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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

Lower Court Case Number 2025-CP-18-00640

Deborah Bowles, Appellant,

v.

City of North Charleston, IMC Charleston, LLC, and Wescott Plantation, Defendants,

of which City of North Charleston is the Respondent.

Appellant Case No. 2026-000775

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Respondent would respectfully restate the issues on appeal as follows:

1. Serving an unfiled Amended Summons and Amended Complaint on a brand-new party to commence an action against the new party is not proper process and/or service of process on the new party.
2. South Carolina Rule of Civil Procedure 15(c) relate back provision does not apply to newly added parties.

STATEMENT OF THE CASE

This matter comes before the Court on appeal from an Order dismissing Appellant Deborah Bowles' action against Respondent City of North Charleston on the grounds of insufficiency of process, insufficiency of service of process, and the statute of limitations. (ROA, p.__).

This case involves injuries allegedly sustained by Appellant Deborah Bowles as a result of a trip-and-fall that occurred on March 27, 2023, on the sidewalk at the intersection of Law Blvd. and Ayscough Rd., located in the Wescott Plantation neighborhood in Summerville, South Carolina. Bowles alleges that while she was on a walk, she tripped and fell on the sidewalk due to the uneven and unlevel conditions present.

On March 20, 2025, Bowles initiated this lawsuit against Dorchester County Public Works, Dorchester County and Wescott Plantation. (ROA, p.__). On April 17, 2025, Defendants Dorchester County Public Works and Dorchester County filed their Answer, including a Motion to Strike the Plaintiff's claims for punitive damages and attorney's fees pursuant to the South Carolina Tort Claims Act SC Code Ann. § 15-78-10, et seq. (ROA, p. ___). On May 16, 2025, Appellant responded to Dorchester County and Dorchester County Public Works' Interrogatories, and as to interrogatory number 23, stated that the Plaintiff was still investigating who is responsible and is

not in possession of responsive documents regarding same. On May 21, 2025, Appellant wrote Dorchester County and Dorchester County Public Works advising that Appellant was willing to dismiss Dorchester County and Dorchester County Public Works if they were willing to withdraw their upcoming motions scheduled to be heard June 19, 2025. (ROA, p___). On May 21, 2025, Appellant supplemented her discovery responses but again stated that she was still investigating who was responsible and that she would supplement her response once that information became available. (ROA, p.__). On May 30, 2025, Appellant wrote Dorchester County and Dorchester County Public Works advising she agrees that Dorchester County and Dorchester County Public Works are not involved in this matter and can be dismissed as parties and that she would like to request leave to amend to add the City of North Charleston Public Works and IMC Charleston, LLC. (ROA, p.__). On June 5, 2025, Appellant filed a Consent Motion to Amend the Complaint to Add Parties and a Memorandum in Support of same. (ROA, p.__). Appellant sought to add the City of North Charleston Public Works and IMC Charleston, LLC. Appellant's motion was granted on June 11, 2025. (ROA, p.___). Appellant did not file the Amended Summons and Complaint at that time. On June 16, 2025, Dorchester County and Dorchester County Public Works were dismissed from this case. (ROA, p.__).

On July 17, 2025, Appellant served City of North Charleston with an *unfiled* Amended Summons and Amended Complaint, Consent Motion for Leave to Amend Complaint to Add Defendants City of North Charleston Public Works and IMC Charleston, LLC, Order to Add Parties City of North Charleston Public Works and IMC Charleston, LLC and Memorandum in Support of Motion for Leave to Amend Complaint to Add Defendant City of North Charleston Public Works and IMC Charleston, LLC. (ROA, p.__). The unfiled Amended Summons and Amended Complaint named the City of North Charleston as a Defendant in the caption but referred

to the City of North Charleston Public Works in the body of the Complaint. On July 30, 2025, Counsel for the City of North Charleston advised Appellant that she had been retained by the Insurance Reserve Fund to represent the City of North Charleston in the underlying state court action. (ROA, p.__). The City of North Charleston filed their Motion to Dismiss on August 13, 2025. (ROA, p.__). On November 12, 2025, Respondent filed their Memorandum in Support of their Motion to Dismiss. (ROA, p.__). On November 13, 2025, Plaintiff filed the Amended Summons and Amended Complaint. (ROA, p.__). On November 14, 2025, Plaintiff served City of North Charleston with the filed Amended Summons and Amended Complaint. (ROA, p.__). On November 17, 2025, Plaintiff filed her Memorandum in Opposition to Defendant's Motion to Dismiss. (ROA, p.__).

The Honorable Maite Murphy heard the City of North Charleston's Motion to Dismiss on November 17, 2025. (ROA, p.__). James F. Hartman, III, appeared on behalf of Deborah Bowles, and Lisa A. Reynolds appeared on behalf of the City of North Charleston. The parties provided memorandums to the Court, and the Court heard oral arguments. The Court took the matter under advisement. (ROA, p.__). The Court thereafter granted the City of North Charleston's motion. (ROA, p.__).

STANDARD OF REVIEW

"The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard." *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) (citing *Clark v. Key*, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991)). "The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion." *Dunn v. Dunn*, 298 S.C. 365, 380 S.E.2d 836 (1989) (citing *Clark v. Ross*, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985)). "An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual

support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law." *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (S.C. Ct. App. 2004) (citing *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997)).

"This court reviews questions of law de novo." *Personal Care, Inc. v. Theos*, 426 S.C. 78, 825 S.E.2d 281 (Ct. App. 2019) (citing *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012)). "In other words, a reviewing court is free to decide questions of law with no particular deference to the trial court." *Id.*

An Appellate court reviews a trial court's decision on whether an amendment relates back under South Carolina Rule of Civil Procedure 15(c) for an abuse of discretion. A ruling on a motion to amend pleadings — including whether an amendment qualifies to relate back to the original filing date to avoid a statute of limitations — is left to the sound discretion of the trial judge. "A motion to amend is addressed to the sound discretion of the trial Judge and the party opposing the motion has the burden of establishing prejudice." *Lee v. Bunch,* 373 SC. 654, 660, 647 SE2d, 197, 200 (2007), *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015), *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000).

ARGUMENTS

I. Process and Service of Process

A civil action must be commenced in order to trigger the subject matter jurisdiction of the Court over the dispute. S.C. Code Ann. § 15-3-20 states: "Any civil action is commenced when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." SCRCP 5(d) requires the Summons and Complaint to be filed before service upon a party.

The City of North Charleston is a governmental subdivision of the State of South Carolina and therefore the requirements for proper service of a Summons and Complaint is contained in S.C.R.C.P. 4(d)(6). S.C.R.C.P. 4(d)(6) requires that the Summons and Complaint shall be served together and "…by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant."

Pursuant to Rule 3(a) of the South Carolina Rules of Civil Procedure (SCRCP), a civil action, including claims brought against a completely new party via an amendment, is legally commenced *only when* the corresponding pleadings are actively filed with the clerk of court. Serving a summons and complaint that has not been filed means the document lacks an official file number, clerk confirmation, or active legal status in the state system. As to the Court, there is no record of an action against them. As such, it lacks legal validity to compel the new party to respond.

Appellant alleges that pursuant to South Carolina Rule of Civil Procedure 5 the Amended Summons and Amended Complaint did not have to be filed before they were served upon Respondent in this matter. This issue was never raised or ruled upon by the trial court and therefore cannot be raised for the first time on appeal. South Carolina jurisprudence is very clear that issues that were not raised at or ruled upon by the trial court cannot be raised for the first time on appeal. In the case of *Creech v. South Carolina Wildlife & Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997), the Wildlife Department argued that they owed no duty of care to the Plaintiff because the Department had no ownership or possessory interest in the dock that was the subject of the suit. The Appellate court in this case noted that because the Wildlife Department did not raise this issue in the trial court, the Appellate court could not properly view or consider it. In the

case of *Smith v. Phillips*, 318 S.C. 453, 458 S.E. 2d 427 (1995), the Supreme Court of South Carolina heard an action that originally came forward in a dispute between two landowners over property and water damage claims. The case was appealed and brought before the Court of Appeals. The Court of Appeals brought forth an issue on their own "sua sponte" on an issue of the jury verdict that was held in the lower court. The Court of Appeals stated that they could make this conclusion on their own, without the issue being raised in the trial court. The State Supreme Court reversed that decision and held that with very few exceptions, an Appellate court is not allowed to address or rule upon an issue unless it was raised to or ruled upon by the trial court and cited *Beaufort County v. Butler*, SC, 451 S.E.2d 386 (1994). In the case of *Beaufort County v. Butler*, 451 S.E2d 386 (1994), the Court noted that after discussing several issues that were raised by Butler's counsel during previous hearings, that the rest of the issues raised by Butler on appeal were not raised during the hearing and could not be presented before the court for review.

South Carolina Rule of Civil Procedure 5 does not apply when initially serving newly added parties. Instead, you must commence an action against the new party and serve the newly added party under Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP). Once a new party has been formally brought into the lawsuit and has made an appearance, Rule 5 applies to all subsequent papers and pleadings served on them. As discussed above, to bring a new person or entity under the jurisdiction of a South Carolina court, an action against them must be commenced, i.e., filed, and they must receive a formal filed summons. SCRCP Rule 5 explicitly applies to pleadings *subsequent* to the original complaint such as written motions, notices, and discovery documents. It governs ongoing service on the "party of record", meaning between active, existing participants who are already part of the lawsuit. A "party of record" under South Carolina civil practice refers to any plaintiff, defendant, or properly joined intervenor who has been formally

named and served or has made a formal appearance in the lawsuit. Parties of record are active participants in the case docket. Under Rule 5(a), SCRCP, every subsequent pleading, motion, discovery paper, and written notice must be served on every "party of record". "A party to an action is a person whose name is designated on record as plaintiff or defendant." Black's Law Dictionary 6th Edition. If the summons and complaint have not been filed, the person is not designated on record and therefore is not a party to the lawsuit. Parties who are in default for failing to appear in the action do *not* need to be served with routine subsequent papers—unless a new or additional claim for relief is asserted against them, which requires new service under Rule 4. By restricting SCRCP 5(d) to parties of record, it clearly governs service on one who is already a party. The City of North Charleston was not a "party of record" or a party in default at the time the unfiled Amended Summons and Amended Complaint were served upon them. Additionally, SCRCP 5(d) requires that proof of service be filed within 10 days after service, which did not occur. SCRCP 5(d) also requires that all papers required to be served on a party shall be filed with the court within five (5) days after service thereof. This also did not occur; the Amended Summons and Amended Complaint were not filed until almost four (4) months later.

In this matter, the Amended Summons and Amended Complaint served upon the City of North Charleston on July 17, 2025, were not filed and no filed copies of same had been served upon the City of North Charleston at the time of the hearing in this matter. An Amended Summons and Amended Complaint naming the City of North Charleston as a Defendant in this matter was filed on November 13, 2025. This action was not properly commenced as against the City of North Charleston, and the purported process and/or service of process was insufficient.

Therefore, the court did not err in determining that process and service of process was insufficient. This Court should affirm the Order of the Honorable Maite Murphy dated February 26, 2026.

II. South Carolina Rule of Civil Procedure 15(c).

The City of North Charleston is a governmental entity as defined by the SC Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. The South Carolina Tort Claims Act is the State's waiver of its right to Sovereign Immunity in the limited circumstances allowed by the Act. The Act states it is to be interpreted strictly and to limit the liability of the State Entities. The South Carolina Tort Claims Act provides a two-year statute of limitations period for actions against a governmental entity unless the Plaintiff files a verified claim within the first year following the alleged incident thereby extending the statute of limitations an additional year. In this matter, the Plaintiff did not file a verified claim and therefore, in accordance with S.C. Code Ann. § 15-78-110, Plaintiff had two (2) years, until March 27, 2025, in which to **commence** this action or it would forever be barred. S.C. Code Ann. § 15-3-20 states: "Any civil action is **commenced** when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." (emphasis added). The Plaintiff filed the Amended Summons and Amended Complaint on November 13, 2025, over 8 months after the statute of limitations had expired.

Plaintiff argued that pursuant to SCRCP 15(c) the Amended Summons and Amended Complaint against the City of North Charleston relates back to the filing of the original Summons and Complaint.

Rule 15(c), SCRCP states:

> "(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted

> to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.
>
> An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him." (emphasis added.)

SCRCP 15(c) does not apply to the addition of a new party and is not the same as a substitution or change of the party. *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000). In *Jackson,* the Plaintiff amended her complaint after the statute of limitations had expired in a John Doe hit and run action. Jackson added a named party as the defendant but did not dismiss John Doe as a Defendant. The court held that the second paragraph of Rule 15(c) only applied to a substitution or change in the party and not the addition of a defendant. "The language of Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant to an already existing defendant. In our view, the addition of a party is not the same as a substitution or change of the party." *Id*. The court specifically rejected including the addition of new parties to relate back to the original pleading date in SCRCP 15(c). In *Jackson,* the Court considered similar rules and their determinations in both Ohio and Georgia. In *Kraly v Vannewkirk*, 635 N.E.2d 323 (Ohio 1994) "Ohio's Rule 15(c), which is similar to our Rule 15(c), allows for relation back with a party is substituted but not when a party is added while retaining a party named in the original suit. But see *Harding v. Godwin*, 518 S.E.2d 910 (Ga. Ct. App. 1999) (noting the Georgia relationship back statute, which contains essentially the same language as our Rule 15(c), authorizes the addition of a new party under certain circumstances if the requirements of the statute are strictly met. Had Jackson substituted Milligan for John Doe or simply corrected the name of the defendant, then the amendment should have been analyzed in light of the requirements of Rule 15(c) … we decline to

expand the plain language of the rule and our current caselaw." *Id.* The court noted that "[t]he statute of limitations may sometimes work a great hardship in special cases; but under the principle that litigation and contention must have an ending, and that the repose and quiet of the many compensates for the loss of the few, such statutes have been adopted and strictly enforced in most countries, as wise and contributing to the best interests of society. Such is the doctrine in this state." *Jackson; Adkins v. Comcar Indus. Inc*., 316 S.C. 149, 447 S.E.2d 228 (Ct. App. 1994). In *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 597 S.E.3f 27 (Ct. App. 2004), the court held Rule 15(c) did not allow plaintiff to add a party to a negligence action after termination of the statue of limitations when plaintiff discovered the additional party was an independent contractor and not an employee of original defendant. In *Gause v Smithers*, 384 S.C. 130, 681 S.E.2d 607 (Ct. App. 2009), the plaintiff, a patrolman, was involved in a traffic stop of a car driven by Son, but owned by Edward Hunt, Father on November 15, 2003. During the stop a second car hit and injured the Plaintiff. On November 2, 2006, Gause filed suit against Father alleging negligence as driver of the car. Father was served November 20, 2006. Realizing his error, Gause filed an amended complaint on December 19, 2006, naming Son as another defendant for his alleged negligence in driving the car. Son moved to dismiss the claims against him, alleging he had been added as a party after the statute of limitations had run. Gause contended he was merely substituting Son as the real driver pursuant to Rule 15(c), SCRCP, so the amended complaint should relate back to the filing of the original complaint. The court determined that Son was being added as a party instead of substituted, and thus Rule 15(c) did not save the claims against Son. The court noted that Gause named Son as a defendant with respect to direct negligence claims but also kept Father in the case. The court held: "We conclude this amounted to the addition of a Defendant, the action *Jackson* sought to proscribe in keeping with the plain language of Rule 15(c).

We are mindful this produces a harsh result, although Gause's claims against Father remain viable. Nevertheless, we are compelled to affirm the findings of the circuit court. Because the addition of a party is not contemplated by Rule 15(c) …." *Id.* The South Carolina Supreme Court later described the 2009 dismissal as part of the same litigation's procedural history and did not disturb it. The Court accepted that the son had been dismissed because the amended complaint did not relate back under Rule 15(c). It then held that the procedural dismissal did not prevent family-purpose liability against the father. *Gause v. Smithers*, 742 S.E.2d 644 (S.C. 2013).

The purpose of 15(c) is to salvage *causes of action* otherwise time barred, not lawsuits against any potential defendant. "Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise of the same conduct, transaction, or occurrence set forth in the original pleading." *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1994), see also *Stanley v Kirkpatrick*, 357 S.C. 269, 592 S.E.2d 296 (2004). Unlike *Thomas* and *Stanley*, the issue in this matter is the addition of a new party/defendant, not the addition of new claims.

Plaintiff relies heavily on *Hughes v. Water World Water Slide, Inc.,* 314 S.C. 21, 442 S.E.2d 584 (1994). Plaintiff's reliance is misplaced and *Hughes* is distinguishable from the issues in this matter. *Hughes*, specifically dealt with the **correction** of the name of the Defendant. In *Hughes*, the Plaintiff misnamed the Defendant. In the summons and complaint, the Defendant was named Water World Water Slide, Inc., when the true name of the corporation was Wet World, Inc. The original summons and complaint were filed on August 12, 1991, within the deadline under the statute of limitations and a copy was delivered to the sheriff's office for Horry County for service on Defendant pursuant to former SCRCP 3(b). The original summons and complaint were served

upon the president of Wet World, Inc., on August 15, 1991. An amended summons and amended complaint were filed on October 28, 1991, correcting the name of the Defendant from Water World Water Slide, Inc. to Wet World, Inc. The court notes that the error in the name of the corporation resulted from Plaintiffs reliance on the sign in front of the business and the insurer's reference to its insured as Wet World Waterslide. The court goes on to hold that although the corporate name was incorrect on the pleadings, the pleadings were served upon the president of the correct corporate defendant, the pleadings described an incident which occurred while the president of the corporation was present, and the name on the original pleading was a trade name used by the defendant corporation. Unlike *Hughes*, the original Summons and Complaint was not served upon any representative or officer of the City of North Charleston. The original Summons and Complaint were served upon Dorchester County and Dorchester County Public Works, both of which are undisputedly separate and distinct entities from the City of North Charleston. The Plaintiff did not believe that Dorchester County and Dorchester County Public Works were the same as the City of North Charleston. Additionally, there are no allegations or evidence that the Dorchester County or Dorchester County Public Works is/was/were a trade name for the City of North Charleston. In this matter, the "name" of the defendant was not incorrect, the identity of the correct defendant was unknown. The Plaintiff believed the sidewalk was owned and/or maintained by Dorchester County, Dorchester County Public Works or the City of Summerville as alleged in the original Complaint. The Plaintiff admits that she brought suit against the entities she reasonably believed responsible for the sidewalk. Plaintiff twice advised, on April 17, 2025, and again on May 30, 2025, that she was still investigating who is responsible for the subject property. (ROA, p.__). The Plaintiff didn't know who owned the subject property and learned only through

discovery that another entity may have some responsibility. This is not a peculiarity of the facts. This is simply the lack of knowledge of the Plaintiff.

In this matter, like *Jackson* and *Gause*, the Plaintiff added a new defendant, the City of North Charleston, to the lawsuit. This was not a correction of an improperly, already named Defendant; the correction of a misnomer in the identity of an already named Defendant; for the qualification of an already identified party; or to conform to evidence of additional causes of action from discovery between already properly identified and participating parties. This was not a "substitution" as Appellant disingenuously states. In this matter, Plaintiff sought and received an order to amend her complaint to **add** the City of North Charleston Public Works and IMC Charleston, LLC. (ROA, pp___). Dorchester County, Dorchester County Public Works and Town of Summerville were all active parties in the lawsuit at the time the Plaintiff sought and was granted leave to amend her complaint to **add** the City of North Charleston and IMC Charleston, LLC. (ROA, pp.___). "We are unwilling to torture the rules in such a way to correct possible mistakes in the filing of motions or misjudgments in strategic procedural decisions. To do so would jeopardize the continuity and uniformity that is essential to the orderly administration of the legal system." *Valentine v. Davis*, 460 S.E.2d 218 (Ct. App. 1995).

Plaintiff's allegations/representations that counsel represented Dorchester County, Dorchester County Public Works and the City of North Charleston in this matter at the same time; agreed to an amendment as part of an agreement to dismiss Dorchester County and Dorchester County Public Works; and consented to and/or negotiated as counsel for the City of North Charleston for the substitution of the City of North Charleston into this case is blatantly false and a gross misrepresentation to this court. As stated above, this matter is not and does not involve the substitution of a party in this matter. The record clearly establishes this was the addition of a party

to this matter. On May 21, 2025, Mr. Hartman's office advised that "Mr. Hartman is willing to dismiss the City of Summerville and Dorchester County, without prejudice, if you would withdraw the Motions before the Court." (ROA, p.__). This offer is unprompted, without prejudice, does not mention the City of North Charleston and is at the same time that the Plaintiff is stating that she is still investigating who is responsible for property that is the subject matter of this litigation. (ROA, p.__). Again, on May 30, 2025, Mr. Hartman advises that "I've now had a chance to discuss this with our client. We agree that Dorchester County and Dorchester Public Works are not involved in this matter and can be dismissed as parties." (ROA, p.__). Mr. Hartman advises he would like to request leave to amend to include the City of North Charleston Public Works. Mr. Hartman's statement that Dorchester County and Dorchester County Public Works are not involved in this matter and can be dismissed is not premised upon any agreement or negotiation regarding the City of North Charleston in this matter. (ROA, p.__). Additionally, on this same date, Plaintiff advises in her supplemental responses to discovery that she is still investigating who is responsible for the subject property. (ROA, p.__). It is undisputed that at this time, and all times relevant hereto, Lisa Reynolds is/was an attorney in private practice with the Firm of Reynolds & Stephens, LLC. Ms. Reynolds is not and has never been an officer, representative or employee of the City of North Charleston. It is undisputed that Mrs. Reynolds represented only Dorchester County and Dorchester County Public Works at the time that Plaintiff sought leave to add the City of North Charleston in this matter. Mrs. Reynolds did not represent the City of North Charleston at the time that Plaintiff sought leave to add the City of North Charleston. Mrs. Reynolds was later retained to represent the City of North Charleston in this matter and advised Plaintiff of same on July 31, 2025. (ROA, pp.__).

There is no statute, rule or caselaw holding that South Carolina has adopted an "identity of interest" or "shared counsel" imputed-notice doctrine under SCRCP 15(c). Under South Carolina law, relation back under SCRCP 15(c) requires that the target party receive notice within the statutory period, so as not to be prejudiced. In *Hughes*, the S.C. Supreme Court found the Rule 15(c) notice requirement satisfied because the correct defendant received actual notice within the 'period allowed by law,' (including the Rule 3(b) tolling concept), notwithstanding a naming error. Furthermore, South Carolina Appellate precedent does not recognize an automatic imputation of notice to a prospective defendant through their attorney, nor has it explicitly adopted "identity of interest" or "shared counsel" theories to bypass this requirement. The identified South Carolina Appellate SCRCP 15(c) decisions require notice/knowledge within the applicable time window and do not hold that later-acquired attorney knowledge cures a lack of timely notice to the party to be brought in.

The Rule 15(c) notice prong is directed at whether the party to be brought in "received such notice of the institution of the action" that it will not be prejudiced. Consistent with that focus on the added party's receipt of notice, *Hughes* found the notice requirement satisfied because the correct defendant's corporate president was actually served and had actual notice within the period allowed by law, notwithstanding a naming error. SCRCP 15(c) explicitly focuses on whether the party to be brought in received timely notice. There is no South Carolina Supreme Court or Court of Appeals decision holding that notice to or knowledge of an attorney automatically constitutes notice to a non-party prospective defendant. In *Schiavone v. Fortune*, the U.S. Supreme Court acknowledged that certain lower courts recognized an identity-of-interest exception but declined to adopt it, finding that neither entity had received timely notice. *Schiavone* acknowledged that some Courts of Appeals recognized an identity-of-interest exception, but the Supreme Court

declined to adopt/apply it on those facts. In *Krupski v. Costa Crociere S.P.A*., the Court resolved Rule 15(c) disputes by focusing on what the prospective defendant knew or should have known regarding a mistake in identity, rather than establishing stand-alone "identity of interest" or "shared counsel" tests. *Schiavone v. Fortune*, 477 U.S. 21, 26 (1986), *Krupski v. Costa Crociere S.P.A.*, 560 U.S. 538, 130 S. Ct. 2485, 177 L. Ed. 2d 48, 78 U.S.L.W. 4528 (2010).

In this matter the statute of limitations expired as to this Defendant on March 27, 2025. The Plaintiff produced no evidence that the City of North Charleston received notice of the institution of the action or that they knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against them on or before March 27, 2025. The unfiled Amended Summons and unfiled Amended Complaint were served upon the City of North Charleston on July 17, 2025, almost 4 months after the statute of limitations expired.

Additionally, the Court granted the Plaintiff leave to amend her complaint to add the City of North Charleston Public Works, not the City of North Charleston. As such, the Plaintiff did not have leave to amend her complaint to name the City of North Charleston in this matter. Plaintiff alleges that this does not change the analysis. However, this “misnomer” as it is identified by the Plaintiff, is exactly the kind of mistake Rule 15(c) exists to cure. Had the Plaintiff commenced this action against the City of North Charleston Public Works within the applicable statute of limitations and later moved to amend to identify them as the City of North Charleston, and the City of North Charleston then moved to dismiss based on the statute of limitations, then that matter should be analyzed under the relate back provisions of SCRCP 15(c).

The Plaintiff sought leave to **add** the City of North Charleston Public Works and IMC Charleston, LLC in this matter, not a substitution of parties nor the correction of a name.

Therefore, the court did not err in determining that the amendment did not relate back to the original filing date. This Court should affirm the Order of the Honorable Maite Murphy dated February 26, 2026.

CONCLUSION

For the reasons stated above, this Court should affirm the Order of the Honorable Maite Murphy dated February 26, 2026.

Respectfully submitted:

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This the 4th day of September, 2026.