

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

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Case No.: 2014-CP-11-0052  
Appellate Case No.: 2014-000981

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Lisa Randolph and George Randolph, ..... Appellants,

v.

Dolgencorp, LLC, d/b/a Dollar General Store #76751, a/k/a Dollar General, and  
Cherokee County, and Blacksburg Police Department, Defendants,

Of Whom Cherokee County and  
Blacksburg Police Department are ..... Respondents.

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FINAL BRIEF OF RESPONDENTS CHEROKEE COUNTY AND  
BLACKSBURG POLICE DEPARTMENT

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SC Court of Appeals

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT PROPERLY DISMISS APPELLANTS' CLAIMS UNDER THE SOUTH CAROLINA VICTIMS' BILL OF RIGHTS BECAUSE THE VICTIMS' BILL OF RIGHTS PROHIBITS CIVIL CAUSES OF ACTION AGAINST PUBLIC ENTITIES?
2. DID THE TRIAL COURT PROPERLY DISMISS APPELLANTS' CONSTITUTIONAL CLAIMS BECAUSE APPELLANTS FAILED TO PLEAD FACTS NECESSARY TO CONSTITUTE A CAUSE OF ACTION UNDER 42 U.S.C. § 1983?
3. DID THE TRIAL COURT PROPERLY DISMISS APPELLANTS' TORT CLAIMS AGAINST THE BLACKSBURG POLICE DEPARTMENT BECAUSE THE EXCEPTIONS TO WAIVER OF SOVEREIGN IMMUNITY SET FORTH IN THE SOUTH CAROLINA TORT CLAIMS ACT APPLY?

## STATEMENT OF THE CASE

On January 24, 2014, pro se Appellants Lisa Randolph and George Randolph filed this action against Dolgencorp, LLC, d/b/a Dollar General Store, #76751, a/k/a Dollar General and Respondents Cherokee County and the Blacksburg Police Department. The thirty-seven page Complaint asserts eleven causes of action, only some of which are directed against these Respondents. The primary claims asserted against Respondents are: (1) claims under the South Carolina Victims' Bill of Rights; (2) alleged violations of Appellants' federal constitutional rights; and (3) purported torts committed by the Blacksburg Police Department.

On February 21, 2014, Respondent Cherokee County filed a motion to dismiss Appellants' Complaint. On February 27, 2014, Respondent Blacksburg Police Department filed a motion to dismiss Appellants' Complaint. On March 31, 2014, the Trial Court heard both of the pending motions.

On April 18, 2014, prior to entry of a final order granting Respondents' motions, Appellants filed a Notice of Appeal. On May 1, 2014 the Trial Court issued an order granting Respondents' motions to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

## FACTS

Appellants allege that on December 7, 2013, Appellant Lisa Randolph purchased three bags of cat litter from the Dollar General store located at 500 West Cherokee Street, Blacksburg, South Carolina. (R. p. 11, lines 3-7). While paying for the cat litter, Appellants allege that Lisa Randolph noticed a discrepancy between the price charged and the price advertised on the shelf. According to Appellants, the register displayed a price of \$9.35 per bag while the shelf advertised a unit price of \$8.95. (R. p. 11, lines 8-12).

Appellants further allege that Lisa Randolph confronted the Dollar General cashier and store manager about the price discrepancy and requested that the price be changed to reflect the advertised price. Appellants allege that the store manager refused to reduce the price. (R. p. 11, lines 16-22). Amazingly, Appellant Lisa Randolph alleges that she called 911 to report the purportedly unlawful conduct of Dollar General. (R. p. 13, lines 15). The Dollar General manager also called 911 seeking to remove Appellant from the store. (R. p. 16, lines 9-17).

Appellants allege that an officer with the Blacksburg Police Department was dispatched to the Dollar General store and, after talking with the store manager and Lisa Randolph, asked Lisa Randolph to leave the store and placed her on trespass notice. (R. p. 11, lines 16-22). Appellants claim that they subsequently obtained a copy of the police report which listed the store manager as the complainant, instead of Lisa Randolph. (R. p. 32, lines 18-24; R. p. 33, lines 8-18). Throughout their Complaint, Appellants generally allege that the police officer improperly believed the representations of the Dollar General Store Manager instead of those of Lisa Randolph. (See, e.g., R. p. 18, line 6-p.19, line 14).

## ARGUMENTS

### **I. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS AGAINST CHEROKEE COUNTY.**

In their Complaint, Appellants rarely mention Cherokee County; only about ten pages of the thirty-seven page Complaint contain any direct reference to Cherokee County. In the few references to Cherokee County, Appellants allege only that Appellant Lisa Randolph called "Cherokee County, 911 operations" and reported the price discrepancy in the cat litter. (R. p. 12, line 24-p. 13, line 14). Appellants also allege that the Dollar General manager called Cherokee County 911 operations. (R. p. 16, line 9-p. 17, line 15).

Based upon these sparse factual allegations, Appellants claim that Cherokee County should have done more to respond to the allegedly unlawful conduct of Defendant Dolgencorp. The Trial Court properly identified two specific causes of action that appear to implicate Cherokee County: (1) the third cause of action for violations of the South Carolina Victims' Bill of Rights (R. p. 12, line 23-p. 16, line 5); and (2) the tenth cause of action for "Violations in Civil Rights and Consumer Rights." (R. p. 36; line 10-p. 40, line 3). The Trial Court properly dismissed both causes of action against Respondent Cherokee County.

#### **A. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS THAT CHEROKEE COUNTY VIOLATED THE SOUTH CAROLINA VICTIMS' BILL OF RIGHTS.**

In their third cause of action, Appellants allege that "Plaintiff, Lisa Randolph, was denied the rights and protections accorded to victims of crime and criminal conduct specific to criminal financial damage and unlawful business conduct as lawfully required by the Victim's Bill of Rights in the State of South Carolina." (R. p. 16, lines 3-5).

Specifically, Appellants allege that Cherokee County “failed to report or make record of any crime, criminal conduct, or unlawful conduct so as to deny the Plaintiffs any recognition as victims thereby depriving the Plaintiffs any rights, protections, and privileges as accorded to all victims as citizens and residents in the State of South Carolina.” Id.

The Trial Court properly dismissed Appellants’ claims under the South Carolina Victims’ Bill of Rights because the Victims’ Bill of Rights does not create a civil cause of action against public employees or public entities for any of the rights contained in the section:

(B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

S.C. CONST. art. 1 sect. 24(B). Accordingly, Cherokee County cannot be sued under the South Carolina Victims’ Bill of Rights. This Court should affirm the Trial Court’s order dismissing Appellants’ claims under the Victims’ Bill of Rights against Respondent Cherokee County.

**B. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ CONSTITUTIONAL CLAIMS AGAINST CHEROKEE COUNTY.**

In their tenth cause of action, “Violations in Civil Rights and Consumer Rights,” Appellants allege that Respondents violated their “First, Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendment Rights.” (R. p. 36, line 10-p. 40, line 3).

Although unclear, it appears that Appellants allege that Cherokee County only violated Appellants' First Amendment (see U.S. CONST. amend. 1, "right to petition"), Fourteenth Amendment (see U.S. CONST. amend. 14, "rights to equal protection" and "due process"), Thirteenth Amendment (see U.S. CONST. amend. 13, "right against involuntary servitude") and possibly Eighth Amendment (see U.S. CONST. amend. 8, "right against cruel and unusual punishment") rights.

Appellants seek to hold Cherokee County, a municipality, liable for alleged violations of their constitutional rights. To do so, Appellants must meet the "stringent" requirements for municipal liability found in 42 U.S.C. § 1983. Jordan v. Jackson, 15 F.3d 333, 338 (4th Cir. 1994) ("[t]he substantive requirements for proof of municipal liability are stringent"). Appellants must, but do not, allege that some policy, custom or practice of Cherokee County was the "moving force" behind the violation of their constitutional rights. See Monell v. Dept of Social Servs. Of City of N.Y., 436 U.S. 658, 694 (1978). "Section 1983 plaintiffs seeking to impose liability on a municipality must, therefore, adequately **plead and prove the existence of an official policy or custom** that is fairly attributable to the municipality and that proximately caused the deprivation of their rights." Jackson, 15 F.3d at 338. The official policy requirement was "intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986).

To demonstrate that an official policy of Cherokee County caused Appellants' harm, Appellants must plead that the alleged constitutional violations resulted from a "widespread practice that . . . is 'so permanent and well settled as to constitute a 'custom

or usage' with the force of law.'" City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988). (quoting Adickes v. S. H. Kress & Co., 398 U.S. 144, 167-168 (1970)). In addition, not every decision by every municipal official will subject a municipality to Section 1983 liability. Riddick v. Sch. Bd. of the City of Portsmouth, 238 F.3d 518, 523 (4th Cir. 2000). Only where the decision maker has "final authority to establish municipal policy with respect to the action ordered" does municipal liability arise. Pembaur, 475 U.S. at 481.

Appellants' Complaint fails to meet the stringent requirements of Section 1983. Appellants do not allege that any Cherokee County policy, custom or practice caused harm to them. Appellants do not plead that the alleged constitutional violations resulted from a widespread custom which reflects official Cherokee County policy. Appellants do not allege that the 911 operators possess final, decision making authority for Cherokee County. Therefore, the Trial Court properly dismissed Appellants' claims for alleged violations of constitutional rights. This Court should affirm the Trial Court's order dismissing Appellants' constitutional claims against Cherokee County.

Beyond this, Appellants have not alleged any facts to support any allegation that Cherokee County violated their constitutional rights. Appellants' only allegations are that Appellant Lisa Randolph and the Dollar General store manager both called 911 and that a Blacksburg Police Department officer was dispatched.

## **II. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS AGAINST THE BLACKSBURG POLICE DEPARTMENT.**

The Appellants allege several facts relating to Respondent Blacksburg Police Department:

- The Blacksburg Police Department failed to “report or make record of any crime.” (R. p. 15, lines 3-6).
- The Blacksburg Police Department officer arrived on the scene and maintained a private conversation” with the Dollar General store manager before entering the store. (R. p. 17, lines 19-24).
- The Blacksburg Police Department officer more favorably considered the Dollar General store manager’s story. (R. p. 18, lines 13-18).
- The Blacksburg Police Department officer observed the price of cat litter on the shelf. (R. p. 20, lines 14-20).
- The Blacksburg Police Department officer failed to object to the Dollar General store manager’s slanderous statements about Lisa Randolph. (R. p. 20, line 21-p. 21, line 3).
- The Blacksburg Police Department officer instructed Lisa Randolph to leave the store or be arrested. (R. p. 23, lines 1-21).
- The Blacksburg Police Department officer told Lisa Randolph that a police report regarding the incident would be available. (R. p. 23, lines 22-26).
- George Randolph heard the Blacksburg Police Department officer speaking with the Dollar General store manager about “advertised price tampering.” (Complaint ¶ 70).
- Respondent George Randolph saw the Dollar General store manager destroy the shelf price in the presence of the Blacksburg Police Department officer. (R. p. 26, lines 10-14).
- The Blacksburg Police Department report of the incident listed Dolgencorp as the complainant. (R. p. 33, line 8-p. 34, line 24).
- The Blacksburg Police Department report states that the officer responded to a “verbal dispute.” (R. p. 14, lines 4-16).
- The Blacksburg Police Department report failed to mention the allegedly unlawful conduct of the Dollar General store in the report of the incident. (R. p. 37, lines 18-23).
- Respondent George Randolph spoke with the Blacksburg Police Department officer following the incident regarding the police report. The officer said he could only include facts he could prove. (R. p. 43, lines 17-20).

From these alleged facts, Appellants assert many causes of action against the Blacksburg Police Department. However, almost all of Appellants’ claims fall within three categories: (1) alleged violations of the South Carolina Victims’ Bill of Rights; (2) alleged violations of Appellants’ federal constitutional rights; and (3) alleged torts

committed by the Blacksburg Police Department. The Trial Court correctly held that Appellants failed to plead facts essential to the causes of action.

**A. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CLAIMS THAT THE BLACKSBURG POLICE DEPARTMENT VIOLATED THE SOUTH CAROLINA VICTIMS' BILL OF RIGHTS.**

As discussed above, the South Carolina Victims' Bill of Rights does not create a cause of action against public employees or public entities. Just like Cherokee County, the Blacksburg Police Department is a "public agency" for purposes of the South Carolina Victims' Bill of Rights. Therefore, Appellants cannot assert a civil cause of action against the Blacksburg Police Department under the Victims' Bill of Rights. S.C. CONST. art. 1 sect. 24(B). This Court should affirm the Trial Court's dismissal of Appellants' claims under the Victims' Bill of Rights.

**B. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS' CONSTITUTIONAL CLAIMS AGAINST THE BLACKSBURG POLICE DEPARTMENT.**

In their tenth cause of action, "Violations in Civil Rights and Consumer Rights," Appellants allege that the Blacksburg Police Department violated several of the Appellants' federal constitutional rights. Specifically, Appellants claim that Respondent violated their "First, Fourth, Fifth, Eighth, Ninth, Thirteenth and Fourteenth Amendment Rights" (R. p. 36, line 10-p. 40, line 3).

As with Cherokee County, Appellants once again seek to hold a governmental entity liable for alleged violations of constitutional rights. Police departments are governmental entities for purposes of Section 1983. In Gary v. Floyd, the United States District Court for the District of South Carolina considered whether the Greenville Police Department could be held liable under Section 1983 under a theory of respondeat

superior. Gary v. Floyd, 582 F. Supp. 2d 741 (D.S.C. 2007). The court held that the Greenville Police Department was a governmental entity and therefore “cannot be held liable for the unconstitutional acts of its employees and is only liable under § 1983 if it causes a deprivation of constitutional rights through an official policy or custom.” Id. at 749 (citing Monell, 436 U.S. at 690-691 (1978)).

Appellants once again fail to meet the stringent requirements under Section 1983. Appellants do not allege that an official policy, custom or practice of the Blacksburg Police Department caused harm to them. Appellants do not plead that the alleged constitutional violations resulted from a widespread custom which reflects official policy of the Blacksburg Police Department. Appellants do not allege that the responding Blacksburg Police Department officer possesses final, decision-making authority for the police department. Therefore, the Trial Court properly dismissed Appellants’ claims for alleged violations of constitutional rights. This Court should affirm the Trial Court’s order dismissing Appellants’ constitutional claims against the Blacksburg Police Department.

**C. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ TORT CLAIMS BY APPLYING THE EXCEPTIONS TO THE WAIVER OF SOVEREIGN IMMUNITY.**

In their Complaint, Appellants allege that the Blacksburg Police Department committed various torts including: abuse of process (R. p. 16, line 8-p. 19, line 14); libel and slander (R. p. 19, line 17-p. 21, line 7; R. p. 32, line 17-p. 36, line 7); negligence “in turning a blind eye to evidence supporting further action as probable cause in protecting the Plaintiffs from being harmed” (R. p. 19, lines 4-7), “in protecting Plaintiff” (R. p. 25, line 23-p. 26, line 6), “in denying the Plaintiffs rights to substantive due process” (R. p.

38, line 24-25), and “in providing and conducting service to remove the Plaintiff, Lisa Randolph, from the Store” (R. p. 39, lines 7-9); and intentional infliction of emotional distress (R. p. 39, lines 13-15).

The Trial Court dismissed Appellants’ tort claims for three reasons: (1) the exceptions to waiver of sovereign immunity set forth in the South Carolina Tort Claims Act apply in this case; (2) several of the claims do not constitute causes of action recognized under South Carolina law; and (3) Appellants failed to plead facts to constitute a cause of action under the recognized tort claims.

The Trial Court correctly determined that the exceptions to waiver of sovereign immunity set forth in the South Carolina Tort Claims Act apply in this case. S.C. Code § 15-78-60 provides in relevant part:

The governmental entity is not liable for a loss resulting from:

- (4) adoption, enforcement or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;

S.C. Code Ann. § 15-78-60 (2005).

These exceptions apply here. Upon arrival at the Dollar General Store, the Blacksburg Police Department officer allegedly investigated through interviews and first-hand observation (R. p. 19, line 18-p. 20, line 4), did not arrest the Dollar General store employees (R. p. 24, line 8-p. 25, line 17), asked Appellant Lisa Randolph to leave the

store and placed Appellant Lisa Randolph on trespass notice (R. p. 23, lines 1-21). The Blacksburg Police Department also created an incident report and listed Defendant Dolgencorp as the complainant. (R. p. 33, line 8-p. 34, line 24).

All of the alleged actions by the Blacksburg Police Department or its officer were either (1) decisions regarding the enforcement of laws; or (2) decisions within the discretion of the Department or its officer. The Respondent cannot be held liable in tort for failure to enforce a law or for the method of providing police protection. (See Huggins v. Metts, 371 S.C. 621, 624, 640 S.E.2d 465, 467 (Ct. App. 2006) (“the [Tort Claims Act] specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection.”). Appellants’ primary claim is that the Blacksburg Police Department failed to properly react to the allegedly unlawful conduct of Defendant Dolgencorp. These allegations clearly fall within the exceptions to waiver of sovereign immunity under the South Carolina Tort Claims Act.

Furthermore, the decisions of the officer to ask Appellant Lisa Randolph to leave the store, the decision to place Appellant Lisa Randolph on trespass notice and the decision to list Defendant Dolgencorp as the complainant in the police report were decisions properly made by the officer within his discretion. Appellants specifically plead that the officer acted within his discretion:

(87) That the Defendant, BPD, **did then use discretion** in exercising the broad powers of a law enforcement agency . . .

(88) That the Defendant, BPD, **did then use law enforcement powers in discretion** wherein giving immunity to Defendant Dolgencorp, in unlawfully profiting from larceny and also by ejecting then permanently barring by threatening Plaintiff, Lisa Randolph, with arrest, and so in did never allow her the right to complain . . .

(89) That the Defendant, **BPD, and in discretion**, did chose not to enforce the laws of the state of South Carolina. . . .

(R. p. 31, lines 5-26).

The Trial Court properly dismissed the claims of Appellants under the South Carolina Tort Claims Act because all of the alleged facts relating to Respondent Blacksburg Police Department fall clearly within exceptions to the waiver of sovereign immunity found in the South Carolina Tort Claims Act.

Appellants contend that Respondent Blacksburg Police Department should be held liable under S.C. Code § 15-78-70(b):

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

S.C. Code Ann. § 15-78-70(b) (2005). Appellants appear to argue that the officer's actions must have constituted "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude" and therefore the Respondent Blacksburg Police Department may be held liable.

Appellants are mistaken. First, in their Complaint, Appellants do not allege that the Blacksburg Police Department officer demonstrated "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." Second, even if the Appellants had alleged the officer acted with "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude" then the officer, not the Blacksburg Police Department, could be liable. The statute demonstrates Appellants' error: "the governmental entity is not liable for a loss resulting from . . . (17) employee conduct outside the scope of his official

duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-60 (2005).

Appellants also improperly seek punitive damages for the tort claims asserted in the Complaint. (R. p. 44, lines 10-12). The South Carolina Tort Claims Act clearly prohibits punitive damages: “No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.” S.C. Code Ann. § 15-78-120 (2005). The Trial Court properly denied Appellants’ claims for punitive damages for any causes of action relating to Appellants’ tort claims.

Lastly, even if the South Carolina Tort Claims Act did not bar Appellants’ tort claims, Appellants failed to plead the required elements for any of the alleged tort claims. The facts pled by the Appellants simply do not support any tort claims under South Carolina law. This Court should affirm the Trial Court’s order dismissing Appellants’ tort claims against Respondent Blacksburg Police Department.

### **III. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ REMAINING CLAIMS AGAINST RESPONDENTS.**

Appellants asserted a variety of other claims throughout their Complaint which the Trial Court properly dismissed.

#### **A. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ LOSS OF SOCIETY CLAIM.**

In their eleventh cause of action, “Loss of society,” Appellants “asserts damages by and being less than fifty (50) percent loss of society, loss of consortium, proximate to the Defendants.” (R. p. 44, lines 1-6). The Trial Court broadly construed Appellants’ loss of society claim as a claim for loss of consortium: “Loss of consortium encompasses not only the loss of services, but also the loss of society and companionship.” Davis v. Tripp,

338 S.C. 226, 239, 525 S.E.2d 528, 535 (Ct. App. 1999) (citing Sullivan v. Davis, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1995)).

Under South Carolina law, “[i]n order to prevail in an action for loss of consortium, a plaintiff must prove the defendant’s liability for the spouse’s injuries, as well as damages to the plaintiff resulting from the spouse’s injury.” Creighton v. Coligny Plaza Ltd. P’ship, 334 S.C. 96, 121, 51 S.E.2d 510, 523 (Ct. App. 1998). As demonstrated above, Appellants failed to plead facts necessary for essential elements of Appellants’ tort claims. Therefore the Trial Court properly dismissed Appellants’ loss of consortium claim.

**B. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ CONSPIRACY TO COMMIT LARCENY CLAIM.**

In their eighth cause of action, “Victim – Conspiracy to/to commit Larceny,” Appellants allege that Respondents conspired with Defendant Dolgencorp to commit larceny. Conspiracy to commit larceny is a crime and cannot be pled in a civil action.

**C. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ OFFICIAL MISCONDUCT CLAIM.**

In their sixth cause of action, “Official Misconduct, Abuse of Authority, Breach of Duty,” Appellants allege that “Defendant, BPD, failed in, and during Official Conduct in applying and following, failed in not applying and not following ordinary law enforcement procedures commonly necessary and required to enforce the laws of the State of South Carolina.” (R. p. 24, line 8-p. 25, line 17). Official misconduct is a crime in South Carolina (See S.C. Code Ann. § 8-1-80 (Supp. 2011)) and cannot be pled in a civil action.

**D. THE TRIAL COURT PROPERLY DISMISSED APPELLANTS’ ABUSE OF AUTHORITY CLAIM.**

In their sixth cause of action, "Official Misconduct, Abuse of Authority, Breach of Duty," Appellants allege that

While having actual and constructive knowledge otherwise, did exceed law enforcement authority by rendering judgment wherein a commission of crime and criminal conduct was already committed and there being sufficient evidence of proving unlawful or criminal conduct being present and such being presented to him for his investigation and statutory duty to exercise arrest, jail, and bail authority vested in the Defendant, BPD.

(R. p. 25, lines 7-11).

"Abuse of authority" is a standard used to assess the propriety of a governmental entity's decision with respect to the disposition of property: "A court will not attempt to control the discretionary powers conferred upon a [governmental entity] and will not interfere, by means of a taxpayer suit, to restrain the authorities of a [governmental entity] from the exercise of their discretionary power with regard to the control or disposition of property of the [governmental entity] in the absence of illegality, fraud, or clear abuse of authority." Berry v. McLeod, 328 S.C. 435, 447, 492 S.E.2d 794, 800 (Ct. App. 1997) (quoting Babb v. Green, 222 S.C. 534, 543, 73 S.E.2d 699, 703 (1952)). Appellants fail to plead facts to support an abuse of authority claim.

**CONCLUSION**

For the reasons stated above, this Court should affirm the Trial Court's grant of Respondents' motions to dismiss.

Respectfully submitted,

December 30, 2014

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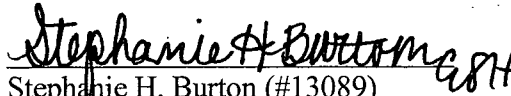
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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

December 30, 2014

  
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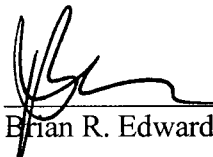
PROOF OF SERVICE

The undersigned, Brian R. Edwards, certifies that he is an employee of Gibbes Burton, LLC and on the 30th day of December 2014, he served a copy of Respondents Cherokee County and Blacksburg Police Department's Final Appellate Brief by depositing in the United States mail, with due and proper postage affixed thereto, a copy of the same addressed to:

Ms. Lisa Randolph, *pro se*  
Mr. George Randolph, *pro se*  
203 West Carolina Street  
Blacksburg, South Carolina 29702

Ms. Mary Daniel LaFave, Esquire  
Ms. Regina Hollins Lewis, Esquire  
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3710 Landmark Drive, Suite 109  
Columbia, South Carolina 29204

December 30, 2014

  
\_\_\_\_\_  
Brian R. Edwards