

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court for the Thirteenth Judicial Circuit

Courtney Clyburn Pope, Circuit Court Judge

App. Case No. 2026-000941

Brow Art Management, LLC,Appellant,

vs.

Angel Eyez & Brows, LLC, Manpreet Kaur, and Binal Gandhi,Respondents.

APPELLANT'S INITIAL BRIEF

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- 1. THE CIRCUIT COURT ERRED IN FINDING THAT THE NON-COMPETE AGREEMENTS ARE UNENFORCEABLE DUE TO A LACK OF CONSIDERATION**
- 2. THE CIRCUIT COURT ERRED IN DETERMINING THAT ANGEL EYEZ & BROWS WAS NOT A PARTY TO THE CONTRACT WITH THE APPELLANT**
- 3. THE CIRCUIT COURT ERRED IN FINDING THAT THE COMPLAINT FAILED TO ALLEGE FACTS SUFFICIENT FOR CLAIMS OF CIVIL CONSPIRACY**

STATEMENT OF THE CASE

This is an appeal from an order of the Greenville County Court of Common Pleas dismissing the underlying action. (Order Granting Motion to Dismiss dated March 18, 2026; R.____ p.____). The Appellant, Brow Art Management, LLC, commenced this action on June 6, 2025, by filing a Summons and Complaint against the Respondents, Angel Eyez & Brows, LLC, Manpreet Kaur, and Binal Gandhi. (Summons and Complaint dated June 6, 2025; R.____ p.____). Proof of service upon the Respondents was subsequently filed on June 18, 2025. (Affidavit of Service dated June 18, 2025; R.____ p.____). On July 11, 2025, the Respondents filed a Motion to Dismiss. (Defendant's Motion to Dismiss dated July 11, 2025; R.____ p. ____). The Respondents filed a Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment on November 5, 2025. (Memorandum in Support of Motion to Dismiss dated November 5, 2025; R.____ p.____).

This matter came before Judge Clyburn Pope on December 11, 2025. (Transcript of Court Proceedings dated December 11, 2025; R.____ p.____). On March 18, 2026, Judge Clyburn Pope issued an Order Granting Motion to Dismiss. (Order Granting Motion to Dismiss dated March 18, 2026; R.____ p.____). Appellant timely filed and served its Notice of Appeal to the South Carolina Court of Appeals on April 16, 2026. (Notice of Appeal dated April 16, 2026; R.____ p.____).

STATEMENT OF THE FACTS

I. INTRODUCTION

This case involves Respondents Angel Eyez and Brows, LLC, Manpreet Kaur, and Binal Gandhi and Appellant Brow Art Management, LLC. Appellant is a limited liability company doing business in Greenville, South Carolina. Respondent Angel Eyez and Brows, LLC is a South

Carolina corporation, and the individual Respondents are both residents and citizens of Greenville, South Carolina. Individual Respondents are former employees of Appellant Brow Art Management, LLC (“Brow Art”).

II. FACTUAL BACKGROUND

Respondent Kaur was hired by Appellant Brow Art on August 9, 2017 as an eyebrow threader. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Respondent Gandhi was hired by Appellant Brow Art on October 25, 2022 for a similar position. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Both individual Respondents signed a non-compete agreement with the previous owner of Brow Art. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Upon Vinesh Darji’s appointment as CEO of Brow Art, all employees were required to sign updated agreements. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Respondent Kaur signed the updated non-compete agreement on July 7, 2023, and Respondent Gandhi signed the agreement on July 12, 2023. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___).

On January 16, 2025, a business registration was created for Angel Eyez and Brows, LLC. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Respondents began operating Angel Eyez and Brows, LLC on April 30, 2025 while the Respondents remained employed by the Appellant. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Angel Eyez and Brows, LLC is owned by Paramjit Talwar, the husband of Respondent Kaur. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Respondent Gandhi is an employee of Angel Eyez and Brows, LLC. (Affidavit of Vinesh Darji dated August 4, 2025; R. ___ p. ___). Appellant Brow Art became aware of Respondent Gandhi’s employment at Angel Eyez and Brows, LLC via Google reviews that showed clients of Appellant Brow Art using Respondent Gandhi’s services at Angel Eyez and

Brows, LLC. (Affidavit of Vinesh Darji dated August 4, 2025; R. ____ p. ____). Respondent Gandhi resigned from Brow Art on April 28, 2025. (Affidavit of Vinesh Darji dated August 4, 2025; R. ____ p. ____). Respondent Kaur resigned on May 3, 2025. (Affidavit of Vinesh Darji dated August 4, 2025; R. ____ p. ____).

STANDARD OF REVIEW

A motion to dismiss under Rule 12(b)(6), SCRCP, has to be reviewed *de novo*, applying the same standard as the circuit court. *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). A Rule 12(b)(6) motion tests only the legal sufficiency of the complaint. It does not address the merits of the claims or consider the plaintiff's likelihood of ultimately prevailing. The circuit court's ruling must be based solely upon the allegations set forth on the face of the complaint. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). Every factual allegation must be accepted as true; all facts and inferences must be viewed in the light most favorable to the plaintiff. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). Dismissal is improper if the facts alleged and the inferences drawn from them would entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995).

The circuit court is confined to the face of the complaint; disputed questions of fact may not be resolved on a Rule 12(b)(6) motion. When a resolution requires consideration of matters outside the pleading, the motion to dismiss must be converted to a motion for summary judgment under Rule 56, SCRCP. Dismissal under Rule 12(b)(6) is a disfavored remedy that must be applied sparingly, and a plaintiff facing dismissal should ordinarily be given an opportunity to amend. *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 179-81, 826 S.E.2d 585, 587-88 (2019); *Spence*, 368 S.C. at 128-31, 628 S.E.2d at 880-82.

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN FINDING THAT THE NON-COMPETE AGREEMENTS ARE UNENFORCEABLE DUE TO A LACK OF CONSIDERATION

Under South Carolina law, a covenant not to compete will be enforced where it is “(1) necessary for the protection of the legitimate interests of the employer, (2) reasonably limited in its operation with respect to time and place, (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood, (4) reasonable from the standpoint of sound public policy, and (5) is supported by consideration.” *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675–76, 301 S.E.2d 142, 143 (1983). Where a covenant not to compete is executed at the inception of the employment relationship, the employment itself constitutes sufficient consideration to support the covenant. *Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001). In this case, the allegations show that the non-compete agreement was valid and enforceable.

The existence of consideration is not a determination that should be made at the pleading stage. The Complaint sufficiently alleges the existence of a valid non-compete agreement, and it alleges a breach of the Respondents’ non-compete agreements. These allegations alone are enough to survive a 12(b)(6) motion to dismiss. Discovery is needed to obtain evidence that would be sufficient to show whether there is a lack of adequate consideration.

Upon information and belief, there also exists a prior non-compete agreement that was signed at the commencement of the Respondents’ employment. This prior non-compete agreement can only be provided through discovery. Dismissal at this time is improper due to a lack of necessary discovery to uncover the original non-compete agreement, and because the Complaint properly alleged a breach of contract.

II. THE CIRCUIT COURT ERRED IN DETERMINING THAT ANGEL EYEZ & BROWS WAS NOT A PARTY TO THE CONTRACT WITH THE APPELLANT

The existence of a contract and the identity of the parties bound by it are questions of fact. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). The Complaint sufficiently alleged that the Respondents breached their contracts with the Appellant. Those allegations, accepted as true, are sufficient to plead that Angel Eyez & Brows is bound by the agreement.

In concluding at the pleading stage that Angel Eyez & Brows was not a party to the contract, the Circuit Court resolved a question of fact against the Appellant without conducting discovery. Because discovery had not yet commenced, Appellant had no opportunity to develop evidence concerning the formation of the agreement, the capacity in which the individual Respondents signed, the relationship between the individual Respondents and the LLC, or the Respondents' acceptance of the contract's benefits. Where the Complaint alleges facts from which a factfinder could reasonably conclude that the LLC was a party to the agreement, dismissal under Rule 12(b)(6) is improper.

The Circuit Court's order stated that corporations cannot be held liable as a party to a contract signed by its owners based on the Supreme Court's ruling in *Raines v. Walker*, 262 S.C. 330, 204 S.E.2d 802 (1974). However, Appellant has conducted a diligent search of South Carolina reporters, regional reporters, and electronic databases, and has consulted a reference librarian at the University of South Carolina School of Law but is unable to locate this decision. Therefore, it appears that the Circuit Court made a determination that corporations cannot be held liable for non-compete agreements based on nonexistent precedent. Appellant could find no equivalent

precedent in South Carolina that would support the Court's assertion. Therefore, the Circuit Court's order should be reversed as to this issue.

III. THE CIRCUIT COURT ERRED IN FINDING THAT THE COMPLAINT FAILED TO ALLEGE FACTS SUFFICIENT FOR CLAIMS OF CIVIL CONSPIRACY

In order to allege a cause of action for civil conspiracy in South Carolina, a Plaintiff must establish “(1) a combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 574-75, 861 S.E.2d 774, 780 (2021). The Court's decision in *Paradis* overturned the special damages requirement for civil conspiracy causes of action. Thus, causes of action for civil conspiracy do not need to allege specific damages if damages exist for other causes of action. *Id.* Conspiracies are inherently secretive such that a “conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances.” *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016) (citing, *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, /7 (2004)). Courts recognize that “in order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Mason v. Mason*, 412 S.C. 28, 61, 770 S.E.2d 405, 422 (Ct. App. 2015) (citing, *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511).

Accepting the factual allegations of the Complaint as true, the pleadings are sufficient to withstand a motion to dismiss for failure to state a claim. The Complaint clearly lists the

Respondents as minds that met in combination or agreement to commit an unlawful act that injured the Appellant. The damages were sufficiently listed under the cause of action for civil conspiracy, and even if they had not been listed under the cause of action, damages alleged in other causes of action are sufficient to satisfy the damages requirement for civil conspiracy.

Because discovery was never initiated, there was not an opportunity to produce evidence that could help establish more elaborate factual allegations. The Court clearly recognizes that conspiracy relies on evidentiary findings which would require discovery. A complaint that alleges civil conspiracy as a cause of action sufficiently states a claim so long as it addresses each element. The Complaint clearly states a claim alleging that the two individual Respondents conspired to unlawfully harm the business of the Appellant and overtly acted to do so which resulted in significant damages. The circuit court erred in granting the Respondents' motion to dismiss as to this cause of action.

CONCLUSION

For the reasons set forth above, the Circuit Court erred in granting the Respondents' Motion to Dismiss. The Order is grounded on serious errors of law, and dismissal is improper at this time. The Court's March 18, 2026 Order should be reversed by this Court.

Please see next page for signature.

Respectfully submitted,

s/ S. Jahue Moore

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