

TABLE OF CONTENTS

Table of Authorities	ii-iv
Statement of Issues on Appeal	1
Statement of the Case	2
Statement of Relevant Facts	2-3
Arguments	3
I. The argument raised by the Appellants was not preserved for appeal at trial	3
II. The argument presented by the Appellants is rendered moot by the two-issue rule	5
III. The Court of Appeals correctly affirmed the trial court’s denial of the Appellants’ motion for directed verdict as Jenkins pled and proved special damages	6
IV. The Supreme Court should reconsider and reverse prior case law requiring special damages as an element of conspiracy	10
Conclusion	13

TABLE OF AUTHORITIES

Cases

<u>Armstrong v. Collins</u> , 366 S.C. 204, 227, 621, 368, 379 (Ct.App. 2005)	6
<u>Brown v. Leverette</u> , 291 S.C. 364, 353 S.E.2d 697 (1987).....	12
<u>Burnsed v. Greene</u> , 291 S.C. 59, 351 S.E.2d 910 (Ct. App. 1986).....	13
<u>Charles v. Texas Co.</u> , 199 S.C. 156, 18 S.E.2d 719 (1942).....	8-9
<u>Cole v. Raut</u> , 378 S.C. 398, 663 S.E.2d 30 (2008)	5
<u>Columbia Pools, Inc. v. Galvin</u> , 288 S.C. 59, 339 S.E.2d 524 (Ct.App. 1986).....	7
<u>Creech v. N.D.T. Indus.</u> , 815 F.Supp. (D.S.C. 1993)	12
<u>Elam v. S.C. Dep't of Transp.</u> , 361 S.C. 9, 602 S.E.2d 772(2004).....	4
<u>Epstin v. Berman</u> , 78 S.C. 327, 58 S.E. 1013 (1907).....	8
<u>Fitzer v. Greater Greenville Young Men's Christian Ass'n</u> , 277 S.C. 1, 282 S.E.2d 230 (1981)	12
<u>Gold Kist, Inc. v. C&S Nat'l Bank</u> , 286 S.C. 272, 333 S.E.2d 67 (Ct.App. 1985)	5
<u>Harper v. Etheridge</u> , 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986)	8
<u>Hackworth v. Greywood at Hammett</u> , 385 S.C. 110, 692 S.E.2d 871 (Ct.App. 2009).....	10
<u>Jackson v. Midlands Human Resource Center</u> , 296 S.C. 526, 374 S.E.2d 505 (Ct.App. 1988)	8
<u>Jenkins v. Few</u> , 391 S.C 209, 705 S.E.2d 457 (Ct.App. 2010)	6
<u>Jones v. Lott</u> , 387 S.C. 339, 692 S.E.2d 900 (2010)	5
<u>Kennedy v. South Carolina Retirement System</u> , 349 S.C. 531, 349 S.C. 531 (2001).....	4
<u>LaMotte v. Punchline of Columbia, Inc.</u> , 296 S.C. 66, 370 S.E.2d 711 (1988.. ..	8
<u>Lee v. Chesterfield Hospital</u> , 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986)	8
<u>McMillian v. Oconee Memorial Hospital</u> , 367 S.C. 559, 626 S.E.2d 884 (2006).....	8
<u>Micronics, Inc. v. South Carolina Dep't of Rev</u> , 345 S.C. 506, 548 S.E.2d 223 (Ct.App. 2001)	7

<u>Pelfrey v. Oconee County</u> , 207 S.C. 433, 36 S.E.2d 297 (1945)	7
<u>Rutto v. Southern Farm Bureau Life Ins. Co.</u> , 259 S.C. 170, 191 S.E.2d 7 (1972)	13
<u>Shaw v. East Coast Builders of Columbia, Inc.</u> , 291 S.C. 482, 354 S.E.2d 392 (1987)	12
<u>Smith v. Strickland</u> , 314 S.C. 192, 442 S.E.2d 207 (1994)	13
<u>Sorrell’s Case</u> , A.C. 700 (1925)	8
<u>Todd v. S.C. Farm Bureau Mut. Ins., Co.</u> , 276 S.C. 284, 278 S.E.2d 607 (1981)	10-13
<u>Vaught v. Waites</u> , 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989)	10-13
<u>White v. Livingston</u> , 231 S. C. 301, 98 S. E. 2d 534 (1957)	4
 <u>Statutes, Rules, and Regulations</u>	
Rule 1, SCRCF	12
Rule 7(c), SCRCF	12
Rule 8, SCRCF	12
Rule 221(a), SCACR	12
 <u>Other Authorities</u>	
15A C.J.S <i>Conspiracy</i> § 33	11
15A C.J.S <i>Conspiracy</i> § 47	11

Statement of Issues on Appeal

- I. Was the single argument raised by the Appellant preserved for appeal?
- II. Is the argument raised by the Appellant rendered moot by the two-issue rule?
- III. Did the Court of Appeals correctly affirm the trial court's denial of the Defendants' Motion for Directed Verdict on the cause of action of civil conspiracy?
- IV. Should the Court reconsider and reverse the case law which requires the establishment of special damages in conspiracy claims in light of Rule 8, SCRCPP?

Statement of the Case

The Plaintiff/Respondent, Kenneth E. Jenkins (hereinafter “Jenkins”), initiated this action by filing a Summons and Complaint on February 2, 2007. Jenkins’ Complaint alleged causes of action of trespass, conversion, civil conspiracy, violation of the Unfair Trade Practices Act, and defamation. On February 19, 2007, the Defendants filed an Answer in which they denied liability and asserted affirmative defenses. Prior to trial, Jenkins voluntarily withdrew his cause of action of defamation.

On August 25 and 26, 2008, a jury trial was held in the Court of Common Pleas in Greenville County. The Honorable D. Garrison Hill presided over the jury trial. The jury returned a verdict in favor of Jenkins on causes of action of trespass, conversion, and civil conspiracy. The jury returned a verdict in favor of the Defendants/Appellants on the cause of action of violation of the Unfair Trade Practices Act. The jury awarded \$28,000.00 in actual damages and \$100,000.00 in punitive damages. The Defendants/Appellants served their Notice of Appeal on September 16, 2008, which was timely filed.

Upon hearing the case, the Court of Appeals issued an order on December 8, 2010, affirming in part and reversing in part. The Court of Appeals upheld the general verdict for civil conspiracy, but reversed the verdict for conversion. The Court rejected the Appellants’ argument that the verdict should be reduced with respect to the cause of action for trespass, and did not alter the verdict amount, upholding both actual and punitive awards.

The Appellants filed a motion for rehearing, which was denied. Thereafter, they filed a Petition for a Writ of Certiorari, which was granted as to the sole issue of the proof of special damages under the conspiracy cause of action.

Statement of Facts

Jenkins was the owner and operator of a fertilizer and lime spreading business in Greenville, South Carolina. The Defendant, Benjamine S. Few, was the owner of Few Farms, Inc., a company which also provided fertilizer and lime spreading services to farmers in Greenville, South Carolina. Few Farms, Inc. is also a Defendant in the matter. Jenkins and the Defendants were competitors.

In February 2004, Benjamine Few, acting on behalf of himself and as President of Few Farms, Inc., hired two individuals to place sugar in the gas tank of Jenkins' Ford F-700 spreader truck. The two individuals poured sugar into the gas tank of Jenkins' truck on two occasions. In conspiring to place sugar in the gas tank of Jenkins' truck, the Defendants sought to put him out of business.

As a result of the Defendants' actions, the truck's engine was damaged and Jenkins was unable to operate his business for at least eight (8) days. Jenkins incurred numerous costs in attempting to determine the amount of damage to the truck and his business, as well as in identifying the perpetrators. In addition, Jenkins was forced to purchase a new spreader truck so that he could compete with the Defendants in the aftermath of their conspiratorial actions.

Argument

I. The argument raised by the Appellants was not preserved for appeal at trial.

The Appellants contend that the Court of Appeals failed to recognize that Jenkins alleged the same damages under his conspiracy claim as he alleged in the other causes of action, and thus, it erred in affirming the trial court's denial of the Defendants' motion for a directed verdict at trial. The Appellants base their argument solely upon a technicality in the Complaint: the use of a transitional paragraph introducing the causes of action following the conspiracy claim which

incorporates the previous allegations¹, including, *arguendo*, the claim for special damages. While the Appellants moved for a directed verdict on the conspiracy claim at trial, and also appealed the denial of that motion to the Court of Appeals, asserting that Jenkins did not prove special damages as required under conspiracy, this specific argument based upon the incorporation language in the transitional paragraphs introducing the causes of action has not previously been raised. This argument was first raised by the Appellants in their Petition for Rehearing to the Court of Appeals. As such, it is a novel argument which should not be considered by this Court.

An appealing party is limited to the same theory or argument presented at trial. White v. Livingston, 231 S. C. 301, 98 S. E. 2d 534 (1957). Issue and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). Moreover, in order to prevail on a petition for rehearing, the appellants must demonstrate that the Court overlooked or misapprehended their argument. Rule 221(a), SCACR. As this Court noted in Kennedy v. South Carolina Retirement System, 349 S.C. 531, 349 S.C. 531 (2001), the purpose of a petition for rehearing is not to allow counsel to argue new points which they failed to raise previously.

At trial, the Appellants moved for a directed verdict based upon Jenkins' failure to "establish any kind of special injury." R. 264. Counsel did not refer to the Complaint, nor did he rely upon the language in the transitional paragraphs following the cause of action of conspiracy, in arguing his motion. Likewise, the Appellants' final brief to the Court of Appeals is silent as to any argument related to the language in the Complaint. The Appellants merely argued that Jenkins failed to prove special damages at trial. Again, the first time that the

¹ The two causes of action following the conspiracy cause of action were defamation and violation of the South Carolina Unfair Trade Practices Act. Jenkins abandoned the defamation claim and the jury awarded a verdict to the Defendants on the SCUTPA claim.

Appellants raised the issue related to the language in the Complaint was in its Petition for Rehearing. Because the Court of Appeals did not overlook or misapprehend an argument, but instead, counsel failed to raise this argument, this Court should not now consider this novel argument.

II. The argument presented by the Appellants is rendered moot by the two-issue rule.

At trial, the jury returned a verdict for Jenkins on the causes of action of conspiracy, conversion and trespass. It returned a verdict for the Defendants on the violation of the South Carolina Unfair Trade Practices Act claim. The verdict form agreed to by counsel and submitted to the jury was a general verdict form and did not identify the amount of damages allocated to each cause of action. R. 2-3.

In their Petition for Writ of Certiorari, the Appellants requested that this Court review the award under conspiracy, the admission of testimony from one of Jenkins' experts, the reduction of the award under conversion, and the award of punitive damages. The Appellants did not ask the Appellate Court or the Supreme Court to reverse the jury verdict for trespass. As such, that verdict stands and cannot now be challenged or infringed upon.

Citing Gold Kist, Inc. v. C&S Nat'l Bank, 286 S.C. 272, 282, 333 S.E.2d 67, 73 (Ct.App. 1985), this Court held: "Under the two-issue rule, when a jury returns a general verdict in a case involving two or more issues or defenses, and the verdict is supported as to at least one issue or defense that has been presented to the jury free from error, the verdict will not be reversed." Cole v. Raut, 378 S.C. 398, 406-7, 663 S.E.2d 30, 34 (2008). Where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground becomes the law of the case. Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900 (2010).

As the Court of Appeals noted in its opinion in this case, “because the verdict was a general verdict, it is impossible to determine how the jury allocated damages between civil conspiracy, conversion, and trespass to personal property.” Jenkins v. Few, 391 S.C. 209, 221, 705 S.E.2d 457, 463 (Ct.App. 2010). The Court continued, noting that it would not speculate as to how the jury allocated damages. *Id.*, citing Armstrong v. Collins, 366 S.C. 204, 227, 621, 368, 379 (Ct.App. 2005) (finding “[b]ecause the verdict was a general verdict, we cannot now speculate as to how the jury allocated damages”).

The Appellants did not appeal the jury’s finding as to trespass, but instead, only challenged the amount of the verdict, requesting that it be reduced. That argument was summarily rejected by the Court of Appeals. As such, the verdict for trespass stands in full. As mentioned above, the verdict form was general and did not specify the award for each cause of action. It is impossible to now determine the amount which was awarded by the jury under conversion versus trespass. Because the Appellants have not appealed the verdict for trespass, and it is impossible to determine how the jury allocated damages between the causes of action, the argument raised by the Appellants with respect to the cause of action of conspiracy is mooted by the two-issue rule and should not be considered by this Court.

III. The Court of Appeals correctly affirmed the trial court’s denial of the Appellants’ motion for directed verdict as Jenkins pled and proved special damages.

The Appellants contend that the Court of Appeals erred in affirming damages under a conspiracy theory where there were no special damages pled or proven. The Appellants argue that the Court of Appeals failed to recognize that Jenkins’ Complaint incorporated additional claims for the same losses as pled under conspiracy in other causes of action. This is the only argument submitted by the Appellants. Should the Court reach this issue, Jenkins submits that

he both pled and proved special damages, and that the jury's verdict should not be overturned based upon a mere technicality in pleading by counsel.

Jenkins acknowledges that paragraphs 24 and 30 of his Complaint include transitional paragraphs which incorporate previous allegations: "The allegations contained in paragraphs 1-23 are alleged [as] if repeated verbatim."² R. 7. He further acknowledges that these transition paragraphs followed the cause of action for conspiracy, in which he explicitly pled "special damages, including, but not limited to, the destruction of the Ford truck, and the loss of revenue for the nine days which Jenkins could not operate his business." R. 7.

It is well settled that the policy of South Carolina courts is to favor the disposition of issues on their merits, rather than on technicalities. Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct.App. 1986); Micronics, Inc. v. South Carolina Dep't of Rev, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct.App. 2001). It has also been held that claims should not be denied upon technicalities. Pelfrey v. Oconee County, 207 S.C. 433, 36 S.E.2d 297 (1945).³ The Appellants' sole contention on appeal is that Jenkins' pleadings technically incorporate previous allegations, which include a plea for special damages under conspiracy. This is a technicality. The incorporation of the previous allegations was a result of the routine pleading practice of Jenkins' counsel, and should not be used to circumvent the jury's verdict on the merits. Jenkins submits that the conspiracy cause of action was properly submitted to the jury and should not be disturbed because of a technicality which was not raised prior to the Appellants' Petition for Rehearing to the Court of Appeals.

However, should the Court review the substance of this issue, Jenkins submits that the trial court and Court of Appeals correctly found that Jenkins pled and proved special damages.

² Paragraph 30 reads: "The allegations contained in paragraphs 1- 29 are alleged [as] if repeated verbatim." R. 7.

³ Jenkins recognizes that these cases deal with motions for default and a workers' compensation claim, respectively; however, submits that the underlying policy is applicable here.

An action for civil conspiracy is one at law, and the trial court's findings will be upheld on appeal unless they are without evidentiary support. McMillan v. Oconee Memorial Hosp., 367 S.C. 559, 626 S.E.2d 884 (2006). A civil conspiracy is "a combination of two or more persons joining for the purpose of injuring the plaintiff." LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). The essential consideration in determining whether a conspiracy exists is whether the primary purpose or object of the combination is to injure the Plaintiff. Lee v. Chesterfield Hosp., 289 S.C. 6, 344 S.E.2d 379 (Ct.App. 1986). A combination of two or more persons willfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable. Id. at 13, *citing* Sorrell's Case, A.C. 700, 712 (1925). The Plaintiff must also establish special damages. Jackson v. Midlands Human Resource Center, 296 S.C. 526, 374 S.E.2d 505 (Ct.App. 1988). Special damages "are such as naturally and proximately, but not necessarily, accrue from the unlawful acts alleged" Epstin v. Berman, 78 S.C. 327, 330, 58 S.E. 1013, 1015 (1907). South Carolina courts have held that in an action for conspiracy resulting in damages to a business, special damages may include loss of profits. Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942).

As stated above, Jenkins specifically alleged that the conspiracy alone resulted in special damages, including loss of profits. R. 7. The evidence and testimony presented at trial established that Jenkins' special damages included the loss of profits caused by the conspiracy, as well as damages to his business which forced him to purchase a new spreader truck so that he could compete with the conspirators, which are recoverable under a cause of action of conspiracy. In Charles v. Texas, the South Carolina Supreme Court considered what damages are recoverable by a business which is harmed by a competitor's conspiratorial actions:

While speculation may not furnish a foundation for a jury award, common sense and business experience combine with fundamental legal concepts to entitle the plaintiff

in cases of the present character to recover a sum that takes into account not only the specific items of loss and damage traceable to the acts of the defendants in specific transactions, and the loss and damage inflicted on the plaintiff in the destruction of particular items of his business; he also is entitled to recover some reasonable amount that will compensate him for the loss of profits that he will sustain by reason of the permanent damage done his business, insofar as a determination on this subject can be reached from the evidence.

Id. at 727-28. The testimony and evidence proffered at trial established Jenkins' claim of special damages, including lost profits. Jenkins' uncontroverted testimony at trial, supported by a spreadsheet reflecting revenue generation which was entered into evidence, was that he could not operate his spreading business for 8.16 days, resulting in a loss of \$5,891.00. (R. p. 180, line 17 – p. 181, line 2; R. pp. 15 – 17, R. pp. 18 - 36). While Jenkins' lost profits naturally and proximately flowed from the appellants' bad acts, they did not necessarily result from the wrong, as Jenkins may have very well been able to continue to operate his business under a variety of alternative conditions. Because Jenkins' lost profits were an aspect of damages that were a result of the conspiracy cause of action alone, which naturally and proximately accrued from the Appellants' unlawful acts, they constitute special damages.

In addition to the lost profits suffered by Jenkins as a result of the conspiracy, he was also forced to purchase a larger spreader truck so that he could continue to compete with the Appellants. Jenkins testified that as a result of the conspiratorial actions of the Appellants, he purchased a new spreader truck for \$38,272, as he was determined "that [he] was not going to let somebody put [him] out of business." (R. p. 187, line 12 – p. 188, line 8). In addition to the loss of profits, Jenkins' purchase of the new truck constitutes special damages resulting from the civil conspiracy.

Finally, Jenkins also testified that he incurred costs of \$2,035 related to the award which he paid for information leading to the identification of the person responsible for the malicious destruction of his truck. (R. p. 183, line 25 – p. 185, line 24). This expense was not related to any

of the other causes of action and was appropriately regarded as special damages by the trial court and the Court of Appeals.

Upon considering the testimony and evidence submitted to the jury, the Court of Appeals agreed that the evidence supported the trial court's ruling that Jenkins alleged and demonstrated special damages at trial.

Because the trial judge's decision to deny the Appellants' motion for directed verdict as to conspiracy was supported by the evidence and testimony, and because the matter should be considered on its merits, rather than a technicality, this Court should affirm the decision of the Court of Appeals in upholding the jury verdict for conspiracy.

IV. The Supreme Court should reconsider and reverse prior case law requiring special damages as an element of conspiracy.

The Appellants contend that Jenkins failed to plead and prove special damages. As outlined above, Jenkins did in fact plead and prove special damages. Nevertheless, Jenkins submits, alternatively, that the case law relied upon by the Appellants in support of their proposition is no longer good law since it originated prior to the adoption of the South Carolina Rules of Civil Procedure.⁴

The Appellants rely upon Vaught v. Waites, 300 S.C. 301, 387 S.E.2d 91 (Ct.App. 1989), and its progeny for the proposition that Jenkins must prove special damages which did not flow from any other cause of action. Vaught is a 1989 Court of Appeals decision that cited as its authority the case of Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981). Todd, however, was decided five years before the adoption of the South Carolina Rules of Civil Procedure.

⁴ This argument was made by Appellants in Hackworth v. Greywood at Hammett, 385 S.C. 110, 682 S.E.2d 871 (Ct.App. 2009), and was rejected by the Court of Appeals.

In Todd, the Court sustained the defendant's demurrer as to the plaintiff's claim for civil conspiracy. The Todd Court reasoned:

[T]he fifth cause of action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy are plead [sic]. The only alleged wrongful acts plead [sic] are those for which damages have already been sought. Paragraph 8 in the first cause of action in fact alleges, inter alia, "That without cause or justification, the defendants, . . . conspired to and did intentionally interfere or otherwise render impossible the performance by the plaintiff of the employment contracts with certain of the other defendants" (Emphasis added).

The trial judge erred by overruling the demurrer to the conspiracy cause of action in the complaint, since Todd can recover no additional damages for the alleged fifth cause of action. The rule applicable to these pleadings is stated at 15A C.J.S. Conspiracy s 33, at 718:

Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

Todd seeks damages in his first four causes of action for the same acts incorporated by the fifth cause. He is therefore precluded from seeking damages for the same acts yet again. As such, the fifth cause fails to state an action⁵

Todd, 278 S.E.2d. at 611. However, the holding in Todd is flawed for two reasons and, as a result, its progeny should be reversed or distinguished. First, Todd misconstrued the C.J.S. authority. Second, Todd was decided before the adoption of the South Carolina Rules of Civil Procedure, which specifically allows the pleading of alternative theories of recovery.

Todd cites no South Carolina case, rule, or statute to support its ruling on the demurrer. The C.J.S. cite quoted by Todd clearly does not stand for the proposition that a party cannot plead and prove both an underlying wrong and a conspiracy to commit the wrong, or that one cannot plead and prove alternative theories of recovery. Instead, a plain reading of the citation

⁵ The current citation for the quoted paragraph of the Corpus Juris Secundum used in Todd is 15A C.J.S. *Conspiracy* § 47.

shows only that a party will not be permitted to recover *damages* both for the underlying wrong and the conspiracy. Jenkins does not quarrel with this latter proposition and acknowledges that only one recovery of damages may be permitted in certain cases. However, Jenkins submits that the Court misinterpreted the C.J.S. authority upon which it based its decisions in Todd and Vaught, and thus, the theory is flawed. A rule that no longer serves a legitimate purpose should not be followed because of dogged adherence to *stare decisis*; *stare decisis* should be used to foster stability and certainty in law, but not perpetuate error and injustice. Fitzer v. Greater Greenville Young Men's Christian Ass'n, 277 S.C.1, 4, 282 S.E.2d 230, 231 (1981).

The South Carolina Rules of Civil Procedure were promulgated by our Supreme Court and were accepted by the General Assembly. As such, the Rules have the force and effect of a legislative enactment. Creech v. N.D.T. Indus., Inc., 815 F. Supp. 165, 169 (D.S.C. 1993). The South Carolina Rules of Civil Procedure, which went into effect on July 1, 1985, govern the procedures in all civil suits in all South Carolina Courts. Rule 1, SCRPC. As a result, the applicability of the Rules must be considered by every court in every case.

Under the Rules of Civil Procedure, the demurrer, which was a critical factor in Todd, was expressly abolished by Rule 7(c). Rule 7, SCRPC ("Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used."); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (Rule 12(b)(6) replaces and performs the same function as the old statutory pleading rules regarding demurrers); Shaw v. East Coast Builders of Columbia, Inc., 291 S.C. 482, 354 S.E.2d 392 (1987) (a demurrer was no longer permitted under South Carolina law once the rules of civil procedure took effect). Additionally, Rule 8 allows a pleader to join as alternate claims as many claims, legal or equitable, as he has against the opposing party, even if the claims are inconsistent. Rule 8, SCRPC; see also Harper v. Ethridge, 290 S.C.112, 348 S.E.2d 374

(Ct.App. 1986) (stating same); (Burnsed v. Greene, 291 S.C. 59, 351 S.E.2d 910 (Ct.App. 1986) (the new rules abolish older restrictions on joinder of causes of action so that a party may now raise as many claims as he has against the other); Smith v. Strickland, 314 S.C. 192, 442 S.E.2d 207 (1994) (a plaintiff is permitted to assert all viable causes of action against the other whether they are consistent or not). However, these Rules which allow for pleading alternative theories of a case were not considered by the Court in Vaught when it adopted the reasoning in Todd.

Assuming *arguendo* that Todd correctly construed the C.J.S. citation on which its decision was based, both the Todd and Vaught decisions, as well as later cases citing them for authority on the point at issue in this appeal, have been implicitly repealed by the adoption of the South Carolina Rules of Civil Procedure. Alternatively, because none of the cases cited by the Appellants in support of their position considered the applicability of Rule 8 when pleading civil conspiracy actions, those cases are inapposite, as they do not address a claimant's right to plead and to attempt to prove alternative theories of recovery as provided by the Rule. See Rutto v. Southern Farm Bureau Life Ins. Co., 259 S.C. 170, 191 S.E.2d 7 (1972) (stating that a case cannot be binding precedent on a legal point not mentioned in the opinion or argued in the case).

Because the case law which established the requirement for pleading and proving special damages was based upon an antiquated pleading style which has been abandoned by our Courts, and is inconsistent with the South Carolina Rules of Civil Procedure, Jenkins submits that the Court should reconsider and reverse this legal precedent.

Conclusion

Based upon the foregoing authorities and arguments, the Respondent respectfully submits that the trial court properly denied the Appellants' motion for directed verdict, and the Court of Appeals' decision should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Fred W. Suggs III" with a stylized flourish at the end.

Fred W. Suggs III (Bar #10222)
ROE CASSIDY COATES & PRICE, PA
P. O. Box 10529
Greenville, South Carolina 29603
(864) 349-2600

Attorney for Respondent

Greenville, South Carolina

May 8, 2012

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS
The Honorable D. Garrison Hill, Circuit Court Judge, 13th Circuit

Case No. 07-CP-23-0779

Benjamine Scott Few and Few Farms, Inc., *Appellants,*

v.

Kenneth B. Jenkins, *Respondent.*

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing BRIEF OF RESPONDENT was served upon counsel of record in the above-referenced action this 11th day of May, 2011, by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

J. Falkner Wilkes
638 E. Washington Street
Greenville, SC 29601



Fred W. Suggs III (Bar # 70222)
ROE CASSIDY COATES & PRICE, PA
P. O. Box 10529
Greenville, South Carolina 29603
(864) 349-2600
Attorney for Respondent



Roe Cassidy
Coates & Price PA

FRED W. "TREY" SUGGS III
(864) 349-2616
RMOODY@ROECASSIDY.COM

May 11, 2012

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

MAY 14 2012

S.C. Supreme Court

Re: *Kenneth B. Jenkins v. Benjamine Scott Few and Few Farms, Inc.*
Case No. 2007-CP-23-0779
Appeal from Greenville County Court of Common Pleas
The Honorable D. Garrison Hill, Judge 13th Circuit

Dear Mr. Shearouse:

Enclosed please find the unbound original and fifteen copies of Respondent's Initial Brief in the above-referenced appeal. Please file the enclosed documents in your usual manner and kindly return a clocked copy of the same to me in the stamped, self-addressed envelope provided herein.

If you have any questions or concerns, please do not hesitate to call.

With highest regards,

Very truly yours,

ROE CASSIDY COATES & PRICE, P.A.

Ellen S. Griffin
Paralegal to Fred W. "Trey" Suggs III

Enclosures: (as stated above)

cc: J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
Attorney for Petitioners

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303