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Aug 20 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Courtney Clyburn Pope, Circuit Court Judge
Case No. 2024-CP-02-00187

Appellate Case No. 2024-001206

Janice Meusel and Adam Meusel,Appellants,

v.

Woodside Plantation Property Owners' Association, Inc., Woodside Plantation Country Club, Inc.
d/b/a Woodside Country Club, and Invited,Defendants,

Of whom Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, are
Respondents.

PETITION FOR REHEARING

The Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited (collectively, “Respondents”), pursuant to Rule 221 of the South Carolina Appellate Court Rules, respectfully request rehearing of this Court’s August 5, 2026 decision. Therein, the Court reversed the circuit court’s underlying order dismissing, with prejudice, the Complaint of Appellants Janice Meusel and Adam Meusel (“Appellants”). The Court held that permitting Appellants the opportunity to amend would not be futile and remanded the case to afford Appellants the opportunity to file an amended pleading. Respectfully, the Court should reconsider its decision because its futility analysis contains inaccurate statements of law.

DISCUSSION

Appellants filed suit against Respondents seeking money damages stemming from causes of action for (1) negligence, (2) violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), and (3) intentional infliction of emotional distress (“IIED”). In short, Appellants (whose home abuts a golf course) contend that Respondents voluntarily undertook a duty to try to curb the ill actions of various golfers that play the course. And according to Appellants, because whatever actions or inactions Respondents took to curb this behavior were allegedly unsuccessful, Respondents are now legally liable to Appellants for the actions of the unnamed golfers.

On appeal, the Court held it was error for the circuit court to not allow Appellants the opportunity to amend following the dismissal of the Complaint. But Appellants never submitted a motion to amend their pleadings and never provided the circuit court with a proposed amended complaint. Additionally, in addressing the futility arguments advanced by Respondents, the Court explained that allowing Appellants to amend would not be clearly futile. However, most respectfully, the Court’s reasoning is misguided with respect to each cause of action. Respondents will address each in turn.

I. NEGLIGENCE

Respectfully, the Court erred in deciding that amending Appellants' complaint would not be futile as to their cause of action for negligence. This Court's opinion identifies Appellants' alleged injuries as "anger, anxiety, depression, severe emotional distress, and diminished property value." Unpublished Op. 2026-UP-401. But these types of damages are not recoverable in negligence. South Carolina law provides: "South Carolina law has long allowed a negligence plaintiff to recover for emotional harm in cases where the *plaintiff has also suffered physical harm.*" *K.S. ex rel. Seeger v. Richland Sch. Dist. Two*, 445 S.C. 111, 120, 912 S.E.2d 240, 244-45 (2025) (emphasis added); *accord Norris v. S. Ry., Carolina Di.*, 84 S.C. 15, 21, 65 S.E. 956, 959 (1909) ("The law in this state does not allow recovery of damages for mental suffering in the absence of bodily injury"). Further, "physical harm may take one of two forms: physical harm caused by physical impact from an external or outside force, or physical harm consisting of the physical manifestations caused by emotional distress." *K.S.* at 111, 912 S.E.2d at 245. Appellants have alleged no physical impact, bodily injury, or any physical manifestation resulting from Respondents' alleged breach. Therefore, under South Carolina law, any attempts by Appellants to amend the pleadings would be futile because they are unable to sufficiently plead the required physical injury.

Nevertheless, the Court mistakenly concluded that "our courts have yet to adopt a physical harm requirement to establish a negligence claim" and, therefore, Appellants "need not allege that they suffered physical harm to show a duty arising from a voluntary undertaking." Unpublished Op. 2026-UP-401 3-4. But this is exactly what South Carolina requires a plaintiff to show to recover damages under a negligence cause of action, and it is exactly what section 323 of the Restatement of Torts requires for a voluntary undertaking of a duty. Here, an amendment to the

Complaint would be futile because Appellants cannot plead that they have suffered physical harm caused by Respondents whether through a duty analysis or a damages analysis, because no such harm exists.

Turning more specifically to the question of voluntary undertaking, the Court correctly stated that there is “generally no duty to act under the common law.” *Wright v. PRG Real Est. Mgm’t, Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). Naturally, however, exceptions to the general rule exist. One such exception arises when a defendant voluntarily assumes a duty to aid or assist another. *Id.* (quoting *Vaughn v. Town of Lyman*, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006)). This Court noted that Appellants alleged the existence of a voluntarily assumed duty, but it incorrectly concluded that such a duty existed and was undertaken by Appellants.

The Court’s Opinion appears to have created a heightened duty of care for alleged voluntary undertakings—voluntary undertakings being an *exception* to the ordinary no-duty rule—that supersedes the requirements for ordinary negligence claims. As noted above, ordinary negligence claims require a physical harm component. That requirement does not cease to exist simply because Respondents allegedly assume a duty to another. And even though the Court’s Opinion notes that South Carolina has not explicitly adopted section 323 of the Restatement, the “recognition of a voluntarily assumed duty in South Carolina is rooted in section 323 of the Restatement.” *Wright* at 213, 826 S.E.2d at 291. Under Section 323, there is an express requirement for physical harm. *Id.* (“One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for *physical harm*”) (emphasis added) (quoting Restatement (Second) of Torts (1965)). Thus, even assuming—without conceding—that there was a voluntary undertaking in this case, that would not abrogate the requirements under

K.C. and longstanding South Carolina jurisprudence requiring physical harm. It simply does not follow that a voluntary undertaking would be subjected to a heightened standard, even if it were properly alleged that Respondents had assumed a duty.

The opinion in *Hurst v. Sandy* is not helpful here either. 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). The absence of bodily injury in a case seeking recovery for property damage does not establish the premise that pleading and showing a physical harm is not required. That is because property damage is still a form of physical harm. This idea is not novel, and is, in fact, over a century old. *See Norris, supra*.

In sum, even assuming Appellants adequately alleged that Respondents voluntarily undertook a duty, they did not plead facts establishing the injury and damages necessary to support a negligence claim. The Court's opinion overlooks the dispositive distinction between the existence of a voluntarily assumed duty and the availability of damages flowing from its alleged breach. Put another way, a showing of a voluntarily assumed duty simply satisfies one of the elements in a Negligence claim, it does not alleviate the requirement that the plaintiff plead and prove the other elements of a Negligence claim, which, under South Carolina law, includes the pleading and proving of a physical harm. Therefore, Respondents respectfully assert that rehearing is warranted on the futility of amending the negligence claim because Appellants will be unable to adequately plead physical harm as required by South Carolina law.

II. IIED

Respectfully, the Court erred in imputing the conduct of third parties to Respondents in the case of an intentional tort. An IIED claim requires allegations that the defendant intentionally or recklessly inflicted emotional distress and that the defendant's own actions caused it. *See Upchurch v. N.Y. Times Co.*, 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993) ("The tort of

intentional infliction of emotional distress arises when *one* by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress *to another*.” (emphasis added) (*citing Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981)). Specifically, to establish a claim for IIED in South Carolina, the plaintiff must show:

- (1) *the defendant* intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain that such distress would result from his conduct;
- (2) the conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
- (3) *the actions of the defendant* caused plaintiff’s emotional distress; *and*
- (4) the emotional distress suffered by the plaintiff was severe such that no reasonable man could be expected to endure it.

Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (emphasis added). Thus, at the most basic level, there must have been (1) some action by the defendant, and (2) it must have been directed at the plaintiff. Put another way, South Carolina has never recognized a voluntary assumption of liability for the alleged outrageous conduct of a third party. This is the fatal flaw in Appellants’ claims that resulted in the original dismissal of the underlying IIED cause of action, and there is no viable claim that Appellants could raise by amendment that would change that fact and comply with Rule 11, SCRPC.

Respectfully, this Court erred by isolating the second element of IIED when it applied the operative rule. The four requirements are not alternative means of stating an IIED claim; they are elements that a plaintiff “must establish.” *Argoe*, 392 S.C. at 475, 710 S.E.2d at 74. Thus, merely alleging conduct that could conceivably qualify as extreme and outrageous does not itself state a claim. Appellants are required to show that *Respondents* intentionally or recklessly inflicted the alleged emotional distress and that *Respondents*’ actions caused that distress. *Id.* Appellants failed to do so in the pleadings, and they would be unable to do so via amendment.

The supporting case, *Ford v. Hudson*, does not cure that central defect. There, the defendant herself repeatedly entered the plaintiff's home without permission and screamed profanities at her. *Ford* at 163-66, 276 S.E.2d 779-80. In other words, the defendant in *Ford* personally engaged in the allegedly outrageous conduct directed toward the plaintiff. Here, by contrast, the Complaint attributes the allegedly reprehensible conduct—trespasses, use of racial epithets, and insults—to third-party golfers, not Respondents. Respondents are alleged only to have failed to prevent that conduct after allegedly assuming responsibility for doing so. The conduct may therefore be comparable to *Ford* in its offensiveness, but the identity of the actor is not. That distinction is dispositive under the first and third elements of IIED.

This Court's conclusion that the golfers' conduct merely "could be" as outrageous and extreme as the conduct in *Ford* therefore is inadequate because it addresses only the second element at the exclusion of the rest. Even assuming that proposition is correct, Appellants would still be required to plead facts showing that Respondents intentionally or recklessly inflicted the distress and that Respondents' actions caused it. *Argoe*, 392 S.C. at 475, 710 S.E.2d at 74. An allegation that Respondents voluntarily undertook responsibility to stop third parties from engaging in offensive conduct does not, without more, transform those third parties' acts into Respondents' own intentional or reckless infliction of emotional distress.

Thus, the underlying allegations do not merely suffer from an insufficient allegation of outrageousness. They suffer from a more fundamental defect: the conduct alleged to be outrageous was committed by third-party golfers, while the parties sued for IIED did not commit that conduct. Treating an alleged failure to prevent another person's tortious conduct as equivalent to personally committing the conduct would effectively collapse the distinct elements of IIED into the single question of whether *some* sufficiently outrageous conduct occurred *somewhere* in the alleged

factual narrative without alleging that such conduct was caused by the defendant. Thus, allowing Appellants to amend their complaint would be futile because they can neither demonstrate through amendment that Respondents acted in any way toward Appellants, nor can they plead that Respondents actions were intended to harm Appellants. Rehearing on this issue is, therefore, warranted.

III. SCUTPA

Respectfully, this Court's SCUTPA analysis conflates the absence of contractual privity with the absence of any commercial nexus at all. *Colleton* does not stand for the proposition that the SCUTPA reaches any conduct by a commercial entity merely because the plaintiff lacks privity. It holds only that strict contractual privity is not required where the challenged conduct itself occurs in the stream of commerce. *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 196, 666 S.E.2d 247, 255 (2008), *overruled on other grounds by Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). There, the plaintiff was a remote user of a product that the defendant manufactured, marketed, and distributed. Here, Appellants were not purchasers, consumers, competitors, or remote participants in *any* commercial transaction with Respondents.

That distinction matters because SCUTPA still requires an unfair or deceptive act "in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a). The alleged act here was Respondents' failure to stop golfers from engaging in offensive conduct after allegedly agreeing to do so. That is not advertising, selling, distributing, bargaining, exchanging, or otherwise conducting trade or commerce with Appellants. *See Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623m 639, 743 S.E.2d 808, 816 (2013). The mere fact that Respondents operate a golf business does not convert every alleged omission by Respondents into a trade practice under South Carolina law.

Nor did Appellants plead a cognizable unfair or deceptive act by Respondents. What was alleged was conduct committed by golfers, not by Respondents. Respondents only allegedly failed to prevent that conduct. If failure could support some other theory of liability, that does not turn it into an “unfair or deceptive act” under SCUTPA because Respondents happen to be a commercial entity. Otherwise, alleged failure by any business to control third parties could be recast as a consumer-protection claim. That is far afield from the legislature’s intent of deterring unfair and deceptive conduct in commerce. *See, e.g., State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 89, 777 S.E.2d 176, 206 (noting that the “clear legislative intent of SCUTPA” is to “deter unfair and deceptive behavior in the *conduct of trade and commerce* in South Carolina”) (emphasis added). It should go without saying that although the construction of the statute should not exclude those things not listed in the statute, *see Baker v. Chavis*, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991), it does not include acts by third-parties unrelated to the commercial activities of Respondent.

The same defect appears in the public-interest element. SCUTPA does not reach purely private disputes merely because one party is a business. *See Ardis v. Cox*, 314 S.C. 512, 518-19, 431 S.E.2d 267, 271 (Ct. App. 1993). The allegations here concern a discrete dispute between neighboring property owners and golfers using Respondents’ facilities. Appellants identify no consumer-facing policy, recurring commercial practice, or marketplace conduct capable of repetition against the public. The alleged undertaking was particular to Appellants and their complaints.

Finally, Appellants still must plead an ascertainable loss of money or property caused by the alleged SCUTPA violation. S.C. Code Ann. § 39-5-140(a). Their emotional injuries do not satisfy that requirement, and the bare allegation of “diminished property value” does not explain how any

unfair or deceptive commercial practice by Respondents caused an actual loss in value. The Opinion therefore resolves only the narrow point that privity is not invariably required. It does not resolve the independent statutory defects that remain: no trade or commerce, no unfair or deceptive act, no public impact, and no adequately pleaded economic loss caused by a SCUTPA violation. Rehearing is warranted because *Colleton Preparatory* does not cure those essential defects, which will not be curable via amendment.

CONCLUSION

For these reasons, Respondents respectfully request that the Court rehear its decision in this case for the reasons stated above.

Respectfully submitted,

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August 20, 2025

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and Invited, are Respondents.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Smith Robinson Holler DuBose and Morgan, LLC, counsel for the Defendant/Respondents Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited, does hereby certify that service of the **Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by email only this the 20th day of August, 2026, as follows:

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s/ Daniel C. Plyler



Meusel v. Woodside Plantation Property Owners' Association, Inc., et al. (2024-001206)

From William Rees <william.rees@smithrobinsonlaw.com>

Date Thu 8/20/2026 10:05 PM

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 2 attachments (185 KB)

COS - Petition for Rehearing.pdf; Petition for Rehearing (FINAL).pdf;

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SC Court of Appeals

Good evening,

Please find attached a Petition for Rehearing to be filed with the Court shortly.

Thank you,

Will Rees

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