

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

REC'D  
JUL 25 2014  
SC COURT OF APPEALS

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APPEALS FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case Number: 2014-000621

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Joseph N. Grate,

Appellant

V.

Andrew J. Rodrigues,

Respondent

---

**BRIEF OF RESPONDENT**

Andrew J. Rodrigues 481 Parkersville Rd. Pawley's Island, SC 29585
--

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Appellant

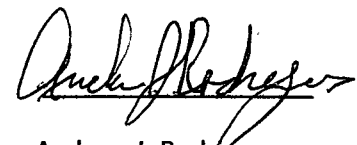
V.

Andrew J. Rodrigues,

Respondent

**BRIEF OF RESPONDENT**

July <sup>15</sup>, 2014



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**RECEIVED**

JUL 25 2014

**SC Court of Appeals**

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12 RESPONDANT'S MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.  
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17 STATEMENTS, WHICH ARE THE BASIS OF HIS CAUSE OF ACTION WERE MADE IN A  
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35 MOTIONS, THEREFORE, RESPONDANT'S MOTION TO DISMISS THE COMPLAINT  
36 AND MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.

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TABLE OF AUTHORITIES

CASES

- Hainer v. American Med. Intern., Inc., 328 S.C. 128, 492 S.E. 2d 103 (1997)
- Holtzscheiter V. Thomson Newspaper, Inc. 332 S.C. 502, 506 S.E. 2d 497 (1998)
- Murray v. Holnam, Inc., 344 S.C. 129 (542 S.E. 2d 743, S.C. App. 2000)
- Pond Place Partners, Inc. v. Poole, 567 S.E. 881 (S.C. App. 2002), 351 S.C. 1

STATUTES

- Rule 8 (a) SCRPC
- RULE 9 (H) SCRPC
- Rule 12 (b) (6) SCRPC
- Rule 15 (a) SCRPC
- Rule 15-3-550 SCRPC

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in the granting of the motion to dismiss the complaint because Appellant failed to set forth a statement of facts in his complaint to meet the requirements rule 8(a)(2) SCRPC for an action for defamation.
2. Did the Trial Court err in granting the motion to dismiss Item 3, 4, 5, and 6 in Appellant’s complaint and granting motion to dismiss Items 10A-10R and Items 11-26 in his amended complaint because all of the alleged defamatory statements, which are the basis of his cause of action were made in a judicial proceeding in Case No. 2013-CP-22-0001; they have absolute privilege and cannot be the basis for an action in defamation, and, therefore, Respondents’ motion to dismiss the complaint should be granted?
3. Did the Trial Court err in granting the motion to dismiss the amended complaint because the alleged defamatory statement in Item 9 of appellants amended complaint occurred on September 1, 2011, and Appellant did not file an action until December 23, 2013, two years and five months after the event occurred and the two year statute of limitations set forth in Rule 15-3-550 SCRPC barred the action, and, therefore, Respondents’ motion to dismiss the amended complaint should be granted?
4. Did the Trial Court err in the granting of the motion to dismiss the complaint and motion to dismiss the amended complaint because Appellant had relied solely

1 upon his pleadings, did not file any counter affidavits or motions in opposition to  
2 the Respondent's motion to dismiss the complaint and motion to dismiss the  
3 amended complaint, and otherwise failed to demonstrate that the was genuine  
4 issue to any material fact contained in Respondent's motions?

5

6

#### STATEMENT OF THE CASE

71. On December 23, 2013, Plaintiff filed his Complaint for Defamation. He alleges the  
8 defamation occurred in the legal proceedings in Case No. 2013-CP-22-0001, an action  
9 for ejectment in which the trial court denied Plaintiff's Motion for Summary Judgment  
10 at the motion hearing and dismissed the case with prejudice at the trial.

112.

123. On January 9, 2014, Defendant filed his Motion to Dismiss Plaintiff's Complaint of  
13 defamation, on the grounds that Plaintiff failed to meet the requirements set forth in  
14 Rule 12(b)(6) SCRPC and that the alleged defamation statement had absolute privilege  
15 having been made in a judicial proceeding, Case No. 2013-CP-22-0001.

164.

175. On January 17, 2014, Defendant filed his Answer to Plaintiff's Complaint for Defamation.

186.

197. On February 7, 2014, Plaintiff filed three objections to Defendant's Motion to Dismiss  
20 Plaintiff's Complaint for Defamation: (1) he cited only the "Rule 9 (h) SCRPC," he did not  
21 cite the title, "Pleading Special Matters—Libel and Slander," (2) he cited only the "Rule  
22 15 (a)" SCRPC" he did not cite the title, "Amended and Supplemental Pleadings" and (3)  
23 only pleaded ignorance to the role of absolute privilege in legal proceedings.

248.

259. On February 10, 2014, Plaintiff filed an Amended Complaint, in which he modified Item  
26 3 of his original complaint by adding "2011" to form the phrase "That in 2011 and  
27 2013". He added Item 9 containing what he alleged to be a defamatory statement. He  
28 also added Items 10A through 10R each containing what he alleged to be defamatory  
29 oral statements and Items 11 through 26 each containing what he alleged to be  
30 defamatory written statements, all of which, except Item 9, were made in the legal  
31 proceedings in Case No. 2013-CP-22-0001, Item 9 was made on September 1, 2011.

32 On February 11, 2014, the hearing of Defendant's Motion to Dismiss commenced but  
33 was curtailed and postponed, because Plaintiff had on the day before filed an Amended  
34 Complaint. The Judge cancelled the hearing until further notice.

35 On February 18, 2014, Defendant filed a Notice of Motion and a Motion to Dismiss  
36 Plaintiff's Amended Complaint, on the basis that Item 9 was barred by the statute-of-  
37 limitations and those Items 10A through 10R and Items 11 through 26 had absolute

1 privilege having been made in the legal proceedings involving Case No. 2013-CP-22-0001  
2 and, therefore, could not be the basis for an action for defamation.

3  
4 On February 20, 2014, Defendant filed an Amended Notice of Motion and a Motion to  
5 Dismiss Plaintiff's Amended Complaint, in order to correct the date on which Item 9  
6 actually occurred, from the mistaken date of August 16, 2011 to the correct date of  
7 "9/1/ 2011."

8  
9 On February 20, 2014, the court by mail, dated February 20, 2014, advised the Parties  
10 that the hearing was rescheduled for March 6, 2014 at 9:30 a.m. to hear Defendant's  
11 Motion to Dismiss Plaintiff's Amended Complaint.

12  
13 On March 4, 2014, Plaintiff filed "Affidavit of Joseph N. Grate In Support of Objection To  
14 (all-to date) Defendants Dismissal Notices. Defendant did not receive Plaintiff affidavit  
15 until March 7, 2014."

16  
17 On March 6, 2014, the rescheduled hearing of Defendant's Motion to Dismiss Plaintiff's  
18 Amended Complaint was held, before Judge Culbertson.

19  
20 On March 12, 2014, Defendant received the Judgment in Civil Case Number 2013-CP-22-  
21 01258, which was an action for defamation. The case was heard by Judge Culbertson,  
22 who: "Ordered and Adjudged:

23 Statement of Judgment by the Court:

24 "Motion to Dismiss/Rodrigues- Granted."

25 "Motion to Dismiss Amended Complaint/Rodrigues- Granted."

26 "This order ends ... the Case."

27 Additional information: "Actions barred by the Statute of Limitations."

28  
29 Judge Culbertson, after reviewing the case files and hearing the Defendant's and the  
30 Plaintiff's arguments at the hearing, orally dismissed the Motion to Dismiss Amended  
31 Complaint and said he agreed with Mr. Rodrigues. He then "Ordered and Adjudged: the  
32 "Motion to Dismiss/Rodrigues- Granted" and the "Motion to Dismiss Amended  
33 Complaint/Rodrigues- Granted," which action dismissed the Plaintiff's Complaint and  
34 Amended Complaint and ended the case. Judge Culbertson did so, on the basis of the  
35 three grounds in the argument presented by the Defendant.

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FACTS

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On December 23, 2013 Appellant filed a defamation action in Case No. 2013-CP-22-01258. In his allegation Appellant made the following allegations: "3. That in 2013, Defendant, **maliciously** and **relentlessly** , made verbal and written Defamatory Public Statements about Plaintiff, with the obvious primary intent of Defaming his character and his Personal and Professional Reputation. 4. That defendant's action is injurious to Plaintiff Professionally, as well as to his Character and to his Reputation. 5. That the Defamation is Manifestly Actionable Per Se. 6. That the Defamation is Defamatory Per Se." (R. p. 1 line 11; R. p. 4, lines 19-25)

Plaintiff, however never offered any evidence to support any one of those four allegations.

In his third item for prayer for relief Appellant made a request "For the Purging of all defamatory material contained at **2013-CP-22-0001**; which are substantively at issue in this case." That prayer for relief unequivocally demonstrated that all of those statements had absolute privilege. (R. p. 5 line 4, 5)

On January 9, 2014, Respondent filed a Motion to Dismiss Plaintiff's Complaint on two grounds. The first ground was pursuant to Rule 12(b)(6) on the grounds that Plaintiff failed "to plead sufficient facts to show the elements required to support a cause of action." The second ground was that Appellant in Item 3 of his prayer for relief confirmed that the alleged defamatory statements in Items 3, 4, 5, and 6 were made in a judicial proceeding, and as such have absolute privilege and, therefore, could not be the subject of a defamation action. (R. p. 6 lines 10-24; R. p. 7 line 4;

On January 17, 2014, Respondent filed an Answer to Appellants Complaint, in which he requested the court to dismiss the Complaint for the same reasons set forth in his Motion to Dismiss, Rule 12 (b)(6) SCRCPP and absolute privilege. (R. p. 9, lines 1-3, 10-15 and 23-28)

On February 7, 2014, Plaintiff filed three objections to Defendant's Motion to Dismiss Plaintiff's Complaint for Defamation: (1) he cited only the "Rule 9 (h) SCRCPP," he did not cite the title, "Pleading Special Matters—Libel and Slander," (2) he cited only the "Rule 15 (a)" SCRCPP" he did not cite the title, "Amended and Supplemental Pleadings" and (3) only pleaded ignorance to the role of absolute privilege in legal proceedings. **(R. p. 10, line 15-20)**

1 "That in **2011** and 2013". He added Item 9 containing what he alleged to be  
2 defamatory a statement—***"That That Defendant made verbal statement to the***  
3 ***Georgetown Sherrif Department, accusing Plaintiff here-in of trespassing"*** (also in bold  
4 italics indicating that Item 9 occurred in 2011). He also added ***"Defendant made verbal***  
5 ***statements, of which every assertion was totally untrue, in Georgetown County Circuit***  
6 ***Court, to wit:"*** Items 10A through 10R each containing what he alleged to be  
7 defamatory oral statements and ***"Defendant submitted documents, wherein every***  
8 ***assertion against Plaintiff are totally untrue, to the Georgetown County Circuit Court,***  
9 ***to wit:"*** Items 11 through 26 each containing what he alleged to be defamatory  
10 10written statements All of the statements except for that in item 9 were made during  
11 the course of legal proceedings in Case No, 2013-CP-22-0001 and had absolute privilege.  
12 Item 9 was made on September 1, 2011, more than two years and four months before  
13 the Amended Complaint was filed. (R. p. 12, lines 1, 2, 3-22; R. p. 13 line 1-23; R. p. 14  
14 lines 1-5, 6, 7, 8-21; R. p. 15, lines 1-23; R. p. 16 lines 1-4,8,9; R. p. 5 line 4,5; R. p. 26,  
15 lines 3-7 R. p. 5 line 11 )

16 On February 11, 2014 the motion hearing was scheduled, but as noted, on the day  
17 before the hearing on February 10, 2014 the Plaintiff filed his Amended Complaint,  
18 which caused the trial Judge to postpone the hearing.

19 On February 18, 2014, Defendant filed a Notice of Motion and a Motion to Dismiss  
20 Plaintiff's Amended Complaint for defamation on the grounds that (1) the alleged  
21 defamatory statement in Item 9 of his allegations was barred by Rule 15-3-550 SCRPC  
22 that set forth the two year Statute-of-Limitations for libel and slander and (2) that the  
23 alleged defamatory statements in Item 10A through 10R and Items 11 through 26 were  
24 made during court proceedings and had absolute privilege and, therefore, could not be  
25 used as the basis for an action for defamation. (R. p. 17, lines 1-32; R. p. 26, lines 5-7,  
26 Rule 15-3-550 SCRPC; R. p. 21, lines 24-33 )

27 On February 20, 2014, Defendant filed an Amended Notice of Motion and a Motion to  
28 Dismiss Plaintiff's Amended Complaint. He did so because he had obtained a Sheriff's  
29 Department Incident Report relating to Item 9 of Plaintiff's Amended Complaint  
30 confirming the actual date of the statement as "9/1/11" contained therein. Which date  
31 confirmed that the statement was barred by Rule 15-3-550 SCRPC that set forth the two  
32 year Statute-of-Limitations for libel and slander. (R. p. 26, lines 3-7; R. p. 27 and 28)

33 The case was rescheduled to March 6, 2014 and heard on that day.

1 On March 4, 2014, Plaintiff filed "Affidavit of Joseph N. Grate In Support of Objection To  
2 (all-to date) Defendants Dismissal Notices. Defendant did not receive Plaintiff affidavit  
3 until March 7, 2014, the day after the case had been dismissed.

4 On March 6, 2014, the rescheduled hearing of Defendant's Motion to Dismiss Plaintiff's  
5 Amended Complaint was held, before Judge Culbertson. Judge Culbertson, after  
6 reviewing the case files and hearing the Defendant's and the Plaintiff's arguments, ruled  
7 "I'm going to grant the motion to dismiss. I agree with Mr. Rodrigues." (R. p.41, lines 12-  
8 25.)

9 On March 12, 2014, Defendant received the Judgment in the case, in which Judge  
10 Culbertson "Ordered and Adjudged: Statement of Judgment by the Court: "Motion to  
11 Dismiss/Rodrigues- Granted." and "Motion to Dismiss Amended Complaint/Rodrigues-  
12 Granted." And that "This order ends ... the Case. Additional information: "Actions  
13 barred by the Statute of Limitations." (R. p. 2 and 3)

14 Judge Culbertson dismissed the Plaintiff's Complaint and Amended Complaint on the  
15 arguments set forth in Defendant's Motion to Dismiss and his Motion to Dismiss  
16 Amended Complaint and the arguments the Defendant presented at the hearing.

17

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#### ARGUMENT with citations

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20 1. BECAUSE APPELLANT FAILED TO SET FORTH A STATEMENT OF FACTS IN HIS  
21 COMPLAINT TO MEET THE REQUIREMENT'S OF RULES 8(A)(2) and 12(b)(6 ) OF  
22 THE SCRPC FOR AN ACTION FOR DEFAMATION IN HIS COMPLAINT,  
23 RESPONDANT'S MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.

24

25 Defendant in his Motion to Dismiss Plaintiff's Complaint cited Rules 8(a)(2) and 12(b)(6)  
26 of the SCRPC as the first of the two basis for his Motion to Dismiss. Those two rules  
27 require that In order to state a cause of action for defamation—libel or slander—the  
28 Plaintiff must plead sufficient facts to show the elements required to support a cause of  
29 action, failure to do so will entitle a defendant to a dismissal of the case. The Plaintiff in  
30 the allegations in the pleading in his complaint has failed to set forth any facts to  
31 support his cause of action. Plaintiff has failed to provide evidence regarding the  
32 following required elements of defamation: (1) any facts regarding the particular words  
33 that he alleged defendant made that were defamatory with respect to him and that  
34 those words were not privileged. (2) any facts regarding the publication of those alleged  
35 defamatory statements and that they were not privileged,. (3) any facts that those

1 alleged defamatory statements were false and (4) any facts that those alleged  
2 defamatory statements injured Plaintiff's personal and professional reputation. Plaintiff  
3 in his pleading in the complaint did not provide any facts to show the elements required  
4 to support a cause of action for defamation. As a consequence, the Trial Judge properly  
5 granted the Respondent's Motion to Dismiss Appellant's complaint. (R. p. 4, lines 19-25  
6 and R. p. 5, lines 4 and 5)

7 Defendant in his Motion to Dismiss Plaintiff's Complaint cited the third item of Plaintiff's  
8 Prayer for relief as the second of the two basis for his Motion to Dismiss. Plaintiff in the  
9 third prayer in his pleadings in his Complaint and Amended Complaint insufficiently  
10 stated that "That in 2013, Defendant **maliciously and relentlessly**, made verbal and  
11 written Defamatory Public Statements about Plaintiff, with the intent of Defaming his  
12 Character, and his Personal and Professional Reputation. " However, Plaintiff in the third  
13 item in his prayer for relief made a request "For the Purging of all defamatory material  
14 contained at: 2013-CP-22-0001; which are **substantively** (emphasis added) at issue in  
15 this case." From the wording of the Plaintiff's prayer for relief, it is clear that the  
16 references in Plaintiff allegations in Items 3, 4, 5, and 6 regarding defamatory  
17 statements allegedly made by the Defendant were made in a judicial proceeding and  
18 would, if made, have had absolute privilege. (R. p. 4, lines 19-25; R. p. 5, lines 4 and 5)

19 Defendant cited these facts as one of the two bases for his Motion to Dismiss. Case No.  
20 2013-CP-22-0001 was an action for ejection that Plaintiff filed against the Defendant,  
21 which was "dismissed with prejudice" at the hearing before the trial began. On the basis  
22 of Plaintiff failure to meet the requirements of Rules 8(a)(2) and 12(b)(6) SCRPC, and the  
23 fact that all of the defamatory statements had absolute privilege, the Trial Judge  
24 properly granted the Respondent's Motion to Dismiss Appellant's complain

25

26 2. BECAUSE APPELLANT IN ITEM 3 OF HIS PRAYER FOR RELIEF IN HIS INITIAL AND  
27 AMENDED COMPLAINTS AND ITEMS 10A-10R AND ITEMS 11-26 IN HIS  
28 AMENDED COMPLAINT ADMITTED THAT ALL OF THE ALLEGED DEFAMATORY  
29 STATEMENTS, WHICH ARE THE BASIS OF HIS CAUSE OF ACTION WERE MADE IN A  
30 JUDICIAL PROCEEDING IN CASE NO. 2013-CP-22-0001; THOSE STATEMENTS  
31 HAVE ABSOLUTE PRIVILEGE AND CANNOT BE THE BASIS FOR AN ACTION IN  
32 DEFAMATION, AND RESPONDANT'S, MOTION TO DISMISS THE COMPLAINT  
33 SHOULD BE GRANTED.

34 With respect to Plaintiff's concern about "an important issue of consideration is  
35 whether a special provision exists, which allow for blatant malicious Defamation, with  
36 impunity." In Pond Place Partners, Inc. v. Poole, 567 S.E. 881 (S.C. App. 2002), 351 S.C.  
37 1, the court stated that "South Carolina has long recognized that relevant pleadings,

1 even if defamatory are absolutely privileged. *McKesson & Robbins v. Newsome*, 206 S.C.  
2 269, 33S.E. 2d 585 (1945); *Texas Co. v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623  
3 (1936); *Rodgers v. Wise*.193 S.C. 5, 7 S.E. 2d 517 (1940); *Sanders v. Rollison*, 33 S.C. Law  
4 (2 Strob.) 447 (1848) ... ("It is well established that statements written or oral made by  
5 judges, attorneys, witnesses, parties or jurors in the course of a judicial proceedings,  
6 which have some relation thereto , are absolutely privileged from libel or defamation  
7 actions , even if the statements are made with malice."); *Kropp v. Prather*, 526 S.W. 2d  
8 (Tex. Civ. App. 1975) ("Any communication, oral or written uttered [351 S.C. 24] or  
9 published in the due course of a judicial proceeding is absolutely privileged and cannot  
10 form the basis for a cause of action in libel or slander.") Defendant as a party and  
11 witness, who was acting pro se—as his own attorney— met the legal requirements for  
12 his statements made in the course of the legal proceeding to be absolutely privileged.

13 With respect to Item 3 of Plaintiff's Objection to Defendant's Dismissal Motion, Plaintiff  
14 states in part as follows: "Finally, with respect to Absolute Privilege or immunity from so  
15 many lies presented to any court, Plaintiff pleads total ignorance; however, an  
16 important issue of consideration is whether a special provision exists, which allow for  
17 blatant malicious Defamation, with impunity." That statement confirms the fact that  
18 Items 3, 4, 5, and 6 referring to defamation in his allegations and Item 3 of his prayer in  
19 both his original complaint and amended complaints in this case—2013-CP-22-01258—  
20 all relate to the Court proceedings in case no. 2012-CP-22-00001." Plaintiff in the third  
21 item in his prayer for relief made a request "For the Purging of all defamatory material  
22 contained at: 2013-CP-22-00001; which are **substantively** at issue in this case."  
23 (Emphasis added.) From the wording of the Plaintiff's prayer for relief, it is clear that the  
24 references in Plaintiff allegations in Items 3, 4, 5, and 6 regarding defamatory statement  
25 allegedly made by the Defendant were all made in a judicial proceeding and would, if  
26 made, have had absolute privilege. Case No. 2013-CP-22-00001 was an action for  
27 eviction that Plaintiff filed against the Defendant, which was "dismissed with prejudice"  
28 at the hearing before the trial began. " (R. p. 4, lines 19-25; R. p. 5, lines 4 and 5)

29 Plaintiff in his Amended Complaint made the two following admissions: (1) "**Defendant**  
30 **made verbal statements, of which every assertion was totally untrue, to the**  
31 **Georgetown Circuit Court, to wit:**" Items 10(A) through 10(R) of plaintiff's amended  
32 complaint. (2) "**That Defendant submitted documents, wherein every assertion against**  
33 **Plaintiff are totally untrue to the Georgetown Circuit Court, to wit:**" Items 11 through  
34 26 of plaintiff's amended complaint. (R. p. 12, lines 1-22; R. p. 13, lines 1- 23; and (R. p.  
35 14, lines 1-5;)

36 Plaintiff in his amended complaint admits that Items 10(A) through 10(R) were oral  
37 statements made by the Defendant during court proceeding and admitted that Items 11  
38 through 26 were written documents submitted by the Defendant during court

1 proceeding. Plaintiff, however, falsely alleged “every assertion was totally untrue;”  
2 however, Plaintiff did not offer any evidence to support that allegation. Defendant  
3 swears that every one of those statements is true. The issue, herein, is not whether  
4 those assertions that occurred in the course of a judicial proceeding are untrue or true,  
5 but whether they are “absolutely privileged and cannot form the basis for a cause of  
6 action in libel or slander.” Plaintiff in his pleading in the Amended Complaint did not  
7 provide any facts to show that these alleged defamatory statements were not relevant  
8 to the action for Ejectment in Case No. 2013 –CP-22-0001. Since all of the defamatory  
9 statements—except for Item 9—had absolute privilege and, therefore could not be the  
10 basis for a cause of action in defamation and Item 9 was barred by the two year statute-  
11 of-limitations set forth in Rule 15-3-550 SCRPC, therefore, they could not be the basis of  
12 an action in defamation. As a consequence, the Trial Judge properly granted  
13 Respondent’s Motion to Dismiss the Initial and Amended Complaints.

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3. BECAUSE THE ALLEGED DEFAMATORY STATEMENT IN ITEM 9 OF APPELLANTS  
AMENDED COMPLAINT OCCURRED ON SEPTEMBER 1, 2011, AND APELLANT DID  
NOT FILE AN ACTION UNTIL DECEMBER 23, 2013, TWO YEARS AND FIVE MONTHS  
AFTER THE EVENT OCCURRED AND THE TWO YEAR STATUTE OF LIMITATIONS  
BARRED THE ACTION, RESPONDANT’S MOTION TO DISMISS THE AMENDED  
COMPLAINT SHOULD BE GRANTED.

22 Rule 15-3-550 SCRPC. Regarding statute of limitations provides that, “Within two years:  
23 (1) an action for, libel, slander, or false imprisonment; and (2) an action upon a statute  
24 for forfeiture or penalty to the state.” Two year statute of limitations applies to the filing  
25 of an action for defamation involving libel or slander. Rule 15-3-550 SCRPC requires that  
26 such actions be filed within two years from the day the defamatory act occurred.

27 With respect to Item 9 of Plaintiff’s Amended Complaint, Plaintiff did not specifically  
28 mention the time that the event occurred or provide any facts to determine the time.  
29 Item 9 of Plaintiff’s Amended Complaint reads as follows: **“That That Defendant made  
30 verbal statement to the Georgetown Sherrif Department, accusing Plaintiff here-in of  
31 trespassing.”** It is noteworthy; however, that Item 9 is the only item alleging defamation  
32 in Plaintiff’s amended complaint that did not occur within the Georgetown County  
33 Court’s proceedings in the year 2013, as did Items 10(A) through 10(R) and Items 11  
34 through 26 of Plaintiff’s Amended Complaint. Therefore, it is reasonable to conclude  
35 that the statement contained in Item 9 occurred in the year 2011.

36 Defendant after the Motion hearing on February 11, 2014, when he and the Trial Judge  
37 were first made aware that Plaintiff had filed his Amended Complaint on February 10,

1 2011, contacted the Sheriff's Office. Defendant did so, in order to determine whether  
2 the deputy sheriffs who were involved in the incident had filed a report, and found out  
3 that an incident report had been filed. (A copy of which is attached.) That incident  
4 report indicated that the event stated in Item 9 had not occurred "on or about August  
5 16, 2011," as set forth in Defendant's Motion to Dismiss the Amended Complaint but it  
6 had actually occurred on September 1, 2011. (R. p. 26, lines 1-7)

7 The Initial Complaint, which did not contain Item 9 of the Amended Complaint, was filed  
8 on December 23, 2013, some four months after the statute-of-limitation had elapsed.  
9 The Amended Complaint, which contains Item 9 was filed on February 10, 2014, some  
10 five months after the statute of limitation elapsed. The statement contained in Item 9 of  
11 the Amended Complaint having been filed after the statute-of-limitation for defamation  
12 had elapsed, could not be the subject of a court action for defamation. (R. p. 4; R. p. 11;  
13 R. p. lines 1 and 7)

14 Since all of the defamatory statements—except for Item 9—had absolute privilege and,  
15 therefore could not be the basis for a cause of action in defamation and Item 9 was  
16 barred by the two year statute-of-limitations set forth in Rule 15-3-550 SCRCP,  
17 therefore, they could not be the basis of an action in defamation. As a consequence, the  
18 Trial Judge properly granted Respondent's Motion to Dismiss the Amended Complaint.

19 4. BECAUSE APPELLANT RELIED SOLELY UPON HIS PLEADINGS, DID NOT FILE ANY  
20 COUNTER AFFIDAVITS OR MOTIONS IN OPPOSITION TO THE RESPONDENT'S  
21 MOTION TO DISMISS THE COMPLAINT OR MOTION TO DISMISS THE AMENDED  
22 COMPLAINT AND OTHERWISE FAILED TO DEMONSTRATE THAT THERE WAS A  
23 GENUINE ISSUE TO ANY MATERIAL FACT CONTAINED IN RESPONDANT'S  
24 MOTIONS, THEREFORE, RESPONDANT'S MOTION TO DISMISS THE COMPLAINT  
25 AND MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.

26 Plaintiff did not offer any responses to Defendants Motion to Dismiss or Motion to  
27 Dismiss the Amended Complaint that set forth any specific facts that showed a genuine  
28 issue for trial. By not filing any pleadings, depositions, answer to interrogatories, and  
29 admission on file, together with affidavits and thereby, relied solely on the pleadings in  
30 his Complaint and/or his Amended Complaint. Plaintiff by his own failure to do so did  
31 not demonstrate that there was genuine issue for trial and as a result, he denied his  
32 own self the right to have a trial. In effect, the Trial Court did not deny the Plaintiff due  
33 process, instead he denied himself of due process.

#### 34 CONCLUSION

35 Defendant set forth two arguments why the Court dismissed Plaintiff's Complaint. The  
36 first argument was that the Appellant did not set forth a brief statement of the facts to

1 support an action for defamation, as required by Rules 8(a)(2) and 12(b)(6) SCRPC. The  
2 second argument was that the Plaintiff admitted that the statements he alleged to be  
3 defamatory in Item 3 of his prayer for relief were all made during the judicial  
4 proceedings in Case No. 2013-CP-22-0001. Accordingly, they were barred by absolute  
5 privilege from being used in an action for defamation and, therefore, the Trial Judge  
6 appropriately dismissed them, by granting Defendant's Motion to Dismiss the Initial  
7 Complaint.

8 Defendant set forth two arguments why the Court dismissed Plaintiff's Amended  
9 Complaint. The first argument was that the statement in Item 9 was barred by the two  
10 year statute-of-limitations for defamation, of Rule 15-3-550 SCRPC. The second  
11 argument was that the Plaintiff admitted in his amended complaint that the statements  
12 contained in Items 10A through 10R each containing what Plaintiff alleged to be  
13 defamatory oral statements and the statements in Items 11 through 26 each containing  
14 what Plaintiff alleged to be defamatory written statements were all made during the  
15 judicial proceedings in Case No. 2013-CP-22-00001. Accordingly, they were barred by  
16 absolute privilege from being used in an action for defamation and, therefore, the Trial  
17 Judge appropriately dismissed them, by granting Defendant's Motion to Dismiss the  
18 Amended Complaint.

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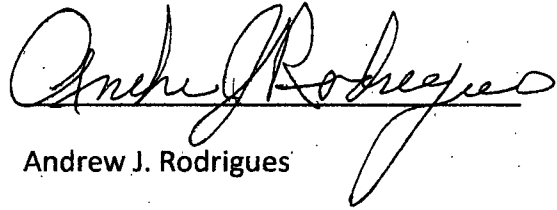
21 June 15<sup>th</sup>, 2014

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEALS FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case Number: 2014-000621

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Joseph N. Grate,

Appellant

V.

Andrew J. Rodrigues,

Respondent

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**PROOF OF SERVICE**

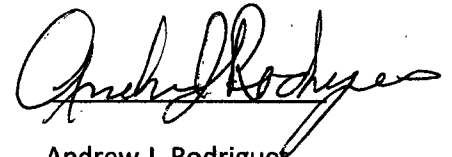
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I certify that Respondent's brief complies with the requirements of Rule 2119b).

I certify that I served the Initial Brief of Respondent on Joseph N. Grate by Certified U.S. Mail on July , 2014, at:

P.O. Box 1294  
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July 15<sup>th</sup>, 2014



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