

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

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

Marvin H. Dukes, III, Master-in-Equity

CASE NO. 2014-001747

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SEP 28 2015
SC Court of Appeals

JOSEPH C. SUN Appellant

v.

**MARSHALL L. HORTON Respondents
and RICHARD ULBRICH**

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Respondents Horton and Ulbrich in their brief admitted their agency relationship is not in question. (Respondent Brief Page 10; R.p.4, line 19) They repeatedly argued that they should enjoy immunity erroneously as Appellant as shown in his Final Brief.

In South Carolina, "[a] civil conspiracy exists when there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage." *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct.App.2002) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 600, 358 S.E.2d 150, 152

(Ct.App.1987)). "A civil conspiracy may, of course, be furthered by an unlawful act. [but] an unlawful act is not a necessary element of the tort. An action for conspiracy may lie even though no unlawful means are used and no independently unlawful acts are committed." *Lee v.*

Chesterfield Gen. Hosp., 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct.App.1986). *Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 596 S.E.2d 67 (2004). Respondent's argument is erroneous.

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Hackworth*, 385 S.C. at 115, 682 S.E.2d at 874 (citing *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989)). *Benedict College v. National Credit System*, 400 S.C. 538, 738 S.E.2d 518 (2012).

In a civil conspiracy claim, injury to the Appellant need not be the only purpose behind the tortfeasor's conduct; many conspiracies will be at least partly motivated by the tortfeasor's desire to protect or benefit the tortfeasor's own lot. To be actionable, therefore, a conspiracy's "primary purpose or object" must be "to injure the plaintiff." *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986), *Benedict College*, supra. Appellant made those allegations in his complaint and Amended Complaint. (R.p. 15, line2)

It is error of the trial court to rule that "all of the claims set forth by Mr. Sun are barred under Fleming." (R.p.4, line 20 - p.5, line 2) It is also error of the trial court to grant summary judgment as to the claims against [Respondent Ulbrich]. (R.p.5, line 3-6)

Most of all, it is error of the trial court to conclude in Paragraph 8 that "there are no causes of action set forth in the Plaintiff's complaint to which would allow the Plaintiff to recover from either Defendant." (R.p.5, line 7,8)

Respondent's argument that Appellant's issues raised in his Appeal have not been properly

preserved for review by the Court of Appeals (Page 6 of Respondent's Brief) is erroneous and irrelevant because the trial judge states in its Order Paragraph 6 that "all of the claims set forth by Mr. Sun are barred under Fleming." (R.p.5, line 1) Therefore, trial court's error was preserved for appeal and should be reversed.

CONCLUSION

The judgment of the Court of Common Pleas should be reversed.

September 22, 2015

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have this date served the Appellant's Final Reply Brief and Certificate of Counsel on Respondents Horton and Ulbrich by depositing a copy of same in the U.S. Mail postage prepaid, on September 23, 2015, addressed to their attorneys on record:

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This 23rd day of September, 2015.



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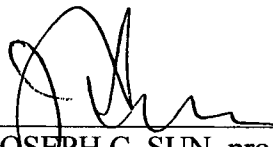
v.

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CERTIFICATE OF COUNSEL

The undersigned certifies that his Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

September 23, 2015.



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