

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

SC Court of Appeals

Larry B. Hyman, Jr., Circuit County Judge

**Case No. 2014-CP-26-1193
Appellate Case No. 2014-002491**

Skydive Myrtle Beach, Inc. (f/k/a Skydive Myrtle Beach, LLC),.....Appellant,

v.

**Horry County, Horry County Department of Airports,
H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal,
Defendants,**

**Of whom H. Randolph Haldi, Pat Apone, Tim Jackson,
and Jack Teal are Respondents.**

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN DISMISSING APPELLANT'S COMPLAINT WITH PREJUDICE AGAINST THE INDIVIDUALLY NAMED RESPONDENTS PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT WHEN APPELLANT ALLEGED RESPONDENTS' ACTS INVOLVED CONDUCT THAT CONSTITUTED ACTUAL FRAUD, ACTUAL MALICE, INTENT TO HARM, AND ALSO CONDUCT WHICH COULD BE INFERRED TO BE OUTSIDE THE SCOPE OF OFFICIAL DUTIES?
- II. DID THE TRIAL COURT ERR WHEN IT DETERMINED THAT CONFLICTING ALLEGATIONS OF CONDUCT AND LIABILITY ARE AN INEQUITABLE INTERPRETATION OF APPELLANT'S COMPLAINT?
- III. DID THE TRIAL COURT ERR WHEN IT DISMISSED APPELLANT'S COMPLAINT AGAINST THE INDIVIDUAL RESPONDENTS WITH PREJUDICE WHEN DISCOVERY HAD NOT BEEN COMPLETED AND APPELLANT HAD REQUESTED LEAVE TO AMEND ITS PLEADINGS?

STATEMENT OF THE CASE

On February 28, 2014, Skydive Myrtle Beach, Inc. ("SDMB") brought this action alleging *inter alia*, fraud, civil conspiracy, defamation, and trespass against H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal ("Individual Respondents") as part of its action against Horry County and Horry County Department of Airports ("HCDA"). Record on Appeal page ("R. p.") 19-51.

On March 26, 2013, the Individual Respondents filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP") "on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action inasmuch as the individually named Defendants are not proper Defendants pursuant to S.C. Code Ann. § 15-78-70 [of the South Carolina Tort Claims Act ("SCTCA)]." Resp't Mot. to Dismiss, R. p. 121.

On May 23, 2014, SDMB sent a memorandum of law in opposition to Individual Respondents' motion to dismiss. R. pp. 421-27. SDMB argued that tortious conduct of

state employees is outside the scope of employment as defined in S.C. Code Ann. § 15-78-70(c) and immunity was unwarranted under the SCTCA. Appellant's Mem. of Law, May 23, 2014, R. pp. 421-27.

On June 2, 2014, a hearing on the matter was held and opposing Orders were requested from opposing counsel. Court Order, June 3, 2014, R. p. 15.

On July 9, 2014, proposed Orders were solicited from the parties by Hon. J. Larry B. Hyman's law clerk specifically addressing actual malice, fraud, and intent to do harm. R. p. 445. SDMB submitted its proposed Order to the court and requested leave to amend the pleadings if the motion was granted. Email dated July 9, 2014, *Id.*

On August 15, 2014, SDMB submitted proposed Orders to the court and requested leave to amend the pleadings if Respondents' motion to dismiss was granted. Ltr. to Judge Hyman, August 15, 2014, R. pp. 437-441.

On October 13, 2014, SDMB's Complaint was dismissed with prejudice against the Individual Respondents. Order, October 13, 2014, R. p. 12.

On October 16, 2014, counsel for the Individual Respondents sent the signed Order to the clerk of court for filing. Ltr. from Resp't's counsel, October 16, 2014.

On October 27, 2014, a date stamped copy of the Order (October 17, 2014) was received from opposing counsel. Ltr. from Resp't's counsel, October 27, 2014.

On November 10, 2014, SDMB served the Notice of Appeal on Horry County, Horry County Department of Airports, H. Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal. Notice of Appeal:

Plaintiff asserts that discovery is ongoing,¹ the circuit court narrowly construed the

¹ Appellant's case was initiated after receiving an unduly restrictive lease in a letter from the Horry County Attorney's Office citing "significant concerns" with alleged rule violations. Appellant has requested

language of the Complaint, improperly applied a Code Pleading standard of review, improperly interpreted the SCTCA, and improperly dismissed the its claims against the Individual Respondents by denying Plaintiff's request to correct any "technical" defect in the complaint by filing an amended pleading.

STATEMENT OF FACTS

Appellant's Complaint alleged that Respondents' conduct amounted to an illegal strong-arm attempt at lease negotiations and retaliatory eviction. Compl. ¶ 54, *see generally*, ¶¶ 27-59, R. p. 23. Since the underlying action was filed on February 28, 2014, additional relevant facts not before the circuit court but relevant to this appeal have occurred. Each of these facts is included in the Amended Complaint as part of Appellant's Designation of Matter to be Included in the Record on Appeal.² R. pp. 55-109.

On March 18, 2014, the Horry County Airport Advisory Committee passed newly drafted regulations ("Illegal Regulations") governing conduct at the Grand Strand Airport ("GSA") in North Myrtle Beach, South Carolina. Am. Compl. ¶ 77, R. p. 63. The Illegal Regulations included formal rules which supported the "serious concerns" Respondent Haldi raised in his letter to Appellant dated February 19, 2014, and denial of a long-term lease. *Id.*

On April 3, 2014, Respondent County, thorough its attorney, presented the Illegal

copies of the rules from all Defendants under the South Carolina Freedom of Information Act (FOIA) and in discovery. *See* Pl. Req. for Prod. to Defs. ¶ 8, R. p. 166; Pl. Interrog. to Defs. ¶ 14, R. p. 194. On November 13, 2014, through its Boston attorneys and as part of *HCDA's Rebuttal in Support of its Answer and Affirmative Defenses to Complainant Skydive Myrtle Beach, Inc.'s Part 16 Formal [FAA] Complaint and Statement of Material Facts*, Appellant learned of the enactment of the Illegal Regulations (effective May 20, 2014) by the Horry County. Am. Compl. ¶ 124, R. p. 67. A motion to compel and for declaratory judgment against the newly promulgated rules is scheduled to be heard on April 22, 2015.

² An Appellant must "present additional factual allegations or a different theory of recovery upon which relief may be granted, [or] the appellate court may in its discretion affirm the complaint with prejudice." *Spence v. Spence*, 368 S.C. 106, ___, 628 S.E.2d 869, 882 (2006).

Regulations to Horry County Administrative Committee stating on the record that no rules existed and needed because HCDA “was now involved in litigation.” Am. Compl. ¶¶ 82-83, R. p. 63-64.

On April 28, 2014, after successfully arguing that Appellant’s lack “good faith” in negotiating a new lease before the Federal Aviation Administration (“FAA”)³, HCDA, through its Boston attorneys, issued a “Notice of Termination” and threatened removal procedures if Appellant did not agree to HCDA’s newly minted “standard lease.” Am. Compl. ¶ 85, R. p. 64.

On May 15, 2014, HCDA initiated a new unpublished reporting system that recorded violations of unpublished rules styled as “Unusual Incidents.” Am. Compl. ¶ 88, R. p. 64.

On May 20, 2014, Horry County passed Horry County Ordinance 36-14, enacting the Illegal Regulations, effective immediately. Am. Compl. ¶ 89, R. p. 64. Horry County, South Carolina, Ordinance to Add Minimum Standards and Requirements for Aeronautical Activities at Grand Strand Airport, Conway-Horry County Airport, and Twin City Airport (May 20, 2014). Am. Compl. ¶ 90, R. p. 64.

On June 5, 2014, Horry County filed a Writ of Ejectment against Appellant in the Myrtle Beach Magistrate’s Court, styled *Horry County v. Skydive Myrtle Beach*, CA No. 2014CV261092444. Am. Compl. ¶ 90, R. p. 64.

On June 13, 2014, in lieu of a responsive pleading, Appellant contested the

³ FAA initially dismissed Appellant’s federal complaint for failure to properly plead and document good faith efforts to resolve its Title 14, Part 16 FAA Complaint without prejudice on March 18, 2014. On July 1, 2014, Appellant resubmitted its Part 16 Complaint. Am. Compl. ¶ 95, R. p. 65. On July 28, 2014, FAA docket Appellant’s Part 16 Complaint, styled *Skydive Myrtle Beach, Inc. v. Horry County Department of Airports*, FAA Docket No. 16-14-05. Am. Compl. ¶ 103, R. p. 65. FAA has denied Respondent’s attempt to have the Complaint dismissed and the matter is pending.

jurisdiction of the magistrate's court to determine the Writ of Ejectment and filed a Motion to Remove the action per Rule 12(b)(8), SCRCP and S.C. Code Ann. § 22-3-30 (1997) in the magistrate's court and a Motion to Consolidate in the circuit court pursuant to Rules 12(b)(8) and 42(a), SCRCP and S.C. Code Ann. § 22-3-30 in the primary action styled *Skydive Myrtle Beach, Inc. v. Horry County, et al*, CA 2014-CP-1193. Am. Compl. ¶ 91, R. p. 64; Pl. Mot. to Consolidate, R. p. 125; Pl. Mot. to Remove, R. p. 151.

On July 2, 2014, the Myrtle Beach Magistrate's Court denied SDMB's motion to remove Horry County's Application for Ejectment to the Circuit Court and consolidate the matter with this action. Am. Compl. ¶ 96, R. p. 65.

On July 8, 2014, SDMB requested production of documents to HCDA including, *inter alia*, rules and regulations pertaining to GSA. Am. Compl. ¶ 97, R. p. 65; Pl. Req. for Prod. ¶ 7, R. p. 156; *see also* Pl. Req. for Prod. to Defs. Haldi, Apone, Jackson, and Teal, R. pp. 163, 169, 179, 183.

In early July 2014, Horry County zoning officials entered SDMB's private pilot lounge (located atop of a warehouse directly across the street from GSA) and took pictures of the lounge. Am. Compl. ¶ 98, R. p. 65.

On July 18, 2014, SDMB requested reconsideration of its denial and thirty days to file an answer, counter-claim, conduct discovery and to have a jury trial should the Magistrate's court deny its request for reconsideration. Am. Compl. ¶ 99, R. p. 65.

On July 23, 2014, the Myrtle Beach Magistrate's Court denied: SDMB's motion to remove; request to answer the complaint; conduct discovery; and have a jury trial. SDMB was subsequently issued a Writ of Ejectment following a Bench Trial. Am. Compl. ¶¶ 100-101, R. p. 65.

On July 25 2014, SDMB appealed the Myrtle Beach Magistrate's Court decision and filed a date-stamped copy of the Appeal with the Myrtle Beach Magistrate's Court. Am. Compl. ¶ 102, R. p. 65.

On July 29, 2014, the Myrtle Beach Magistrate's Court denied counsel's request for rescheduling or telephonic appearance for an August 1, 2014, Bond Hearing (counsel for SDMB was in Florida and unavailable). Am. Compl. ¶ 104, R. p. 66.

On August 1, 2014, SDMB appeared *pro se* before the Myrtle Beach Magistrate's Court, which issued a Bond to Stay Execution on Appeal authorizing SDMB to remain in Hangar 7 pending the decision on appeal provided SDMB continues monthly payments of \$1,200.00 on the first of each month. Am. Compl. ¶¶ 105-06, R. p. 66.

On August 16, 2014, the North Myrtle Beach Police department generated a police report about skydiver beach landings in response to an anonymous complaint. No arrests were made. Am. Compl. ¶ 107, R. p. 66.

On September 1, 2014, SDMB was required to vacate its pilot lounge after receipt of a zoning violation. Am. Compl. ¶ 109, R. p. 66.

On September 30, 2014, a hearing before the circuit court on SDMB's motion to consolidate was denied as moot since the matter had been litigated in the Magistrate's Court and appealed to the circuit court. Am. Compl. ¶ 113, R. p. 66. SDMB's request for injunctive relief relating to its allegations of HCDA harassment was also denied. Am. Compl. ¶ 114, R. p. 66.

On October 7, 2014, HCDA advised SDMB that it would not be able to utilize Hangar 7 during its Rehabilitation Project and would be required to execute a "Space Use Permit" in order to operate and park its aircraft at GSA. Am. Compl. ¶ 115, R. p. 66.

On October 8, 2014, SDMB advised HCDA that it had authorization to use Hangar 7 to store its aircraft per the Stay Order, advised HCDA that it was required to hangar its aircraft under a lease agreement, and could store its aircraft in Hangar 1, provided HCDA consent. Am. Compl. ¶ 116, R. pp. 66-67. Although Hangar 1 was available for immediate occupancy, HCDA rejected this request and advised SDMB that hangaring its aircraft was “not HCDA’s responsibility.” Am. Compl. ¶ 117, R. p. 67.

On October 14, 2014, SDMB filed a Request for Emergency Hearing, Motion to Compel and Injunctive relief with the CCP. Am. Compl. ¶ 118, R. p. 67.

On October 25, 2014, SDMB’s leased aircraft was removed by the owner due to anticipated loss of use of Hangar 7. Am. Compl. ¶ 120, R. p. 67.

On October 28, 2014, HCDA sent SDMB a copy of “proposed” Illegal Regulations and invited SDMB to a “town hall” meeting to discuss the proposed rules. Am. Compl. ¶ 121, R. p. 67.

On October 30, 2014, HCDA reiterated in a “Town Hall Meeting” with SDMB that GSA had no effective regulations or rules in effect and “noted” SDMB’s objections to penalties and Illegal Regulations proposed by HCDA at the meeting. Am. Compl. ¶ 122, R. p. 67.

On November 3, 2014, SDMB sent HCDA its comments and objections to the “proposed” Illegal Regulations as related to skydiving. Am. Compl. ¶ 123, R. p. 67.

On November 13, 2014, HCDA’s Boston attorneys provided “Minutes” from the County Council and for the first time identified County Ordinance 36-14 enacting the Illegal Regulations for GSA. Am. Compl. ¶ 124, R. p. 67.

On December 5, 2014, Horry County Administration Committee approved an

ordinance amending the Illegal Regulations. Am. Compl. ¶ 125, R. p. 67.

On December 8, 2014, Horry County Council, at its Regular Council Meeting, unanimously adopted Horry County Ordinance 115-14 (first reading) revising the Illegal Regulations passed in May. Am. Compl. ¶ 126, R. p. 67.

On Christmas week, Horry County and HCDA's first submission of requested documents were produced. Am. Compl. ¶ 127, R. p. 67. The bulk of documents requested including regulations or other rules relating to conduct and operations at GSA was not produced. *Id.*

On December 30, 2014, SDMB's independent investigation revealed Horry County Council's official online minutes and agenda containing the Illegal Regulations.⁴ Am. Compl. ¶ 128, R. p. 68.

On January 6, 2015, Horry County Council held a "public review" of County Ordinance 115-14 amending the Illegal Regulations and passed the second reading. No public input relating to the Illegal Regulations was received. Am. Compl. ¶ 129, R. p. 68.

On January 9, 2015, through its Boston attorneys, HCDA objected to SDMB's supplementation of the record (inclusion of County Council minutes). Am. Compl. ¶ 130, R. p. 68.

On January 20, 2014, Horry County Council enacted an amendment to the Illegal Regulations (effective immediately) to include selective and discretionary power to enforce the Illegal Regulations at GSA together with the power to fine and ban violators from

⁴ On July 8, 2014, SDMB requested HCDA to "[l]ist all policies, rules, memoranda, or procedures relating to tenant conduct and training on all Horry County airport property for the last seven (7) years (including but not limited to all operational activity at Conway, Loris, CRE and MYR airports)." Pl. Interrog. No. 14, R. p. 194. On Oct. 16, 2014, Respondents' response to Appellants Interrogatory No. 14 was, "[t]he answers will be provided in accordance with Rule 33 (c) SCRPC Option to Produce Business records." Defs.' Answer to Pl. Interrog. No. 14, R. p. 398. To date, no documents have been produced. A hearing on Appellant's Motion to Compel is scheduled on Apr. 22, 2015.

operating at any Horry County Airport (any law enforcement officer has authority to enforce the rules). Am. Compl. ¶¶ 131, 160, R. pp. 68, 70; Horry County Ordinance 115-14, Ordinance Amending the County Code by Revising the Minimum Standards and Requirements for Aeronautical Activities at Grand Strand Airport, Conway-Horry County Airport, & Twin City Airport (Jan. 20, 2015).

On January 30, 2015, CCP Motions Calendar scheduled a hearing on SDMB's Motion to Compel and Injunctive Relief for March 2, 2015. Am. Compl. ¶ 132, R. p. 68.

On February 3, 2015, the County filed a motion to increase the appeal bond by \$358,000.00 – nearly six (6) months after Horry County Magistrate issued the Stay – erroneously claiming that the CRE Ramp Renovation project requires work in front of Hangar 7 to commence on February 16, 2015. Am. Compl. ¶ 133, R. p. 68. Contrary to the County's unsupported assertions, this was the first written notice of the start date for Phase 2 Ramp Rehabilitation received by SDMB. *Id.*

On February 10, 2015, the Horry County Magistrate denied County's motion on the grounds that it lacked jurisdiction to make an adjustment to a Bond determination of an appealed matter. Am. Compl. ¶ 135, R. p. 68. That same day, counsel for the County filed a Motion for Temporary Restraining Order and Temporary Injunction. Am. Compl. ¶ 136, R. p. 68. On February 11, 2015, counsel for the County filed a Motion for Modification of Bond Amount. Both were filed in Horry County Circuit Court. Am. Compl. ¶ 137, R. 68.

On February 17, 2015, the Circuit Court denied Horry County's request for bond increase, Temporary Restraining Order and Injunctive Relief holding that the *status quo ante* should be preserved, SDMB should execute a Space Use Permit (without affecting its legal objections), be permitted to use Hangar 7 during the rehabilitation period, and keep

its aircraft on the tarmac during the construction period. Am. Compl. ¶ 138, R. p. 69.

On March 14, 2015, HCDA instructed Greenwald Construction to stop any effort to allow Hangar 7 aircraft access (by building a temporary bridge) since SDMB was illegally occupying Hangar 7. Am. Compl. ¶ 141, R. p. 69.

On March 30, 2015, HCDA attempted to prevent a mechanic from performing routine maintenance in Hangar 7 pursuant to the Illegal Regulations. Am. Compl. ¶ 143, R. p. 69.

STANDARD OF REVIEW

A 12(b)(6) motion must be based solely on the allegations set forth in the complaint and all well-pled facts are presumed to be true. *Gressett v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006). “The 12(b)(6) motion may not be sustained if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory.” *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 74 (1999). A motion to dismiss “should not be granted if ‘facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.’” *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003); accord, *Overcash v. S.C. Elect. & Gas Co.*, 356 S.C. 165, 588 S.E.2d 116, 118 (Ct. App. 2003) “Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Overcash*, at 118. “The [12(b)(6)] motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any claim

for relief.” *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998).

ARGUMENT

- I. BECAUSE APPELLANT ALLEGED RESPONDENTS’ ACTS INVOLVED CONDUCT THAT CONSTITUTED ACTUAL FRAUD, ACTUAL MALICE, INTENT TO HARM, AND CONDUCT WHICH COULD ALSO BE INFERRED TO BE OUTSIDE THE SCOPE OF OFFICIAL DUTIES, THE TRIAL COURT ERRED IN DISMISSING APPELLANT’S COMPLAINT WITH PREJUDICE AGAINST THE INDIVIDUALLY NAMED RESPONDENTS PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT.

The SCTCA⁵ provides personal immunity upon any governmental employee “who commits a tort while acting within the scope of his official duty” S.C. Code Ann. § 15-78-70(a) (2005). SCTCA “is the exclusive civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15-78-70(b).” *Health Promotion Specialists, LLC and Palmetto Dental Care, LLC v. South Carolina Board of Dentistry*, 403 S.C. 623, 635, 743 S.E.2d 808, 814 (2013) citing *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (1998) and S.C. Code Ann. § 15-78-40 (1986) (SCTCA “is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.”); *Flateau v. Harrelson*, 355 S.C. 197, 594 S.E.2d 413 (Ct. App. 2003).

Exceptions to SCTCA immunity attach when a governmental employee’s conduct is “not within the scope of his official duties or it is proved that it constituted actual fraud, actual malice, intent to harm, or a crime of moral turpitude.” S.C. Code Ann. § 15-78-70(b) (2005). The South Carolina Supreme Court has stated, “[the SCTCA] does not grant an employee ‘immunity from suit and liability if it is proved that the employee’s conduct

⁵ S.C. Code Ann. §§ 15-78-10 *et seq.*

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.” *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640, 643 (1990) quoting S.C. Code Ann. § 15-78-70(b); see also *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (same). In *Brown v. County of Berkley*, the Supreme Court elaborated:

Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, [§ 15-78-70(b) of the SCTCA] would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

Brown v. County of Berkley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 (2005).

A. Count 4, Civil Conspiracy.

In a civil conspiracy claim, Government employees that intended to harm the plaintiff acted outside the scope of official duties and were afforded no SCTCA immunity. *Pridgen v. Ward* 391 S.C. 238, 248, 705 S.E.2d 58, 64 (Ct. App. 2011). In *Pridgen*, the government employees were found to have made false statements, had an unfriendly relationship, and a plan to have the plaintiff fired. The court opined that this constituted evidence where a jury could infer motive of an intent to harm and attach individual liability despite the SCTCA. *Pridgen*, 91 S.C.at 248, 705 S.E.2d at 64.

Civil Conspiracy is recognized in South Carolina, and the elements for this cause of action are: (1) combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) special damages. *Future Group II v. NationsBank*, 324 S.C. 89, 478 S.E.2d 45 (1995); *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Robertson v. First Union National Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002), cert dis., 357 S.C. 592 S.E.2d 625 (2004); *First Union Nat'l Bank v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); *Mendelsohn v. Whitfield*, 312 S.C. 17, 430

S.E.2d 524 (Ct. App. 1993) *affirmed* 312 S.C. 226, 439 S.E.2d 845 (1994); *Yeager v. Murphy*, 291 S.C. 485, 354 S.E.2d 393 (Ct. App. 1987); *Lee v Chesterfield General Hospital, Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App.1986). In its complaint, Appellant alleged the requisite elements for civil conspiracy. Appellant alleged (1) Respondents Haldi, Apone, Jackson and Teal “collectively acted” (Compl. ¶ 77, R. p. 25); (2) actions were “designed to ruin or damage the business of SDMB” (Compl. ¶ 80, R. p. 26); and (3) caused special damages (Compl. ¶ 81, R. p. 26). Allegations that a plan’s “object is to ruin or damage the business of another” are the basis for civil conspiracy. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711, 713 (1988) (allegation that defendants combined to prevent opening a restaurant survives summary judgment motion).

In the Complaint and at the hearing, Appellants have maintained that the complaint “alleged conduct that constituted a fraudulent act and that together that constituted a civil conspiracy . . . [and made] false representations under color of state authority that . . . if [SDMB] knew what was good for them, they would leave.” Hr’g Tr. 10:11-25, R. p. 410; Compl. ¶ 77-81, R. pp. 25-26. Similar to *Pridgen*, false statements, an unfriendly relationship and plan to have the victim fired demonstrated sufficient motive of an intent to harm for individual liability despite SCTCA immunity. *Pridgen*, 91 S.C.at 248, 705 S.E.2d at 64. SDMB’s allegations of a plan designed to “ruin or damage the business of SDMB” unequivocally state a cause of action that is outside the scope of the employees’ official duties. Compl. ¶ 80, R. p. 26. Therefore, under South Carolina law, the civil conspiracy allegations in Appellant’s Complaint state an actionable claim upon which relief can be granted against the Individual Respondents.

B. Appellant's Claims Included Allegations of Actual Malice

"Actual malice is ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights." *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898, 902 (1987). The Court of Appeals states "[c]ommon law actual malice means the defendant acted with ill will toward the plaintiff or acted recklessly or wantonly, meaning with conscious indifference toward the plaintiff's rights." *Murray v. Holnam, Inc.*, 344 S.C. 129, 142, 542 S.E.2d 743, 750 (Ct. App. 2001). Actual malice is also defined as "[t]he deliberate intent to commit an injury, as evidenced by external circumstances." *Black's Law Dictionary* 1042 (9th ed. 2009).

1. *Count 5, Constructive Fraud*

Constructive Fraud is a valid cause of action in South Carolina. *Greene v. Brown*, 199 S.C. 218, 19 S.E.2d 114 (1942); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 1993); *Designer Showrooms, Inc. v. Kelley*, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991); *Giles v. Lanfgord & Gibson, Inc.*, 285 S.C.285, 328 S.E.2d 916 (Ct. App. 1985); *see also, Cheney Bros., Inc. v. Batesville Casket Co., Inc.*, 47 F.3d 111, (4th Cir. 1995). It is a breach of a legal or equitable duty that the law defines as fraudulent because it tends to deceive, violate public policy or private confidence, or injure public interest. *Greene v. Brown*, 199 S.C. 218, 19 S.E.2d 114 (1942); *Woods v. State*, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 1993); *Giles v. Lanfgord & Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985). "[M]isrepresentations by conduct, as well as by express words, will support an action for fraud." *Satcher v. Berry*, 299 S.C. 381, 385 S.E.2d 41 (Ct. App. 1989). As representatives of the Horry County and HCDA, Respondent's Haldi, Apone, and Jackson are required to act in good faith and fair dealing to SDMB. Appellant's complaint alleges

that the combined actions of Respondents amounted to actionable constructive fraud. Compl. ¶¶ 82-91, R. pp. 26-27.

2. *Count 6, Defamation*

Defamation is a communication which tends to impeach a plaintiff's honesty, integrity, virtue, or reputation and expose him or her to public hatred, contempt, ridicule, or obloquy, or to cause the individual to be shunned or avoided, or to be injured in his or her business or occupation. *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118, 120 (1998); *Timmons v. News & Press, Inc.*, 232 S.C. 639, 103 S.E.2d 277, 281 (1958); *Smith v. Bradstreet Co.*, 63 S.C. 525, 41 S.E. 763 (1902). Defamation is actionable in South Carolina. *Id.* It may be spoken, written, or in broadcast media. *Willhoit v. WCSC, Inc.*, 293 S.C. 397, 358 S.E.2d 397 (Ct. App. 1986). In Appellant's Complaint, it alleged Respondents Haldi and Jackson each made written and spoken statements that are arguably defamatory *per se* as they imputed Appellant's impropriety or inadequacy in performing its trade or profession. Compl. ¶¶ 92-96, R. p. 27. See *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1996); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (Ct. App. 2001); *Moshtaghi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994).

3. *Count 7, Fraud and Misrepresentation*

It is well settled that an action for fraud or misrepresentation exists when a plaintiff alleges: (1) a false material representation; (2) that the statement(s) was (were) made with either knowledge or reckless disregard of truth or falsity; (3) that the statement(s) was (were) made with the intent of plaintiff's reliance on the statement(s); (4) that plaintiff was ignorant of the statement(s) falsity; (5) plaintiff's reliance on the statement(s) truth; (6) that plaintiff's reliance was reasonable; and (7) that plaintiff was injured thereby. *M.B. Kahn*

Construction Co. v. South Carolina Nat'l Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980); *Kiriakides v. Atlas Food Sys. & Servs., Inc.*, 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000), *modified* 343 S.C. 587, 541 S.E.2d 257 (2001); *Hooters of Am. v. Phillips*, 39 F. Supp. 2d 582 (D.S.C. 1998); *aff'd* 173 F.3d 933 (4th Cir. 1999). Appellant alleged Respondent Jackson's conduct amounted to fraud in its complaint. Compl. ¶¶ 97-100, R. p. 28.

4. *Count 8, Interference with Contractual Relations.*

Interference with contractual relations is the interference with a contract by on a defendant with knowledge of the contract by the tortfeasor, an intentional procurement of a breach by tortfeasor of the contracts breach without justification and actual damages. *Chitwood v. McMillian*, 189 S.C. 262, 1 S.E.2d 162 (1939). Additionally, there is a cause of action for intentional interference with prospective contracts. *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C.265, 395 S.E.2d 179 (1990). In its Letter of Agreement ("LOA") between SDMB, FAA, Robinson Aviation, and HCDA, SDMB is obligated to follow applicable rules and regulations relating to skydiving operations and airport procedures. Compl. ¶¶ 102-105, R. p. 28. In its Complaint, SDMB articulated facts demonstrating intentional concealment of unpublished rules (LOA between HCDA and Robinson Aviation) and regulations by HCDA. Compl. ¶ 104, R. p. 28. Further, HCDA's concealment was the proximate cause of SDMB's alleged conduct; although following published regulations in Part 105, Title 14 of the Code of Federal Regulations ("CFR") authorized SDMB's conduct, the failure to follow the terms of an LOA violates Part 139, Title 14 CFR. Compl. ¶¶ 101-107, R. pp. 28-29.

5. *Count 14, Trespass*

Trespass is the interference with plaintiff's exclusive, peaceable possession by the defendant without plaintiff's permission. *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993); *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993); see also Ralph King Anderson, Jr., *South Carolina Request to Charge-Civil* § 4-43 (2002). Appellant alleged that Respondent Jack Teal did unlawfully enter Appellant's premises without Appellant's permission causing damages, thus stating a permissible claim for trespass and damages to Appellant's property against Respondent Teal under South Carolina State Law. Compl. ¶¶ 137-140, R. pp. 31-32.

6. *Count 15, Unfair Trade Practices Act*

Under the South Carolina Unfair Trade Practices Act ("SCUTPA"),⁶ "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. § 39-5-20(a) (1971). A case may be filed by "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 35-5-20 may bring an action. . . ." S.C. Code Ann. § 39-5-140(a) (1971). "'Person' shall include natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity." S.C. Code Ann. § 39-5-10(a) (1971). "'Trade' and 'commerce' shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or

⁶ S.C. Code Ann. §§ 39-5-10, *et seq.*

indirectly affecting the people of this State.” S.C. Code Ann. § 39-5-10(b) (1971). Leases are defined as “a thing of value” under the SCUTPA. *Burbach v. Investors Management Corp. Internat’l*, 326 S.C. 492, 484 S.E.2d 119 (Ct. App. 1997). Local governments are “persons” and may be sued. *City of Charleston v. Hotels.com, LP*, 487 F.Supp. 2d 676 (D.S.C. 2007).

A SCUTPA action requires allegations of: (1) an unfair or deceptive act; (2) defendant’s actions affecting the public interest or are capable of repetition; and (3) that defendant’s actions caused plaintiff monetary or property loss. *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006). “Unfair acts” under SCUTPA actions include acts or conduct that “offends public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.” See *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574 (D.S.C. 2003) (interpreting “unfair acts” under the SCUTPA under a federal 12(b)(6) motion). SC Courts have defined “affecting the public” to not restrict allegations to adverse impact on the public, it is sufficient to allege conduct that is “capable of repetition.” *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000); *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E. 2d 483 (Ct. App. 1998); *Noack Enter., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986); *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 279 (D.S.C. 1999). Appellant alleged that the actions and conduct of each defendant when taken together were unethical, unscrupulous, and capable of repetition. Compl. ¶¶ 141-143, R. p. 32.

Appellant’s claims for breach of fiduciary duty, negligence, negligent supervision, negligent misrepresentation, trespass and Unfair Trade Practices Act each included

elements of Respondent's intention to harm Appellant in its ability to operate a legitimate aeronautical activity as defined by the federal Department of Transportation's FAA. Each of the Appellant's allegations are capable of repetition and, as Appellant's Complaint makes clear, are ongoing. Finally, Appellant's allegations of fraud, defamation, and constructive fraud include allegations of malice and are specifically excluded from the SCTCA individual immunity provisions. *See McCall v. Williams*, 52 F. Supp. 2d 611, 615 (D.S.C. 1999). In the light most favorable to the Appellant, and in compliance with the SCRPC, it was improper to dismiss the Individual Respondents.

II. BECAUSE SCRPC PERMITS CONFLICTING ALLEGATIONS AND INCONSISTENT THEORIES OF LIABILITY, THE TRIAL COURT ERRED WHEN IT DETERMINED THAT CONFLICTING ALLEGATIONS OF CONDUCT AND LIABILITY ARE AN INEQUITABLE INTERPRETATION OF APPELLANT'S COMPLAINT AND IMPERMISSIBLE.

A 12(b)(6) motion must also consider Rule 8, SCRPC. Rule 8(e)(2), SCRPC permits inconsistent pleadings and that "a party may state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or equitable grounds or both." Rule 8(f), SCRPC states that "All pleadings shall be so construed as to do substantial justice to all parties." Discussing the rejection of Code Pleading by the legislature, Professor Flanagan states:

Although South Carolina retained the Code Pleading requirement that factual detail is necessary to state a claim or defense, Rule 8 rejects other aspects of Code Pleading. Rule 8(e)(1) specifically states that the technical forms of pleading found in Code Pleading or at common law are not required. The allegations are to be "simple, concise and direct." This admonition reiterates the language of Rule 8(a) and (b) that claims and defenses are "short and plain statement."

Rule 8(e)(2) rejects the Code Pleading Requirement that allegations are to be consistent with each other. Formerly a party could not allege fraud to disavow a transaction, and in another count affirm the transaction to obtain its benefits. Each alternate theory in the pleading had to be sufficient, and if one was not, both failed under Code Pleading. The second sentence

of this rule reverses this harsh result. The third sentence of 8(e)(2) permits all causes of action or defenses to be pleaded regardless of their consistency, or whether they were legal or equitable claims. In addition, the pleader may assert claims alternately, or hypothetically. All allegations, however, are subject to Rule 11 which makes the attorney's signature a certificate that "to the best of his knowledge, information and belief there is good ground to support it." Plaintiffs no longer may be forced to elect which remedy or legal theory will be pursued at the pleading stage. An election may be compelled before the case is submitted to the jury when the causes of action are mutually repugnant, or when they require different modes of trial.

8(f) contains a fundamental principle of the rules: the substance of the pleading govern rather than its technical form. This principle is reemphasized by the language of 8(e)(1) that no technical forms of pleading are required, and Rule 8(c) that states that if affirmative defenses or counter claims are misnamed, the court should treat them as if correctly identified. Thus, the court should not seek out pleading defects when the parties are on notice of the issues. The rule, however, is not a license because it demands that substantial justice be accorded to all parties. An improper denial, or failure to plead an affirmative defense or all the elements of a cause of action still forecloses the pleader. Nor will allegations that contained certain required disclosures were not made be construed to raise the issues of erroneous disclosures. Likewise, a party may not raise an unpleaded issue when it would substantially prejudice the other party.

James F. Flanagan, *South Carolina Civil Procedure*, Ch. 8 § F, page 64-6 (2d ed. 1996 The South Carolina Bar – CLE Division)(footnotes omitted).

Despite the plain language of the complaint, the plain language of the SCTCA and the precedent interpreting the SCTCA and the allegations contained in the Appellant's Complaint, and Rule 8, SCRCF, the court accepted Respondent's argument *in toto* and dismissed the complaint with prejudice. Although not specifically plead, each of the counts identified each Respondent individually, by entity or both. The circuit court admitted that allegations of fraud, defamation, civil conspiracy, and trespass can be exceptions to immunity under the SCTCA but apparently only if the conduct plead is outside the scope of employment. Circuit Court Order, 7 (October 13, 2014), R. p. 11. This is contrary to the plain language of the statute and although Appellant's Complaint is arguably unartful, this alone should not support a 12(b)(6) motion to dismiss. As plead, a jury could infer

that the conduct complained of was either with malice, fraud, or an intent to harm while acting within the course of his official duties or outside the scope of duties sufficient to find individual liability under the SCTCA. *See Pridgen v. Ward*, 391, S.C. 238, 705 S.E.2d 58 (Ct. App. 2011) (government employees are not protected by SCTCA if jury could infer intent to harm).

In dismissing the complaint with prejudice, it appears that the circuit court improperly accepted Respondent's arguments that the Individual Respondents were entitled to intercorporate immunity and were included simply to cause an undue burden and harass. Circuit Court Order, 7-8 (October 13, 2014), R. pp. 11-12. In defense of the civil conspiracy claim, counsel for Respondent argued:

Your Honor, essentially it's our position that the plaintiff is trying to have his cake and eat it too, here. He wants to allege that they're acting as agents of the county, if it serves his purposes, and then he wants to act -- he wants to try to persuade you that if you read the Complaint in the light most favorable to the plaintiff, you have to say that -- you have to take his civil conspiracy cause of action to mean that they were acting outside the scope of their employment. We take the position that he can't have it both ways.

The defendants, all of the defendants, would be entitled to the defense of intercorporate immunity for civil conspiracy. These individuals are employees of the entity.

And as you correctly stated, they can't conspire within themselves. As long as they're doing -- taking actions that falls within their authority as employees of the entity, there is no conspiracy.

Hr'g Tr. 11:19-52, 12:1-11, R. pp. 411-12.

* * *

Your Honor, we certainly acknowledge the existence of the exceptions set forth in Subsection (b) of 15-78-70; however, our position is that the Complaint as stated does not satisfy that exception by containing allegations of intentional conduct or actual fraud or actual malice on the part of these individual defendants. It's simply an effort to keep them in the lawsuit to harass them personally for the actions that they have done as agents of the airport. And it's not permitted by the Tort Claims Act.

Hr'g Tr. 16:10-19, R. p. 416.

The court was persuaded by Respondents' arguments that Appellant can't plead

inconsistent allegations or have it “both ways” in a pleading, intercorporate immunity, and personal harassment to the Individual Respondents. The court decided:

This court acknowledges that Plaintiff’s Complaint contains causes of action for constructive fraud, fraud, defamation, and misrepresentation. . . . The cause of action for “constructive” clearly does not satisfy the *actual* fraud requirement. The cause of action for defamation can be interpreted to contain an allegation that Defendant Jackson’s statements were made “with actual or implied malice;” . . . The cause of action for fraud and misrepresentation appears to relate to alleged representations of Defendant Airport made by Defendant Jackson as an agent for Defendant Airport. Therefore, none of the allegations set forth in [the complaint] . . . appear to suggest that the individually named Defendants acted on their own with sufficient intent to take their actions outside the protections afforded by the [South Carolina Tort Claims Act] SCTCA

* * *

For these reasons, and following the guidance provided by the South Carolina Court of Appeals in *Flateau*, this court finds that the Plaintiff’s Complaint clearly attempts to assert tort claims against individually named employees of Defendant County and/or Defendant Airport that relate to conduct performed by said individuals that, even if presumed true for purposes of this motion only, was within the course and scope of their official duties of said entities. Furthermore, it is simply an inequitable interpretation of the allegations of the Complaint to allow Plaintiff to assert responsibility on the part of Defendants County and Airport for the actions of the individually named Defendants to the extent it serves Plaintiff’s interests – and then accept Plaintiff’s argument at the hearing that the causes of action set forth in the Complaint somehow suggest alternate allegations that Defendants Haldi, Apone, Jackson, and Teal acted outside the scope of their official duties for the sake of conveniently exposing said individuals to personal liability. Therefore, this court finds that the Complaint, on its face, fails to properly set forth any allegations that are not subject to the limitations of the South Carolina Tort Claims Act and the individually named Defendants are entitled to the protection set forth therein, including immunity from personal liability.

* * *

[F]or all the foregoing reasons, Plaintiff’s Complaint in this matter is hereby dismissed with prejudice as to all claims alleged against Defendants Haldi, Apone, Jackson, and Teal.

Circuit Court Order, 7-8 (October 13, 2014), R. pp. 11-12 (emphasis supplied).

Clearly, the circuit court rejected the plain meaning of Rule 12(b)(6), SCRCP and

the standards of review set forth by precedent. It is not necessary that the only interpretation of Appellant's allegations include conduct outside the scope of official duties or conduct with actual fraud, actual malice or intent to harm to set forth a claim or legal or equitable theory in lieu of the SCTCA. Here, all that is required to withstand a Rule 12(b)(6) motion to dismiss is to allege facts that place a defendant on notice and entitle a plaintiff to relief on any theory. See *Baird v. Charleston County*, 333 S.C. at 527, 511 S.E.2d at 74. The Individual Respondents have been placed on notice and the Appellant has stated multiple, albeit at times conflicting, theories for relief. As such, the trial court erred in dismissing the Individual Respondents from the Complaint.

III. BECAUSE DISCOVERY HAD NOT BEEN COMPLETED AND APPELLANT HAD REQUESTED LEAVE TO AMEND ITS PLEADINGS TO CORRECT THE TECHNICAL DEFECTS OF ITS COMPLAINT, THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S COMPLAINT AGAINST THE INDIVIDUAL RESPONDENTS WITH PREJUDICE

In South Carolina, generally, when a complaint dismissed for failure to state a claim under Rule 12(b)(6), SCRPC, it is without prejudice. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006). "The plaintiff in most cases should be given an opportunity to file and serve an amended complaint." *Id.* (citations omitted). Professor Flanagan, states:

The [12(b)(6)] motion must be denied if the facts and the inferences reasonably deducible from them show that the plaintiff could prevail on any theory of the case. Likewise, when the allegations of the complaint give rise to competing inferences on a material issue, the motion is to be denied. For example, the motion is generally not successful when a lack of proximate cause is asserted. That issue is reserved for the jury. The motion should not be granted merely because the plaintiff is not likely to prevail at trial. There is older authority that the demurrer should not be used to resolve novel issues, and some suggestion that the same result applies with Rule 12 motions. However, there is also authority that delaying a Rule 12(b)(6) order because the facts were not "ripe" was inappropriate.

The granting of a motion to dismiss may terminate the case.

However, the losing party is normally given the right to amend the complaint to cure the defect. In one case the Court of Appeals reversed a dismissal with prejudice so the matter could be repleaded under the appropriate federal cause of action. The dismissal has preclusive effect only on matters actually decided in the dismissal. The granting of a motion to dismiss is appealable under SC Code Ann. § 14-3-330(2)(c) (1976) because it strikes out a pleading. It is also appealable under § 14-3-330(1) because it involves the merits, and under this section it may be raised after the final judgment. There is no need for a certification under Rule 54(b) when the dismissal is less than all of the claims or parties.

Flanagan, *supra*, Ch. 12 § 5.d., pages 94-5 (footnotes omitted, emphasis supplied).

On June 9, 2014, Appellant sent a proposed order to the trial court with a request for leave to file an amended Complaint if Respondent's motion to dismiss was granted. R. p. 431. On August 15, 2014, in response to a request from the court, Appellant sent a second proposed order and another request for leave to file an amended Complaint if Respondent's motion to dismiss was granted. R. p. 437. The trial court did not discuss Appellant's requests to amend the complaint in its order and dismissed the complaint with prejudice in error. *See* Circuit Court Order, 1-8 (October 13, 2014), R. pp. 5-12.

"[W]hen a complaint is dismissed with prejudice and the plaintiff erroneously is denied the opportunity to file and serve an amended complaint, but the plaintiff fails to present additional factual allegations or a different theory of recovery which may give rise to a claim upon which relief may be granted, the appellate court may in its discretion affirm the dismissal of the complaint with prejudice." *Spence v. Spence*, 368 S.C. 106, 130-31, 628 S.E.2d 869, 882 (2006) (*rehearing denied*, original majority and dissenting opinions withdrawn and replaced).

Appellant has rephrased the offensive language of its Complaint and included, inconsistent allegations of the Individual Respondents acting outside the scope of their official duties and alternatively with actual malice, actual fraud, or intent to harm sufficient

to withstand a Rule 12(b)(6) motion to dismiss and has included a copy of the proposed Amended Complaint in its Designation of the Matter to be Included in the Appeal. See e.g., Am. Compl. ¶¶ 165-70, 181, R. pp. 71, 73.

The Amended Complaint includes new facts and additional parties that were unknown to the Appellant when the Complaint was originally drafted. Appellant has also included clauses to its allegations rectifying the offensive omissions identified by Respondents at the hearing and by the court in its order. *Id.* Appellant has not been afforded full discovery as it has a motion to compel against Horry County and HCDA and its Complaint against the Individual Respondents was dismissed before discovery was fully conducted with depositions, answers to interrogatories, and requests for production pending or contemplated.

CONCLUSION

For the reasons stated, Appellant asks this Court to reverse the circuit court's dismissal of the Individual Respondents, grant Appellants request to amend its Complaint and Order Respondent's to answer the Amended Complaint within fifteen (15) days of this Honorable Court's Order or a remand consistent with this Honorable Court's ruling.

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