

RECEIVED

Jun 08 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas**

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2026-000337

James Earl Lovorn, III Appellant

v.

National Collegiate Athletic Association Respondent.

INITIAL BRIEF OF APPELLANT

Donald L. Chuck Allen
Joshua C. B. Allen
Austin G. McLain
Allen & Allen Law Firm, LLC
PO BOX 2861
Anderson, SC 29621
864-226-6184
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STANDARD OF REVIEW3

ARGUMENT4

I. Was the affirmative defense of laches properly pleaded pursuant to Rule 8 of the SCRCP and did the Trial Court err by improperly dismissing the action based on the Affirmative Defense of Laches?

a. The Defendant did not file a pleading that asserted the affirmative defense of laches.

b. The Trial Court erred by dismissing the case in its entirety on the merits at the temporary injunction hearing.

CONCLUSION6

TABLE OF AUTHORITIES

CASES

Howard v. S.C. Dep't of Highways, 343 S.C. 149, 538 S.E.2d 291, 294 (Ct.App.2000)

Mack v. Edens, 412 S.E.2d 431 (Ct. App.1991)

McNeely v. S.C. Farm Bureau Mut. Ins. Co., 259 S.C. 39, 190 S.E.2d 499 (1972)

Powell v. Immanuel Baptist Church, 261 S.C. 219 (1973).

Proctor v. Steedley, 398 S.C. 561, 730 S.E.2d 357 (Ct. App. 2012)

Southern Railway Co. v. Coltex, Inc., 285 S.C. 213 (1985).

Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422 (2010).

RULES

Rule 7, SCRCF

Rule 8, SCRCF

Rule 65, SCRCF

STATEMENT OF ISSUES ON APPEAL

- I. Was the affirmative defense of laches properly before the lower court pursuant to the South Carolina Rules of Civil Procedure and did the lower court err by improperly dismissing the entire action based on the Affirmative Defense of Laches?

STATEMENT OF THE CASE

On December 8, 2025, James Earl Lovorn, III brought this action seeking injunctive relief against the National Collegiate Athletic Association (NCAA) after it denied his waiver for additional eligibility as a collegiate basketball player. Subsequently, an amended complaint was filed on December 17, 2025. A notice of motion and motion for a temporary injunction was filed on December 18, 2025 and a hearing on the temporary injunction was scheduled for December 23, 2025. The defendant did not file responsive pleadings prior to the temporary injunction hearing.

The hearing regarding the temporary injunction was heard by the Honorable Frank R. Addy, Jr. on December 23, 2025. On December 30, 2025, Judge Addy issued an order not only denying the temporary relief sought by the plaintiff but also dismissing the case in its entirety based on the affirmative defense of laches. On February 13, 2026, Plaintiff served and filed a notice of appeal.

STANDARD OF REVIEW

A Trial Court's *sua sponte* dismissal of case is a question of law to be reviewed *de novo*. *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427 (2010), *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012) (stating an appellate court employing the *de novo* standard of review is "is free to decide questions of law with no particular deference to the trial court"). A South Carolina court may not grant dispositive relief on an unpled or waived ground raised *sua sponte*. *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214 (1985).

ARGUMENT

- I. Was the affirmative defense of laches properly pleaded pursuant to Rule 8 of the SCRCP and did the Trial Court err by dismissing the action based on the Affirmative Defense of Laches?**
- a. The Defendant did not file a a pleading that asserted the affirmative defense of laches.**

Rule 8 (c) of the South Carolina Rule of Civil Procedure requires that any affirmative defenses a party wishes to argue must be set forth in a pleading. Rule 8, SCRCP. The rule further provides a list of recognized affirmative defenses in South Carolina, of which laches is listed. *Id.* One of the aims of this rule is to avoid the “surprise” defense and allow a party notice and opportunity to prepare accordingly. Rule 8, SCRCP (notes). South Carolina Courts have regularly affirmed Rule 8’s requirement that “affirmative defenses must be raised by the pleadings.” *See Mack v. Edens*, 412 S.E.2d 431 (Ct. App.) (1991).

In the present case, the only filings made by the Defendant were a notice of appearance (filed on December 22, 2025) and a “Memorandum in Opposition to Plaintiff’s Motion for Temporary Injunction” (filed on December 22, 2025). While it is true the Defendant referenced the doctrine of laches as an argument against the Plaintiff’s request for temporary relief in its memorandum, that filing is not considered a “Pleading” as defined by Rule 7 of the South Carolina Rules of Civil Procedure and does not satisfy the pleading requirement of Rule 8.

An affirmative defense is waived if not pled. *Howard v. S.C. Dep’t of Highways*, 343 S.C. 149, 152, 538 S.E.2d 291, 294 (Ct.App.2000). *McNeely v. S.C. Farm Bureau Mut. Ins. Co.*, 259 S.C. 39, 41, 190 S.E.2d 499, 499 (1972). In the present case, the Defendant had not properly raised laches as an affirmative defense and thus laches should not have been given any consideration, whatsoever, *at the time of the hearing regarding a temporary injunction*. The

Plaintiff was never properly noticed regarding the Defendant's intent to raise laches as a defense and was essentially given a "surprise defense" the day prior to the hearing on the temporary injunction – the very issue Rule 8 looks to avoid. Therefore, the Court should not have considered the laches defense at the temporary injunction stage with regard to a final determination on the merits of the case.

b. The Trial Court erred by dismissing the case on the merits at the temporary injunction hearing.

The only issue at the preliminary stage of a motion for Temporary Injunction is whether a temporary injunction should issue based on the standard requirements for a temporary injunction in South Carolina (irreparable harm; likelihood of success on the merits; and no adequate remedy at law). Rule 65 SCRPC. *Powell v. Immanuel Baptist Church*, 261 S.C. 219 (1973). The limited purpose is not to adjudicate the underlying case on its merits on a final basis. *Id.* Further, a Court may not grant dispositive relief on an unpled or waived ground raised *sue sponte*. *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214 (1985).

In the present case, the Court not only denied the Plaintiff's motion for a temporary injunction, but went further and, *sua sponte*, dismissed the case in its entirety on the merits based on the doctrine of laches. This was done after the Hearing on the Plaintiff's Temporary Injunction hearing and constitutes legal error according to *Powell* and *Southern Railway*.

CONCLUSION

Because the defense of laches was never properly asserted and the trial court, *sua sponte*, improperly dismissed the Plaintiff's claims on the merits at the initial Temporary Injunction Hearing this court should reverse and remand the case for further proceedings on the merits.

Respectfully submitted,

s/Donald L. Chuck Allen

Donald L. Chuck Allen, JD, SC Bar#10421

s/Joshua C. B. Allen

Joshua C. B. Allen, JD, SC Bar #80398

s/Austin G. McLain

Austin G. McLain, JD, SC Bar#100692

ALLEN & ALLEN LAW FIRM, LLC

Attorneys for Appellants

PO Box 2861

Anderson, SC 29622

(864)226-6184

June 8, 2026
Anderson, South Carolina