

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2015-001720

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SC Court of Appeals

Kevin Watkins..... Appellant,  
v.  
Jason Hall Jr., Jason Hall Sr., Martha Hall, and J.S. Hall Inc.,..... Defendants,  
Of Which J.S. Hall Inc. is the..... Respondent.

**REPLY BRIEF OF APPELLANT**

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## REPLY TO RESPONDENT'S BRIEF

### Rule 8 SCRPC Governs the Pleadings

In its appellate brief, the respondent continues to argue for a higher standard of pleading than the standard set by our legislature in Rule 8 SCRPC. At least implicitly, the respondent seems to continue to argue that particularized facts must be pled instead of "...the more liberal pleading requirements of Rule 8, SCRPC." *Carolina First Corp. v. Whittle*, 539 S.E.2d 402. The respondent continues to rely on the rationale that particularized facts are required as described by Rule 23 SCRPC, which is applicable to shareholder derivative actions, and not cases like the one before the Court. "Rule 23 is a departure from the more liberal pleading requirements of Rule 8, SCRPC, in that it requires particularized allegations." *Id.* The pleading related to this appeal contains several allegations that survive the low Rule 8 SCRPC threshold.

The appellant has made a "short and plain statement of the facts" required by Rule 8, SCRPC. "[I]f the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory," a motion to dismiss should be denied. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). At times, it seems as if the respondent argues that the appellant's case fails under a summary judgment analysis. However, the appellant need not show genuine issues of material fact (which also exist), but must only set forth facts and allegations that, if assumed true, entitle him to recover. *Id.* The pleading at issue does that in its several facts and allegations related to claims for vicarious liability and direct liability for negligent hiring and supervision. The respondent's only known shareholder, officer and director actually owns the gun used to shoot the appellant. (R. p. 89). The respondent stored the gun in the same house where it lodged its property manager (the shooter), who is "always on duty." At least an inference exists that the accessibility of the respondent's gun aided the respondent's employee in shooting the appellant. Many of these facts, allegations, and inferences are contained in the Third Amended Complaint, and would survive even a particularized fact standard.

The respondent has cited authority for the definition of "scope and course of authority." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). *James* does not speak to Rule 8 SCRPC pleading requirements. The other case cited by the respondent is *Jones v. Gilstrap*, 343 S.E.2d 646 (S.C. Ct. App. 1986). *Jones* focused more on whether a cause of action was stated, not whether sufficient factual allegations were made. *Id.* It is doubtful that the respondent contests that the appellant stated all elements of all causes of action pled in the Third

Amended Complaint. *Jones* states “A demurrer admits facts well pleaded in a complaint but does not admit conclusions of law.” *Id.*, citing *Carrington v. City of Spartanburg*, 283 S.C. 298, 322 S.E. (2d) 28, 29 (Ct. App. 1984). The appellant’s allegations are not merely conclusions of law:

12. Hall, Jr. is an employee of Hall, Inc. and works as the full time care-taker of the defendants’ properties as a condition of being able to reside in a home owned by one or more of the defendants. In addition, Hall, Jr. receives monetary compensation for his duties as caretaker for Hall, Sr.’s properties.
13. Hall, Jr.’s paychecks for his caretaker duties are issued by Hall, Inc. and, upon information and belief, are signed by Hall, Sr.
20. Hall, Jr. acted within his capacity as caretaker the property owned by one or more of the defendants and Hall, Sr., Hall, Inc. and Martha Hall acted vicariously through Hall, Jr.
21. Hall, Sr., Hall, Inc. and Martha Hall endorsed and ratified Hall, Jr.’s actions.
22. Hall, Sr., Hall, Inc. and Martha Hall were negligent and/or reckless by hiring Hall, Jr., who injured the plaintiff by acting recklessly or through mental derangement.
23. Hall, Sr., Hall, Inc. and Martha Hall knew or should have known of Hall, Jr.’s dangerous propensities.
24. During all times described herein, Hall, Sr. and possibly Martha Hall acted as directors of J.S. Hall, Inc., and these defendants acted vicariously through Hall, Jr.
26. ... Hall, Sr., Hall, Inc. and Martha Hall owed a duty to avoid hiring dangerous employees and other duties as will be shown through discovery and at trial.
37. Hall, Sr., and/or Martha Hall as owners of the property in question and/or exert dominion and control of it and one or both of them are shareholders of Hall, Inc. the defendants breached their duty by hiring and/or failing to properly supervise Hall, Jr.

The specificity and descriptions contained in the Third Amended Complaint do not merely make “conclusions of law,” but describe the parties’ relationship to each other, the duties of the parties, the respondent’s employee’s job and residence, and the fact that the respondent pays its employee for his services. The respondent pays its employee in part by lodging him in the house where the respondent stores the gun that was used to shoot the appellant.

The respondent’s motion to dismiss should be denied because the pleadings entitle the plaintiff to relief on not just one, but several theories. “The motion cannot 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.” *Dye v. Gainey*, 320 S.C. 65, 463 S.E.2d 97 (Ct.App.1995). “The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief. The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” *Id.* at 68, 463 S.E.2d at 99.

### **The Shooter’s Employment with the Respondent**

It should be noted that as far as the respondent’s employee is concerned, there was never a time he was not an employee of the respondent during or since the shooting. Jason Hall, Jr. is specifically alleged to be an employee of the respondent, and it is specifically alleged that he shot the appellant while acting as an employee. The respondent continues to aver that the respondent’s employee was not an employee when he shot the appellant, but the respondent’s employee has given sworn testimony contrary to the respondent’s statement. This fact question survives even a summary judgment scrutiny, and certainly surpasses the lesser mandates of Rule 8 *SCRPC*. These allegations are set forth in the Third Amended Complaint because the respondent’s employee has testified he is “always on call,” and that his J.S. Hall, Inc. duties include acting as property manager for the property where pertinent shooting took place. (R. p. 59, lines 8-21, p. 56, line 23). The shooter/employee went on to testify that he receives J.S. Hall, Inc. paychecks for his duties and that he lives in a house at a reduced rent in exchange for acting as property manager. (R. p. 69, lines 4-8, p. 48, lines 2-13, p. 68, lines 2-13, p. 57, lines 3-6). The shooter/employee’s father, Jason Hall, Sr., owns J.S. Hall, Inc. (R. p. 48, lines 9-21). The house where the shooter/employee lives is owned by his mother, who seems to be involved in and “make[s] decisions” for J.S. Hall, Inc., as alleged in the pleadings. (R. p. 57, lines 16-25, pp. 7-9).

The appellant drafted the Third Amended Complaint to include information gleaned from the shooter/employee’s testimony. If considered to be true, the appellant’s statement that shooter/employee shot the appellant while acting as the respondent’s employee defeats the respondent’s motion to dismiss. “Generally, in considering a 12(b)(6) motion, the court must base its ruling solely upon allegations set forth on the face of the complaint.” *Baird v. Charleston County*, 713 S.E.2d 604 (2011); *Doe v. Greenville County Sch. Dist.*, 651 S.E.2d 305, 307 (2007). “The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom

would entitle the plaintiff to any relief on any theory.” *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). The pleadings unambiguously state the shooter/employee acted in the scope and course of his employment when he shot the appellant, and at least an inference can be drawn that the shooter was attempting to protect the property within his capacity as property manager, since the shooter/employee lives in the house where the shooting occurred.

Contrary to the respondent’s argument, the appellant is not required to allege some prior act known to the respondent before hiring the employee that shot the appellant. The appellant has stated the managers of J.S. Hall, Inc. “...had a duty to avoid hiring unstable, mentally deranged or dangerous persons to reside on and care for...” the property where the respondent’s employee shot the appellant, and that they “...had a duty to properly supervise...” the employee. (R. p. 9). The pleadings make it clear that the parents of the shooter/employee “... are shareholders of Hall, Inc...” and the respondent “...breached [its] duty by hiring and/or failing to properly supervise Hall, Jr.” (R. p. 9).

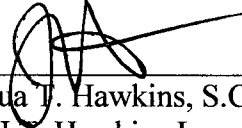
The respondent has admitted that it never performed a background check before hiring the shooter/employee and that the employee/shooter was never reprimanded for his actions. (R. p. 90). These facts are consistent with the pleadings and the appellant’s claim for negligent hiring and supervision.

According to the shooter/employee’s own testimony, he *had* to have been on duty when he shot the appellant, a fact which is unambiguous on the face of the pleadings. (R. p. 7). “The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Brown v. Leverette*, 353 SE 2d 697 (Supreme Court 1987); *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985); and *Glass v. Glass*, 276 S.C. 625, 281 S.E. (2d) 221 (1981).

**Conclusion**

For the reasons stated herein and in the appellant's initial brief, the appellant respectfully requests that the Appellate Court reverse the Circuit Court's dismissal of J.S. Hall, Inc. as a defendant.

Respectfully submitted,



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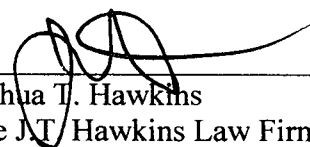
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v.

J.S. Hall, Inc.....Respondent.

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Appellant Kevin Watkins hereby certifies that the appellant's Final Brief and Reply Brief both comply with Rule 211(b), SCACR.



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