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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM YORK COUNTY

Court of Common Pleas

William A. McKinnon, Circuit Court Judge

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Case No. 2024-CP-46-01354

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Latif Taheri-Azar.....Appellant,

v.

Tim Haake and Justin Marlow.....Respondents

Appellate Case No. 2025-000971

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FINAL BRIEF OF APPELLANT

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July 3, 2026

s/ Rolf M. Baghdady

Rolf M. Baghdady / SC Bar # 0464

Rolf M. Baghdady, P.A.

118 Cobblestone Court

Chapin, SC 29036-9705

(803) 345-7653

E-mail: [rolf@rolfbaghdady.com](mailto:rolf@rolfbaghdady.com)

Attorney for Appellant

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING ON SUMMARY JUDGMENT THE STATEMENTS AT ISSUE THAT WERE INDEED MADE BY RESPONDENTS HAAKE AND MARLOW CONCERNING THE APPELLANT DID NOT CONCERN THE APPELLANT?
2. DID THE TRIAL COURT ERR IN FINDING ON SUMMARY JUDGMENT THE STATEMENTS IN RESPONDENTS' LETTER OF FEBRUARY 28TH WERE NOT FALSE?
3. DID THE TRIAL COURT ERR IN GRANTING RESPONDENTS' SUMMARY JUDGMENT?

## STATEMENT OF THE CASE

The proceedings in this case began with the filing of Appellant Latif Taheri-Azar's Summons and Complaint on April 3, 2024, which sought delay damages for tortious interference with prospective contractual relations, as well as defamation and declaratory judgment arising out of statements made to the City of Rock Hill that caused the City of Rock Hill to stop Appellant's construction work on the residence he was building. The construction was completed pendent lite, the home was sold, and the tortious interference and declaratory judgment causes of action were dismissed.

Respondent Haake answered and counterclaimed on May 9, 2024. Appellant replied on June 10, 2024. Respondent Marlow answered on July 2, 2024. Respondent Haake's Motion for Summary Judgment was filed January 24, 2025. Respondent Haake's memo in support of Motion for Summary Judgment was also filed on January 24, 2025. Respondent Marlow's Motion for Summary Judgment was filed on January 28, 2025. Appellant's memo in opposition to Respondents' Motions for Summary Judgment was filed on February 19, 2025. The Court

granted Respondents' Motion for Summary Judgment by Order filed March 21, 2025.

Appellant's Motion for Reconsideration was filed on March 31, 2025 and Appellant's Notice of Appeal was filed May 16, 2025.

### STANDARD OF REVIEW

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (S.C. 1976), 86.

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Upon review of the trial court's grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003)

### ARGUMENTS

- I. BECAUSE THE RESPONDENTS HAAKE AND MARLOW DID INDEED MAKE STATEMENTS CONCERNING THE PLAINTIFF, THE TRIAL COURT ERRED IN FINDING ON SUMMARY JUDGMENT THE STATEMENTS AT ISSUE DID NOT CONCERN THE APPELLANT.

The only Restrictive Covenants in existence for the Poplar Forest Subdivision were recorded on April 30, 1966 with the Register of Deeds for the County of York [Restrictive Covenants] (R. pp. 797- 799). Those Restrictive Covenants provide in Paragraph 7a., "Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp." [Restrictive Covenants p. 1] (R. pp. 797-799). There is no Poplar Forest Corporation in existence

[Certificate of no existence of Poplar Forest] (R. p. 835), hence no Board of Directors that comprise an Architectural Review Board for the subdivision. This is accurately reflected in the building permit Appellant filed with the City of Rock Hill [Exhibit 6, p. 6 of Appellant's deposition] (R. p. 809). Respondents asserted that Appellant's true statement was a lie. Respondents asserted that Appellant was building a house in violation of the Restrictive Covenants and that a Poplar Forest's HOA's Architectural Review Board was in existence [Exhibit 5, pp. 1-2 of Appellant's deposition] (R. pp. 793-794). Appellant was both named individually and by reference via the street address of his building permit [Exhibit 5, pp. 1-2 of Appellant's deposition] (R. pp. 793-794). "To prevail in a defamation action, the plaintiff must establish that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred." *Burns v. Gardner*, 328 S.C. 608, 615, 493 S.E.2d 356, 359 (Ct. App. 1997).

Therefore, the Trial Court erred in finding the statements at issue did not concern the Appellant and the conclusion of law on summary judgement should be reversed.

II. BECAUSE IT CAN BE REASONABLY INFERRED FROM THE RECORD THAT RESPONDENTS' FEBRUARY 28<sup>TH</sup>, 2024 LETTER WAS FALSE, WHICH EVIDENCED THE CAUSE OF APPELLANT'S HARM, THE TRIAL COURT ERRED IN FINDING ON SUMMARY JUDGMENT THE STATEMENTS IN THE LETTER WERE NOT FALSE.

The only Restrictive Covenants in existence for the Poplar Forest Subdivision were recorded on April 30, 1966 with the Register of Deeds for the County of York [Restrictive Covenants] (R. pp. 797-799)). Those Restrictive Covenants provide in Paragraph 7a., "Lot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp."

[Restrictive Covenants p. 1] (R. pp. 797-799). There is no Poplar Forest Corporation in existence [Certificate of no existence of Poplar Forest] (R. p. 835), hence no Board of Directors that comprise an Architectural Review Board for the subdivision. This is accurately reflected in the building permit Appellant filed with the City of Rock Hill [Exhibit 6, p. 6 of Appellant's deposition] (R. 809). Respondents asserted that Appellant's true statement was a lie. Respondents asserted that Appellant was building a house in violation of the Restrictive Covenants and that a Poplar Forest's HOA's Architectural Review Board was in existence [Exhibit 5, pp. 1-2 of Appellant's deposition] (R. pp. 793-794). Appellant was both named individually and by reference via the street address of his building permit [Exhibit 5, pp. 1-2 of Appellant's deposition] (R. pp. 793-794). Furthermore, the issue of the existence is also contested by Appellant's testimony:

7 Q How did you determine that there was no HOA?

8 A First of all, there is insurance title. So if

9 there was an HOA, it would come in the title

10 insurance.

11 Secondly, I went myself personally to the

12 register of deeds -- not because the gentleman,

13 because of the City -- to make sure that what I'm

14 doing is what the City requires. If there's an

15 HOA, I needed to find the address, the names, to be

16 able to communicate.

17 So at the register of deeds, they told me

18 there is no HOA. So that's how I informed the City

19 that there is no HOA. [Appellant's deposition, p. 25, lines 7-19] (R. p. 661, lines 7-19).

Appellant further testified that he was in compliance with the Restrictive Covenants for Poplar Forest Subdivision which were filed in 1966:

1 Q -- restrictive covenants.

2 A So I complied with the covenants of the recorded --

3 which was done 60 years ago. [Appellant's deposition, p. 26, lines 1-3] (R. p. 662, lines 1-3).

6 Q Okay. All right. You alleged in your complaint  
7 that my client and Mr. Marlowe represented in  
8 writing that they were authorized agents of  
9 Poplar Forest Corporation and that you were in  
10 violation of architectural requirements; is that  
11 correct? Is that accurate?

12 A It's accurate that that's what they wrote.

13 Q Okay. So how are these statements defamatory?

14 A Number one, because they are not. That's a false  
15 claim.

16 Q That they're --

17 A They are --

18 Q -- not true?

19 A They are not true. [Appellant's deposition, p. 34, lines 6-19] (R. p. 670, lines  
6-19).

19 He claimed falsely that he's the

20 chairman of the architectural committee. That's a

21 total false statement. That's defamation. [Appellant's deposition, p. 40, lines 19-21]

(R. p. 676, lines 19-21).

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCF. To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Sumner v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Upon review of the trial court's grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCF. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003)

Therefore, the record's clearly established facts are in dispute and summary judgment determining these contested facts is in error and should be reversed.

III. BECAUSE THE RECORD SHOWS THE ELEMENTS OF DEFAMATION, THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' SUMMARY JUDGMENT.

Respondents published defamatory statements concerning the Appellant in a letter to the City of Rock Hill and to the other residents of the Poplar Forest subdivision of the subject property. The letter claimed that Respondents were representatives of the Poplar Forest HOA and that Appellant's construction of the new residence in the subdivision was in violation of the Poplar Forest's HOA's Covenants, Codes, and Restrictions. The defamatory statements were about Appellant and his construction of the new residence in the subdivision [Exhibit 5, pp. 1-2 of Appellant's deposition.] (R. pp. 793-794). The Appellant had done his due diligence and was not in violation of the recorded Covenants, Codes, and Restrictions. The Respondents were not members of an Architectural Review Board for the Poplar Forest HOA, which is a nonexistent entity. The Respondents were not representatives of any HOA within the subdivision.

7 Q How did you determine that there was no HOA?

8 A First of all, there is insurance title. So if  
9 there was an HOA, it would come in the title  
10 insurance.

11 Secondly, I went myself personally to the  
12 register of deeds -- not because the gentleman,  
13 because of the City -- to make sure that what I'm  
14 doing is what the City requires. If there's an  
15 HOA, I needed to find the address, the names, to be  
16 able to communicate.

17 So at the register of deeds, they told me  
18 there is no HOA. So that's how I informed the City  
19 that there is no HOA. [Appellant's deposition, p. 25, lines 7-19] (R. p. 661,  
lines 7-19).

Appellant further testified that he was in compliance with the Restrictive Covenants for Poplar Forest Subdivision which were filed in 1966:

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6 Q Okay. All right. You alleged in your complaint  
7 that my client and Mr. Marlowe represented in  
8 writing that they were authorized agents of  
9 Poplar Forest Corporation and that you were in  
10 violation of architectural requirements; is that  
11 correct? Is that accurate?  
12 A It's accurate that that's what they wrote.  
13 Q Okay. So how are these statements defamatory?  
14 A Number one, because they are not. That's a false  
15 claim.  
16 Q That they're --  
17 A They are --  
18 Q -- not true?  
19 A They are not true. [Appellant's deposition, p. 34, lines 6-19] (R. p. 670, lines 6-19).

19 He claimed falsely that he's the  
20 chairman of the architectural committee. That's a  
21 total false statement. That's defamation. [Appellant's deposition p. 40, lines 19-21]  
(R. p. 676, lines 19-21).

The Respondents' statements were not privileged as they were not representatives of any HOA and were not acting within any legal representative capacity of an HOA. The statements sent in their communications with the City of Rock Hill were made knowingly, intentionally, and willingly and thus the Respondents are at fault for false communications to the City of Rock Hill.

Furthermore, Respondents' defamatory statements pertaining to the Appellant which they made to the City of Rock Hill caused the Appellant harm. Appellant was forced to delay and halt construction on the subject property for forty-five (45) days. Respondents' statements caused a halt in the construction and consequential delays and rescheduling of subcontractors for the construction of the residence, constituting damages of approximately fifty-thousand dollars (\$50,000.00).

22 A It was 45 days exactly from the time this guy  
23 put -- I mean, the City put my project on hold  
24 until they started working on it and released the  
25 hold. Right? For that 45 days, a full-time  
1 superintendent and project manager -- the domino  
2 effect of later on losing the subs, rescheduling  
3 them. Because they don't only work for me.  
4 There's a sub for the plumbing. They have their  
5 own schedule.  
6 So all these extensions of time and not being  
7 able to schedule the material and time they  
8 imposed -- over \$50,000. [Appellant's deposition, p. 69, line 22 – p. 70, line 8]  
(R. p. 705, line 22 – p. 706, line 8).

Thus, the false statements Respondents communicated to the City of Rock Hill were injurious to Appellant's work and income.

In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fleming v. Rose*, 350 S.C. 488 , 494, 567 S.E.2d 857 , 860 (2002); *Holtzscheiter II*, 332 S.C. at 506, 506 S.E.2d at 518 (Toal, J., concurring). *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (S.C. 2006).

The definition of libel as adopted in *Smith v. Bradstreet Company*, 63 S.C. 525, 530, 41 S.E. 763, 764, is as follows: 'A libel is malicious defamation, expressed either by writing or printing, or by signs, pictures, effigies, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty or integrity or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.' *Hubbard v. Furman University*, 76 S.C. 510, 57 S.E. 478 (S.C. 1907), 511.

Therefore, because the record establishes contested facts on all of the elements of Appellant's cause of action for defamation, it was error for the Trial Court to grant summary judgement as a matter of law.

## CONCLUSION

For the reasons stated above, this Court of Appeals should reverse the order denying the motion for reconsideration and reverse the order granting summary judgement and remand the case for further proceedings

Respectfully submitted,

July 3, 2026

s/ Rolf M. Baghdady  
Rolf M. Baghdady / SC Bar # 0464  
Rolf M. Baghdady, P.A  
118 Cobblestone Court  
Chapin, SC 29036-9705  
(803) 345-7653  
E-mail: rolf@rolfbaghdady.com  
Attorney for Appellant