “discontinue an action, prevent an

¹ 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023).

appeal, grant or refuse a new trial, or strike out an action or defense.” MidState Distribs., Inc., 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.

There is nothing “piecemeal” about the Appellants’ appeal in this case. The trial court’s Orders “involve the merits” and finally dismissed all the Appellants’ causes of action against Respondents. This appeal is appropriate and ripe for review.

B. Incorrect findings in the trial court’s Orders will adversely affect Appellants’ defenses to Respondents’ counterclaims.

Findings in the trial court’s Orders will materially affect the Appellants’ ability to assert the Respondents were terminated “for cause,” thereby adversely affecting their defenses to the Respondents’ counterclaims for fees. The Appellants’ Complaint alleges the Respondents were terminated “for cause”. R. 45 and 48; Complaint, ¶¶ 49 and 66.

C. Respondents’ counterclaims are stayed during the appeal because the appeal directly affects those matters.

“Generally, serving [the] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal.” Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal.” (citing Rule 205, SCACR).

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR.

The reference in Rules 205 and 241(a) to the “jurisdiction” of the lower courts does not refer to subject matter jurisdiction. Rather, the rules govern the circumstances under which the exclusive appellate jurisdiction Rule 205 grants to the appellate court deprives the lower court of the power to address a particular issue, or “matter,” during the pendency of the appeal.

Tillman v. Oakes, 398 S.C. 245, 256 n.3, 728 S.E.2d 45, 51 n.3 (Ct. App. 2012).

“When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.” Id., 398 S.C. at 254-55, 728 S.E.2d at 50.

The matters included in the Appellants’ appeal include whether the Respondents were terminated “for cause” as alleged in Paragraphs 49 and 66 in the Appellants’ Complaint. R. 49 and 66. If the trial court’s Orders are reversed on appeal and if the finder of fact agrees with Appellants’ arguments, such findings would prevent the Respondents from recovering on their claims for legal fees. See e.g., Est. of McClain v. Killmer, Lane & Newman, LLP, ___ P.3d ___, 2024 WL 2066330, *9 (Colo. App. May 9, 2024) (“[A] quantum meruit fee is not permitted when a client terminates the lawyer for cause and the fee agreement lacks a conversion clause.”); Maher v. Quality Bus Service, LLC, 144 A.D.3d 990, 42 N.Y.S.3d 43 (2d Dep’t 2016) (lawyer discharged

for cause is not entitled to compensation).

These Orders are not interlocutory, and the appeal should continue.

II. The Respondents' arguments on the Appellants' legal malpractice claims ignore specific fact allegations in the Complaint showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care.

The Respondents argue that the trial court's Orders properly dismissed the Appellants' legal malpractice claims because they failed to allege specific facts showing they would have obtained a better result in the underlying matter if the Respondents had exercised reasonable care. On page 16 of their Brief, the Respondents' summary description of the trial court's errors in dismissing the Appellants' legal malpractice/professional negligence claims as outlined in the Appellants' Brief, followed by its interpretation of this Court's rulings in Doe v. Howe.²

However, the Respondents carefully avoid mentioning the Appellants' allegations in Paragraphs 68-71 in their Complaint containing specific allegations of fact on how they would have obtained a better result had the Respondents met the standard of care. The Respondents urge this Court to conclude that the "Appellants still must allege facts in their complaint that, if true, would support that they 'would have obtained a better result in the underlying matter if [Respondents] had exercised reasonable care.'" Respondents Brief at 17 citing Doe v. Howe and then referring *only* to Paragraph 1 in the Appellants' Complaint. The problem with Respondents' arguments (and the trial court's rulings) is that the Appellants did allege facts in their Complaint which, if taken as true, would support that they "would have obtained a better result in the underlying matter if Respondents had exercised reasonable care." The trial court's rulings ignoring these allegations constitutes reversible error.

In Paragraphs 67-71 of their Complaint, the Appellants alleged

² 367 S.C. 432, 446, 626 S.E.2d 25, 32 (Ct. App. 2005).

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions before and after their being relieved as counsel, [Appellants] suffered damages, including ***loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessary to mitigate or to rectify the harm caused by the [Respondents]' actions and inactions.***

Had the [Respondents] met the standard of care by properly, accurately or timely attempting to assert a lien so as not to prejudice [Appellant, Andrew Pampu] in the State Court mediation and litigation, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

Had the [Respondents] met the fiduciary standard of conduct by properly, accurately or timely attempting to assert an alleged charging lien, ***a substantial portion of the damages sustained*** by [Appellant, Andrew Pampu] (recounted throughout this Complaint) ***should have been avoided.***

As a direct, proximate and foreseeable result of the [Respondents]' actions and inactions ***in the Federal Case*** and its mediation, the [Appellants] suffered damages, including ***loss of settlement value of a settlement in the Federal Case; loss of the value of the claims in the Federal Case; loss of settlement value of a settlement of the State Case; loss of value of the claims in the State Case, and expenditure of substantial legal fees necessitated to mitigate or to rectify the harm*** caused by the [Respondents]' actions and inactions.

Had the [Respondents] met the standard of care by properly, accurately or timely advising [Appellant, Andrew Pampu] before, during and after the Federal Case mediation regarding any terms of the Federal Case mediation, the damages sustained by [Appellant, Andrew Pampu] (recounted throughout this Complaint) should have been avoided.

R. 48-49, Complaint, ¶¶ 67-71 (emphasis added).

While the Respondents' Brief accurately states that the State Case was pending when the Complaint was filed, it completely ignores the impact the Respondents' acts and omissions had on the Federal Case, notwithstanding the specific allegations in Paragraphs 69-71.

The arguments in the Respondents' Brief that the Appellants' Complaint. "contains merely conclusory allegations that Respondents were negligent in the manner in which they concluded the representation" ignores the actual pleadings. Like the trial court, Respondents ignore the

allegations about the adverse consequences resulting from Respondents' actions in sending correspondence to opposing counsel and other third parties asserting their alleged "charging lien." Although the Supreme Court's last pronouncement on this issue was in an unpublished opinion, their view is that opposing counsel and other third parties are not subject to any duties to protect a "charging lien" asserted by counsel for the opposing party. See Byrd v. Wausau Underwriters Ins. Cos., No. 2011-MO-002, 2011 WL 11748258, at *1 (S.C. Jan. 7, 2011). Therefore, the allegations in the Appellants' pleadings that the Respondents' sending a lien letter to third parties who had no duties to protect their alleged lien was improper and interfered with the mediation process and settlement negotiations, which caused the Appellants to "spend several hundred thousand dollars litigating" because the matter was not resolved at or shortly after the federal court mediation.

The Respondents did not have the Appellants' permission to disclose information related to the representation of the Appellants to third parties without the Appellants' consent, and the Respondents' breach of those duties are alleged in the Complaint to have caused damages to the Appellants. The Appellants' Complaint states claims for breach of fiduciary duty and the trial court's Orders dismissing this cause of action should be reversed.

The allegations in the Complaint sufficiently state facts on which relief can be granted. Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) ("If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper."). The trial court's Orders granting the motions dismissing the Appellants' cause of action for legal malpractice/professional negligence were reversible errors.

III. The trial court's Orders and Respondents' Brief misapprehend South Carolina's fiduciary duty jurisprudence recognizing a fiduciary's liability for breach of their duties of confidentiality and loyalty.

Neither the trial court's Orders nor the Respondents' Brief dispute a fiduciary's liability for disclosing confidential information. Cf., McCormick v. England, 328 S.C. 627, 630, 494 S.E.2d 431, 432 (Ct. App. 1997) (physician can be liable for breach of a duty of confidentiality). Instead, the Respondents' Brief simply disputes whether the Appellants actually suffered any damages and not whether the Complaint states facts sufficient to show damages. The Respondents' Brief pays little to no attention to the allegations in the Complaint alleging damages the Respondents caused to the Appellants' Federal Case, including damages caused by disclosing confidential information to third parties in breach of their fiduciary duties. It was a reversible error for the trial court to grant the motions dismissing the Appellants' breach of fiduciary duty claims.

IV. John Pampu and Amanda Pampu have standing to pursue their breach of contract claims against the Respondents.

Both the trial court and the Respondents' Brief ignore specific allegations in the Complaint alleging 1) the existence of the client-lawyer relationship between the Respondents, as counsel, and John Pampu and Amanda Pampu, as clients, and 2) a contractual relationship in which the Respondents were to provide legal services without regard to whether a client-lawyer relationship existed. The trial court committed reversible error when it disregarded the allegations in Paragraphs 14 and 98 of the Complaint, which state:

14. On or about November 2, 2017, CLAWSON FARGNOLI and BREWER LAW FIRM (collectively "the Law Firms") contracted to represent the [Appellants] in the Federal Case, the State Case, and "any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits."

98. Law Firms entered into a Contract with the [Appellants] agreeing and contracting to provide legal services to represent the [Appellants] in the Federal

Case, the State Case, and “any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits.”

R. 39 and 54, Complaint ¶¶ 14 and 98.

One can reasonably infer John Pampu and Amanda Pampu, as the parents of Andrew Pampu, were paying the legal fees and costs associated with the Respondents’ representation in the underlying matters. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (“A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and *inferences reasonably deducible therefrom* would entitle the plaintiff to any relief on any theory of the case.”) (emphasis added); Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (“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.”).

John Pampu and Amanda Pampu have standing to assert breach of contract claims against the Respondents because they were the parties to the contract who were paying the legal fees. Jaffe v. Gibbons, 290 S.C. 468, 472, 351 S.E.2d 343, 345 (Ct. App. 1986) (“The general rule is that where both parties have signed a contract, the signing by the first party is in effect his proposal or offer, and the signing by the second party is his acceptance thereof; the writing then represents or evidences the bargain between them.”); Fabian v. Lindsay, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014) (“Generally, one *not in privity of contract* with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third-party is not, as such, recoverable by the plaintiff.”) (emphasis added).

The Respondents’ Brief—like the trial court’s Orders—fails to consider as true the Appellants’ allegations that the Respondents agreed and contracted “to provide legal services to

represent the Does in the Federal Case, the State Case, and ‘any other claims or causes of action arising from the facts, incidents, and allegations referenced in these lawsuits[,]’” and breached the contract by “failing to provide such services,” which for the purposes of a motion to dismiss or required to be taken as true. See R. 54-55, Complaint, ¶¶ 98 and 99. The Complaint states a breach of contract claim on behalf of John Pampu and Amanda Pampu.

The Respondents’ arguments that the Appellants’ breach of contract claim “is simply a recharacterization of their legal malpractice and breach of fiduciary duty claims” should be rejected. Rule 8(a), SCRCP, permits “[r]elief in the alternative, or of several different types may be demanded” in a pleading. See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (“We find it is entirely appropriate for Skydive to allege that some of an individual’s actions were within the scope of their official duties, and some were not, or even to plead alternative theories of liability depending on whether an individual’s actions were within the scope of their duties.”) (citing Rule 8(a), SCRCP). The trial court’s rulings in its Orders were not “harmless error” as argued by the Respondents. John Pampu and Amanda Pampu have legitimate and viable breach of contract claims, which they should be permitted to litigate on the merits.

V. The Respondents’ Brief fails to address the trial court’s reversible error in not permitting the Appellants to plead in the alternative as provided under Rule 8(a) of the South Carolina Rules of Civil Procedure.

Nowhere in the four pages of arguments in the Respondents’ Brief do they make any argument supporting the trial court’s rulings that were contrary to Rule 8(a), SCRCP, which prevented the Appellants from pleading in the alternative. The Appellants’ Brief explains why this was a reversible error by the trial court because the rulings in RFT Management Co. v. Tinsley &

Adams, L.L.P.³ and Gibson v. Epting⁴ were not applicable to the trial court’s rulings on a motion to dismiss. Nothing in the Respondents’ Brief defeats those arguments.

In the light most favorable to the Appellants, there Complaint alleges specific facts supporting claims for professional negligence, see e.g., R. 42-44, Complaint ¶¶ 28, 29, 38, and 41-42, and also alleges specific facts supporting claims for breach of the fiduciary duties of loyalty and confidentiality. See e.g., R. 45 and 47-48, Complaint ¶¶ 47, 61, 63, and 66. The Appellants’ breach of fiduciary duty claim is **not** “premised on the same factual allegations as their legal malpractice claim” as argued on page 28 of the Respondents’ Brief. Applying Rule 8(a), SCRC, permitting pleading in the alternative should have controlled the trial court’s rulings, especially given the separate factual allegations supporting each of these two independent claims, legal malpractice, and breach of fiduciary duty.

The Respondents’ Brief argues this Court’s rulings in Smith v. Hastie⁵ are not relevant in determining whether the trial court made an error in this case because that opinion “contains no discussion about duplicity or merger of these claims.” Respondents Brief at pp. 28-29. The problem with the Respondents’ argument is this Court’s ruling in Smith v. Hastie is grounded on the concept that parties are permitted to plead in the alternative, which eliminated the need for any discussion about duplicity or merger of claims. It was error for the trial court to hold that Appellants’ breach of fiduciary duty claim was duplicative of their legal malpractice claim based on the specific factual allegations supporting each of these claims, and based on Rule 8(a), SCRC, specifically permitting parties to plead in the alternative.

³ 399 S.C. 322, 732 S.E.2d 166 (2012).

⁴ 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019).

⁵ 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005).

VI. The affidavit by the Appellants' expert was timely filed and sufficient to satisfy all statutory requirements.

The statements of fact in Paragraph 103 in the Appellants' Complaint concerning the filing of the expert's affidavit explain the events leading to the timely filing of the affidavit as permitted under S.C. CODE ANN. § 15-36-100, including all subparts. The substance of Justin Dillon, Esq.'s affidavit, including his CV showing the wealth of his experience in federal courts on Title IX matters, demonstrates why he is "qualified as to the acceptable conduct of the professional whose conduct is at issue." The Appellants' Title IX claims that the Respondents "strongly urged" the Appellant, Andrew Pampu, to release as part of the defective settlement agreement are a significant part of the Appellants' legal malpractice claims. Mr. Dillon is eminently qualified to provide expert opinions on the Respondents' failure to meet the standard of care in prosecuting those Title IX claims. Title IX claims are Title IX claims regardless of whether they are being litigated in South Carolina or other jurisdictions. The Respondents' contrary arguments should be rejected and the trial court's rulings should be reversed. Mr. Dillon's affidavit sufficiently and succinctly identified one negligent act by the Respondents.

While, like the amended complaint, this affidavit is generic in some ways, it too contains the minimal information necessary to survive a motion to dismiss. Our supreme court has held that section 15-36-100 requires only that the affidavit specify the "breach" element of malpractice. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012). This affidavit does that.

Hager v. McCabe, Trotter & Beverly, P.C., 435 S.C. at 752, 869 S.E.2d at 892.

The trial court erred in concluding that Mr. Dillon's expert affidavit was not timely filed and insufficient as a matter of law. Those rulings should be reversed, and this matter should be remanded for trial.

VII. The Respondents' Brief and the trial court's Orders misapprehend South Carolina's public policy permitting legal malpractice claims based on a lawyer's errors during a mediation.

It is understandable why the Respondents' Brief does not address why Rule 8(c)(3), SCADR, defeats the trial court's findings that the Appellants' claims are against public policy. This is because there would be no reason for the South Carolina Supreme Court to include Rule 8(c)(3) in the South Carolina Rules of Alternative Dispute Resolution if South Carolina public policy did not permit lawsuits based on alleged "professional malpractice occurring during the mediation" as expressly stated in Rule 8(c)(3). The Respondents' arguments about Rule 8(g), SCADR, concerning motions to compel disclosures by a mediator simply have no bearing on the trial court's rulings on South Carolina public policy or this appeal. The plain language in Rule 8(c)(3), SCADR, demonstrates why the trial court's rulings on South Carolina public policy should be reversed.

CONCLUSION

Appellants Andrew Pampu, Amanda Pampu, and John Pampu respectfully request that this Court reverse the trial court's ruling dismissing their Complaint with prejudice and remand the matter to allow them to maintain their legal malpractice, breach of fiduciary duty, and breach of contract claims against the Respondents.

Respectfully submitted,

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2025 WL 2158945

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

**THIS OPINION HAS NO PRECEDENTIAL VALUE.
IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT
AS PROVIDED BY RULE 268(d)(2), SCACR.**

Court of Appeals of South Carolina.

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

v.

Clawson Fagnoli, LLC, Samuel R. Clawson, Jr.,
Esq., Christina R. Fagnoli, Esq., Barrett R. Brewer,
Esq., and Brewer Law Firm, LLC; Respondents.

Appellate Case No. 2023-001779

|

Unpublished Opinion No. 2025-UP-272

|

Heard March 6, 2025

|

Filed July 30, 2025

Appeal From Charleston County [Edgar Warren Dickson](#),
Circuit Court Judge

AFFIRMED IN PART AND REVERSED IN PART

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Opinion

PER CURIAM:

***1** Andrew Pampu, Amanda Pampu, and John Pampu
(collectively, Appellants) appeal the circuit court's order
dismissing their claims for legal professional negligence,
breach of fiduciary duty, and breach of contract pursuant to
[Rule 12\(b\)\(6\)](#), [SCRCP](#).

1. Appellants argue the circuit court erred by dismissing
their claim for legal professional negligence. Additionally,
Appellants argue the circuit court erred in finding their
required expert affidavit untimely and insufficient. We agree.

We hold Appellants' complaint sufficiently alleged facts to
support a cause of action for legal professional negligence
and the circuit court erred in dismissing it. See [Ashley River
Properties I, LLC v. Ashley River Properties II, LLC](#), 374
S.C. 271, 279, 648 S.E.2d 295, 298 (Ct. App. 2007) ("Upon
review of a dismissal of an action pursuant to [Rule 12\(b\)](#)
(6), the appellate court applies the same standard of review
implemented by the trial court."); [Doe v. Marion](#), 373 S.C.
390, 395, 645 S.E.2d 245, 247 (2007) ("In considering a
motion to dismiss a complaint based on a failure to state
facts sufficient to constitute a cause of action, the trial
court must base its ruling solely on allegations set forth in
the complaint."); *id.* ("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."); *id.* at 395, 645 S.E.2d at 247 ("The complaint
should not be dismissed merely because the court doubts the
plaintiff will prevail in the action."). Appellants' complaint
alleged Respondents permitted Andrew to sign a settlement
agreement that failed to address his academic records; did not
meet key objectives of the litigation; and failed to explain the
settlement agreement to Andrew and ensure he understood
its implications, discovery deficiencies, and the disclosure of
materials related to their representation. See [RFT Mgmt. Co.
v. Tinsley & Adams L.L.P.](#), 399 S.C. 322, 331, 732 S.E.2d
166, 170 (2012) ("A plaintiff in a legal malpractice action
must establish four elements: (1) the existence of an attorney-
client relationship, (2) a breach of duty by the attorney, (3)
damage to the client, and (4) proximate causation of the
client's damages by the breach.").

We hold Appellants' expert affidavit was timely filed
and sufficient. Appellants' original complaint cited [section
15-36-100\(C\)\(1\) of the South Carolina Code](#) (Supp. 2024)
and stated Appellants would file an amended complaint with
the required affidavit within forty-five days. Additionally,
Appellants' second amended complaint alleged the affidavit

could not be prepared prior to the expiration of the statute of limitations due to time constraints. We find this adequately met [section 15-36-100\(C\)\(1\)](#)'s exception to the filing requirement. *See S.C. Code Ann. § 15-36-100(B)* (Supp. 2024) (requiring in an action for legal malpractice, the contemporaneous filing with the complaint of "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); [§ 15-36-100\(C\)\(1\)](#) ("The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire ... within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared."). Additionally, Appellants' expert testified in his affidavit that he had extensive experience litigating and writing about Title IX cases involving universities across the country. Appellants' legal malpractice claim concerns inadequate representation during Appellants' Title IX litigation against Clemson University; thus, we find the affidavit is sufficient under the statute. *See S.C. Code Ann. § 15-36-100(A)* (Supp. 2024) (stating an "expert witness" is one "who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who ... has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in ... the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion").

***2** 2. Appellants argue the circuit court erred by dismissing their claim for breach of fiduciary duty. We hold Appellants' 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. *See RFT Mgmt. Co.*, 399 S.C. at 335–37, 732 S.E.2d at 173 (2012) (holding a breach of fiduciary duty claim was duplicative of a legal malpractice claim and failed as a matter of law because the client's claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and the same factual allegations).

3. Appellants argue the circuit court erred by dismissing their claim for breach of contract. They contend the circuit court erred in finding Amanda and John Pampu, Andrew's parents, lacked standing. We disagree. 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. *See Sloan v. Greenville County*, 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003) ("A plaintiff must have standing to institute an action."); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013) ("Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." (quoting *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008))); *Sloan*, 356 S.C. at 547, 590 S.E.2d at 347 ("To have standing ... one must be a real party in interest. A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." (omission in original) (quoting *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999))). Further, we hold the circuit court did not err in dismissing Appellants' breach of contract claim. Appellants' complaint fails to allege how Respondents breached any agreement. The complaint only states that Respondents "fail[ed] to provide such services." *See Doe*, 373 S.C. at 395, 645 S.E.2d at 247 ("In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint."); *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) ("The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach.").

4. Appellants argue the circuit court's last ground for dismissing the complaint, which is that it violates public policy, is an improper ground for dismissal under [Rule 12\(b\)\(6\)](#). *See Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019) ("Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim."). In any event, holding attorneys accountable for unprofessional conduct during a mediation is not a public policy violation. Therefore, it is not surprising that the circuit court cited no specific authority for such a proposition. We agree with Pampu that Rule 8(c)(3), SCADR contemplates legal malpractice lawsuits for "professional malpractice occurring during the mediation" and this provision would not exist if public policy did not permit malpractice suits for attorney conduct during a mediation. Rule 8(c)(3) states, "There is no confidentiality attached to information that is disclosed during a mediation ... offered to report, prove, or disprove professional malpractice

occurring during the mediation, solely for the purpose of the professional malpractice proceeding.”

*3 Respondents cite to Rule 8(g), SCADR and [Rule 16.10\(E\) of the Local Civil Rules](#) for the United States District Court for the District of South Carolina to support their argument that a legal malpractice suit for attorney conduct during a mediation violates public policy “because the mediator would be the key witness” and because these rules prohibit calling the mediator as a witness or compelling the production of records received or created by the mediator. However, these provisions do not prohibit the introduction of any other information disclosed during the mediation for purposes of a professional malpractice proceeding, and they do not otherwise diminish the force of Rule 8(c)(3) or the

clear inference that this rule contemplates legal malpractice lawsuits for professional malpractice occurring during the mediation. Therefore, we find Respondents’ argument neither persuasive nor credible.

AFFIRMED IN PART AND REVERSED IN PART.

[WILLIAMS](#), C.J., and [GEATHERS](#) and TURNER, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2025 WL 2158945

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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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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), SCRPC 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), SCRCF.

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,

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August 13, 2025

Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Aug 14 2025

APPEAL FROM CHARLESTON COUNTY
Honorable Edgar W. Dickson

SC Court of Appeals

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.

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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August 14, 2025

Beaufort, South Carolina

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Aug 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge
Civil Action No. 2021-CP-10-01343

Appellate Case No. 2023-001779

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

v.

Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R.
Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC Respondents

**RESPONDENTS' JOINT
PETITION FOR REHEARING**

INTRODUCTION

Respondents Clawson Fagnoli, LLC; Samuel R. Clawson, Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and Brewer Law Firm, LLC (“Respondents”), pursuant to Rule 221, SCACR, respectfully and jointly petition the Court for Rehearing of Respondents’ arguments in this matter. Specifically, pursuant to Rule 221(a), Respondents petition the Court to reconsider its decision that the expert affidavit filed by Appellants was timely pursuant to S.C. Code Ann. § 15-36-100 and, instead, hold that the affidavit was untimely.

BACKGROUND

The relevant background of this Petition concerns Appellants’ failure to contemporaneously file with their original Complaint an expert affidavit pursuant to S.C. Code Ann. § 15-36-100. The Record on Appeal confirms Appellants did not file an expert affidavit with the original Complaint. R. p. 35-56. Appellants do not contest this point. Section 15-36-100 provides an exception to the contemporaneous filing rule but requires the following:

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing *and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.*

S.C. Code Ann. § 15-36-100(C)(1) (emphasis added). In their original Complaint, Appellants did not allege that, because of the time constraints, an affidavit of an expert could not be prepared. *See* R. p. 35-56.

ARGUMENT

Rehearing is appropriate when the Court has “overlooked or misapprehended [the petitioners’] argument,” *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), or when a “material fact or principle of law has been either overlooked or disregarded.” *State v.*

Haygood, 413 S.C. 239, 240, 776 S.E.2d 262, 263 (2015); *see Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Here, the Court should grant rehearing and reverse its decision that Appellants timely filed the Expert Affidavit pursuant to S.C. Code Ann. § 15-36-100.

The Circuit Court issued two (2) Orders dismissing the Amended Complaint in this action. R. pp. 6-31. In each order, the Circuit Court addressed the timeliness of Appellants' expert affidavit filed pursuant to South Carolina Code Annotated 15-36-100. Specifically, the Circuit Court found in response to the Motion to Dismiss filed by Respondents Barrett Brewer and the Brewer Law Firm:

Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

R. pp. 7-8. In response to the Motion to Dismiss filed by Respondents Clawson Fargnoli, LLC, Christina R. Fargnoli, and Samuel R. Clawson, the Circuit Court found:

However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have presumed that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C). Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

R. p. 26. Respondents argued on appeal that Appellants' failure to allege that time constraints prevented the filing of the expert affidavit was fatal to their claims.

In its Opinion, this Court found:

We hold Appellants' expert affidavit was timely filed and sufficient. Appellants' original complaint cited section 15-36-100(C)(1) of the South Carolina Code (Supp. 2024) and stated Appellants would file an amended complaint with the required affidavit within forty-five days. Additionally, Appellants' second amended complaint alleged the affidavit could not be prepared prior to the expiration of the statute of limitations due to time constraints. We find this adequately met section 15-36-100(C)(1)'s exception to the filing requirement. *See* S.C. Code Ann. § 15-36-100(B) (Supp. 2024) (requiring in an action for legal malpractice, the contemporaneous filing with the complaint of "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); § 15-36-100(C)(1) ("The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire . . . within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.").

Opinion at 3. Appellants concede the statute of limitations ran on their claims on March 21, 2021. R. p. 129, ¶ 103. Appellants did not file any expert affidavit until April 30, 2021, more than thirty (30) days after the expiration of the statute of limitations. And Appellants did not allege until June 16, 2021, more than 88 days after filing the original Complaint, that, because of time constraints, a contemporaneous expert affidavit could not be filed. R. p. 129, ¶ 103.

The Circuit Court correctly held that Appellants' proffered affidavit of Justin Dillon was untimely as a matter of law. "If a plaintiff fails to file an affidavit as required by [§ 15-36-100], and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake." S.C. Code Ann. § 15-36-100(F).

When Appellants filed their initial Complaint on March 19, 2021, they did not include the required expert witness affidavit. R. pp. 35-56. Instead, Appellants alleged that pursuant to § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” R. p. 55, ¶ 103. Appellants then amended their Complaint 42 days later to include an expert witness affidavit. *See* R. pp. 58-78. In response to Respondents’ respective motions to dismiss, which raised Appellants’ untimely expert affidavit as one of several grounds for dismissal, Appellants amended their Complaint a second time to add further allegations related to expert affidavit issue. R. pp. 129, ¶ 103. Specifically, Appellants claimed that the statute of limitations expired on March 21, 2021 (two days after the filing of the initial Complaint) and alleged—for the first time—that because of time constraints, the expert affidavit could not be prepared in time to file it before that date. *Id.* Appellants further claimed that they were filing their Second Amended Complaint under § 15-36-100(E), which they contend permitted them to file an amended pleading to cure the alleged defects. *Id.* Appellants have argued that the trial court ignored these allegations, which they contend establish that the expert affidavit was timely filed. *See* Appellants’ Brief, pp. 28-29.

As an initial matter, by its plain language, § 15-36-100(E) only applies where a plaintiff has filed an expert affidavit that is alleged to be insufficient, not where a plaintiff has failed to file any expert affidavit. *See* S.C. Code Ann. § 15-36-100(E). Stated differently, this section allows a plaintiff to cure an alleged defect in the affidavit by amending the affidavit within a certain amount of time. *See id.* It does not permit a plaintiff to cure his failure to file any affidavit at all by amending the pleadings to include an affidavit. *See id.* Accordingly, Appellants’ reliance on § 15-36-100(E) is misplaced.

Next, § 15-36-100(C)(1) provides, in part, that the contemporaneous filing requirement “does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, *because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.*” § 15-36-100(C)(1) (emphasis added). Simply put, Appellants made no such allegation in their initial Complaint. *See generally* R. pp. 35-56. And they did not cure this defect in their First Amended Complaint. *See generally* R. pp. 57-87. Moreover, allowing Appellants to circumvent the clear requirements of § 15-36-100 would effectively extend the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Accordingly, the trial court did not err in holding that Appellants’ expert affidavit was untimely as a matter of law, which provided an independent basis to dismiss Appellants’ legal malpractice claims. *See* S.C. Code Ann. § 15-36-100(F) (“If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation . . .”).

CONCLUSION

This Court’s opinion should be amended pursuant to Rule 221(a) because the Court overlooked or misapprehended Respondents’ argument on the applicable statute. Appellants did not comply with S.C. Code Ann. § 15-36-100(C)(1) because they did not allege in their initial Complaint that, due to time constraints, an expert affidavit could not be prepared. The statute requires Appellants to allege this fact. Their failure to do so is fatal to their legal malpractice claims. As a result, the Circuit Court properly dismissed the Second Amended Complaint.

Respondents request this Court amend its opinion and affirm the Circuit Court on this issue as well.

Respectfully Submitted,

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Aug 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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v.

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CERTIFICATE OF SERVICE

Pursuant to Rules 240(c)(1) and 262(b) of the South Carolina Rules of Appellate Procedure, the undersigned hereby certifies that on August 28, 2025, copies of Respondents' Joint Petition for Rehearing were served on all counsel of record via e-mail as follows:

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The South Carolina Court of Appeals

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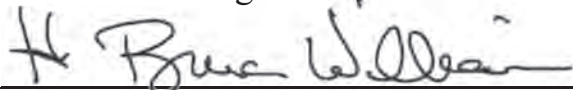
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ORDER

After careful consideration of the Appellants' and Respondents' petitions for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

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James M. Dedman, IV, Esquire

FILED
Sep 29 2025

Appendix0585

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The Honorable Edgar Warren Dickson

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Sep 29 2025

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Apr 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM CHARLESTON COUNTY
Edgar W. Dickson, Circuit Court Judge

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

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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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Volume 1, Volume 2, and Volume 3 of
Petitioners-Respondents' Appendix, filed on behalf of Petitioners-Respondents, Andrew
Pampu; Amanda Pampu; and John Pampu, contain all material proposed to be included by
any of the parties and not any other material.



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April 10, 2026

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