

STATE OF SOUTH CAROLINA  
 COUNTY OF CHARLESTON  
 IN THE COURT OF COMMON PLEAS

FORM 4  
**FILED**

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-3689

2015 NOV 24 AM 11:56

Save Shem Creek Corp.

JULIE J. ARMSTRONG  
 CLERK OF COURT

Town of Mt. Pleasant and Shem Creek  
 Development Group, LLC

**RECEIVED**  
 JAN 04 2016  
 SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: G. Hamlin O'Kelley, III

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk : \_\_\_\_\_

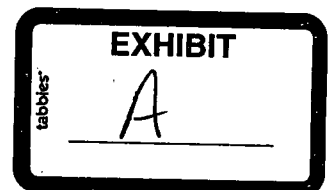
**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Save Shem Creek Corporation,  
Plaintiff,

vs.

The Town of Mount Pleasant and Shem  
Creek Development Group, LLC,  
Defendants.

IN THE COURT OF COMMON PLEAS  
CASE NUMBER: 2015-CP-10-3689

**ORDER GRANTING SHEM CREEK  
DEVELOPMENT GROUP, LLC'S  
MOTION TO DISMISS**

FILED  
2015 NOV 24 AM 11:56  
JULIE J. ARPISTRONG  
CLERK OF COURT

THIS MATTER CAME BEFORE the Court on November 13, 2015, for a hearing of the Defendant Shem Creek Development Group, LLC's Motion to Dismiss filed July 22, 2015. Present at the hearing were G. Hamlin O'Kelley, III, attorney for Shem Creek Development Group, LLC, Aaron E. Edwards, attorney for the Plaintiff Save Shem Creek Corporation, and David G. Pargliarini, attorney for the Town of Mt. Pleasant. For the reasons stated herein, the Defendant Shem Creek Development Group, LLC's Motion to Dismiss is **GRANTED**.



The Plaintiff in this case filed its Summons and Complaint on July 1, 2015. In the Complaint, the Plaintiff seeks to have this Court enter a declaratory judgment regarding decisions and approvals by the Town of Mt. Pleasant for a proposed office building to be built in the Town of Mt. Pleasant. (Complaint, ¶7) In its Complaint, the Plaintiff named the Shem Creek Development Group, LLC, as a Defendant. (Complaint). The Plaintiff mentions the Defendant Shem Creek Development Group, LLC, twice: once in the caption and once in Paragraph 5. (Complaint, Caption, ¶5). The Complaint states the following in reference to the Defendant Shem Creek Development Group, LLC:

5. Shem Creek Development Group, LLC is a South Carolina limited liability company, with a principal place of business in Charleston County. Shem Creek Development Group, LLC is named solely as a necessary party.

(Complaint, ¶15).

There is no other mention of Shem Creek Development Group, LLC in the Complaint.

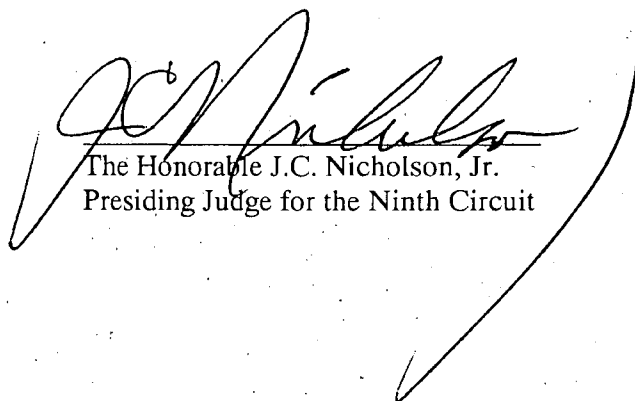
(Complaint, *id.*) There is no prayer for relief from the Defendant Shem Creek Development Group, LLC. (*Id.*)

Where there are no allegations pled against the Defendant Shem Creek Development Group, LLC, the Plaintiff's Complaint against it should be dismissed Under Rule 12(b)(6) SCRPC, a Defendant may make a motion to dismiss based on failure to state facts to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). A court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Flateau v. Harrison*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003). There are no facts at all pled against Shem Creek Development Group, LLC, and there is no relief sought from it. Instead, the Court is being asked to make a determination as to the actions of the Town of Mt. Pleasant's permitting process and to render an advisory opinion in the form of a declaratory judgment. (Complaint). The case is not a zoning appeal which might require Shem Creek Development Group, LLC under Rule 19 SCRPC as a necessary party. The Defendant Shem Creek Development Group, LLC, is not a necessary party since there are not facts or allegations pled against it in the Complaint itself. Without facts and allegations pled against it, Shem Creek Development Group, LLC, should be dismissed pursuant to Rule 12(b)(6) SCRPC; therefore, it is

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Complaint as to the Defendant Shem Creek Development Group, LLC, is hereby dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and

IT IS SO ORDERED!

Charleston, South Carolina  
11/25, 2015



The Honorable J.C. Nicholson, Jr.  
Presiding Judge for the Ninth Circuit