

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE G. THOMAS COOPER, JR.
CIRCUIT COURT JUDGE

CASE NO. 2014-CP-32-0697

2014-000829

Vivian Atkins, Robert P. Frick, and Kay Hollis,
in their official capacities as members of the
Town Council of the Town of Chapin,

Appellants,

v.

James R. Wilson, Jr. in his official capacity
as Mayor of the Town of Chapin,
Gregg White in his official capacity as a
member of the Town Council of the
Town of Chapin and the Town of Chapin, Defendants

Of whom James R. Wilson, Jr. and Gregg White are

Respondents.

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Authorities	i
Issues presented on Appeal	1
Statement of the Case	1
Argument	2
1. Did the Court err in dismissing the case pursuant to Rule 12(b)(6), SCRCP?	2
2. Did the Court err in denying the Appellants' Motion for Temporary Relief?	3
3. Did the Court err in dismissing the Second and Fourth Causes of Action on a Motion to Dismiss?	3
4. Did the Court err in finding that §2.206(b) of the Chapin Town Ordinances applies to Special Meetings called by a majority of Council pursuant to §2.202(3) of the Chapin Town Ordinances?	3
5. Did the Court err in invalidating the actions taken by the Appellants at the Special meeting?	5
Conclusion	7

TABLE OF AUTHORITIES

STATUTES

5-5-10(a)	1
5-7-160	1
§5-7-250	5
§5-9-20	1
§5-9-30	1
§15-53-120	5
§15-77-300	4
§30-4-80(a)	5

CASES

<u>Baird v. Charleston County,</u> 333 S.C., 519, 511 S.E.2d 69 (1999)	2
<u>Brown v. Leverette,</u> 291 S.C. 364, 353 S.E.2d 697 (1987)	2
<u>CFRE, LLC v. Greenville County Assessor,</u> 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)	5
<u>Lambries v. Saluda County Council,</u> 398 S.C. 501, 728 S.E.2d 488 (Ct. App. 2012)	1
<u>Lambries v. Saluda County Council,</u> 409 S.C. 1, 760 S.E.2d 785 (2014)	3, 5
<u>McClanahan v. Richland Cnty. Council,</u> 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)	5
<u>Robison v. Asbill,</u> 328 S.C. 450, 492 S.E.2d 400, (Ct. App. 1997)	6
<u>Sparks v. Palmetto Hardwood, Inc.,</u> 406 S.C. 124, 750 S.E.2d 61 (2013)	5

COURT RULES

12(b)(1)	1
12(b)(6)	1
56	3

CHAPIN TOWN ORDINANCES

§1.204	5
§2.202	2, 4
§2.203	2
§2.206	3, 4, 5

ISSUES PRESENTED ON APPEAL

1. Did the Court err in dismissing the case pursuant to Rule 12(b)(6), SCRPC?
2. Did the Court err in denying the Appellants' Motion for Temporary Relief?
3. Did the Court err in dismissing the Second and Fourth Causes of Action on a Motion to Dismiss?
4. Did the Court err in finding that §2.206(b) of the Chapin Town Ordinances applies to Special Meetings called by a majority of Council pursuant to §2.202(3) of the Chapin Town Ordinances?
5. Did the Court err in invalidating the actions taken by the Appellants at the Special meeting?

STATEMENT OF THE CASE

The Town of Chapin has the Mayor-Council form of municipal government with the Mayor and 4 members constituting the Town Council. §5-5-10(a), §5-9-20. Appellants constitute a majority of Council. Respondent Wilson was elected Mayor in November 2013. Respondent White was also elected a member of Council in November 2013. Each took office in January, 2014. The mayor in the Mayor-Council form has the powers set for in §5-9-30. Except for those powers delegated to the Mayor by §5-9-30, the Council has all other powers. §5-7-160.

Shortly after Respondent Wilson took office, the Appellants realized that none of their proposals were being placed on the agendas for Town Council meetings. At that time, Court of Appeals decision in Lambries I was the current law. Lambries v. Saluda County Council, 398 S.C. 501, 728 S.E.2d 488 (Ct. App. 2012). The Appellants interpreted the case as prohibiting them from seeking to amend the agenda at a regular meeting.

After several attempts to get matters on the agenda, Appellants commenced this action on February 26, 2014, seeking declaratory and injunctive relief. The Appellants also filed a motion seeking temporary relief. The Respondents filed a Motion to Dismiss the Action pursuant to Rule 12(b)(1) and Rule 12(b)(6).

The matter came before the Honorable G. Thomas Cooper on March 10, 2014.

Both the Appellants and Respondents presented affidavits to the Court.

In his Order dated March 18, 2014, Judge Cooper denied the Appellants' motion for temporary relief, granted the Respondents' motion and dismissed the action. Rec. p. 1

Appellants filed a Motion pursuant to Rule 59(e). On April 8, 2014, Judge Cooper denied the motion. Rec. p. 10

Thereafter relying on Chapin Ordinance §2.202 and 2.203, on April 5, 2014, the Appellants noticed a special meeting to be held on April 10, 2014. Rec. p. 139 On April 7, 2014, Respondents filed a Motion to enforce Judge Cooper's prior order. rec. p. 134 The Appellants held the meeting on April 10, 2014. On April 14, 2014, the Respondents filed a second Motion to hold the Appellants in Civil Contempt. Rec. p. 147 Respondent Wilson filed an affidavit in support of each motion. Rec. pp. 220, 221 Appellant Atkins filed an affidavit explaining the Appellants' actions. Rec. p.223

The two motions came before Judge Cooper on April 25, 2014.

In his Order dated May 5, 2014, Judge Cooper denied the Respondents' motion for a finding of contempt but Judge Cooper invalidated the actions taken by the Appellants at the special meetings. Rec. p. 12

The Appellants appealed Judge Cooper's first Order and Order denying the Motion to Reconsider to the Supreme Court on April 22, 2014. The Appeal was served on the same day. On April 23, 2014, the Court transferred the appeal to the Court of Appeals. Appellants appealed the second Order on May 23, 2014. The appeal was served the same day. By letter dated June 20, 2104, the Clerk of the Court of Appeals notified the parties that the two cases have been consolidated into a single appeal.

ARGUMENT

1. Did the Court err in dismissing the case pursuant to Rule 12(b)(6), SCRPC?

When the Court dismisses an action pursuant to Rule 12, it is limited to considering only the matters alleged in the Complaint. The Court is required to consider all of the allegations of the Complaint to be true and to construe those allegations in a manner most favorable to the Plaintiff. Baird v. Charleston County, 333 S.C., 519, 511 S.E.2d 69 (1999)

The Court is not to consider any facts not alleged in the Complaint. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987)

If the Court considers matters not alleged in the Complaint, the Court should make clear that it is converting the Motion to a Motion Pursuant to Rule 56, SCRPC. The Court did not do so. Rec. p. 1.

Appellants submit that it was at best premature for the Court to dismiss the action prior to any of the parties having the opportunity conduct discovery or explore the issues presented.

In addition, for the Court to find no evidence that the Appellants had sought to amend the agenda at a meeting was clear error. First, the existence or non-existence of such evidence is inappropriate for consideration on a Motion pursuant to Rule 12(b). In addition, at the time of the hearing, the decision of the Court of Appeals in Lambries v. Saluda County Council, 398 S.C. 501, 728 S.E.2d 488 (Ct. App. 2012) (Lambries I) was the law at that time. Lambries I held that agendas for council meeting could not be amended at the meeting without violating the South Carolina Freedom of Information Act §30-4-10, et seq. This holding has now been reversed by the South Carolina Supreme Court. Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014) (Lambries II)

2. Did the Court err in denying the Appellants' Motion for Temporary Relief?

In their motion for temporary relief, the Appellants sought an ability to add matters to the agendas set for regular meetings. The Court denied the relief.

Ordinance §2.206 admittedly grants authority to the Mayor to set the agenda for regular meetings. §2.206, as amended on June 6, 2000, however, grants the power to a majority of Council to add matters to the agenda at the meeting. By extension, the ordinance would require a majority of Council to block an item from being considered. Because the holding in Lambries I was law at the time of the hearing, then the Appellants' only remedy to have matters considered at a regular meeting would be to compel the Mayor to add matters to the agenda published before the meeting.

The essence of representative government is for majority rule, subject to certain

minority rights. Allowing the minority to completely control what council may consider is counter to every concept of representative government. To allow the Court's interpretation to stand would allow the Mayor to be "an autocrat, czar and a king." Rec. page 87. It renders Town Council superfluous.

The Court's order essentially insulates the Mayor from any review of his actions. All the mayor has to do is simply refuse to allow items he does not wish to have heard from ever being considered. This contradicts the provisions of 2.206(a).

3. Did the Court err in dismissing the Second and Fourth Causes of Action on a Motion to Dismiss?

Appellants sought no temporary relief for the Second and Fourth Causes of Action (the matters raised in the Third Cause of Action have been resolved separately).

As argued above, it was error to decide the allegations at a hearing on a Motion under Rule 12(b)(6).

While Council may have created the position of "Director of Communication and Economic Development," it did not establish any salary for the position; it did not establish a job description or qualifications for the position, nor did it authorize the mayor to hire anyone to fill the position.

The Appellants have been thwarted in their efforts to exercise their statutory authority by the mayor's refusal to place any item regarding the position on the agenda.

If the Appellants are successful in any of the matters arising in this action, they would be entitled to seek an award of attorney fees pursuant to §15-77-300, et seq. If the Order is reversed and remanded for further proceedings, the right of the Appellants to seek attorney fees should also be restored.

4. Did the Court err in finding that §2.206(b) of the Chapin Town Ordinances applies to Special Meetings called by a majority of Council pursuant to §2.202(3) of the Chapin Town Ordinances?

The Court was called upon to interpret §2.202 and 2.206 of the Chapin Town ordinances. The Appellants submit that the Judge erred in his interpretation.

"Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

The Court "must follow the plain and unambiguous language in a statute and ha[s] no right to impose another meaning." McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)

"A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013)

Section 1.204 of the ordinances states that the titles of the various ordinances are not part of the ordinance. Therefore the title of 2.206 is not part of the ordinance.

By its terms Section 2.206(a) applies only to regular meetings. The term "The agenda" in 2.206(b) must therefore, refer to the "written agenda" set forth in Section 206(a). The Trial Court expanded 2.206 to apply to all agendas for all meetings. This was error.

Section 2.202 refers to special meetings. Two of its three alternatives allow the Mayor to call a special meeting on his own without any concurrence or cooperation from the Town Council. This is consistent with §5-7-250. Section 3 permits a majority of Council to call a special meeting. The freedom of Information Act requires that an agenda for such meeting be posted at least 24 hours prior to the meeting. §30-4-80(a)

The Trial Court stated that permitting the majority to set the agenda for a special meeting called by them would be an implicit partial repeal of §2.206. May 5, 2014 Order p. 4. As stated above, however, §2.206 applies only to a regular meeting. The Court's ruling is in effect a repeal of 2.202(3) because a special meeting without an agenda is a nullity. Lambries II and §30-4-80.

5. Did the Court err in invalidating the actions taken by the Appellants at the Special meeting?

§15-53-120 allows the Court to grant further relief "whenever necessary or proper." The section prescribes the procedure: it requires a petition to a Court having jurisdiction

to grant the relief and the Court issuing a Rule to Show Cause.

The Respondents did not follow the procedure specified in the statute.

They filed a motion, not a petition. The Court did not issue any Rule to Show Cause.

More importantly, the Motion addressed issues which were not before the Court in its original order. Nowhere in the original action was the matter of a special meeting addressed. If the Respondents believed that the special meetings called by a majority of Council pursuant to §2.202 and the actions taken by Council at those special meetings were illegal or invalid, they should have filed a new action for a declaratory judgment. A Declaratory Judgment (and by extension, an order denying declaratory relief) is not res judicata for any matter not raised in the action. Although the parties are the same, the issues sought to be litigated are different. Robison v. Asbill, 328 S.C. 450, 492 S.E.2d 400, (Ct. App. 1997).

In invalidating the actions taken at the special meetings, the Trial Court went far beyond the terms of its prior order. This Order simply denied the relief sought by the Appellants.

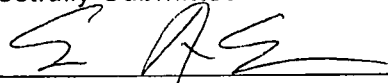
If the Court's order stands, the majority of Council will have absolutely no right to address any action taken by the mayor. He can act with impunity and there is nothing that Council can do to stop him. This an absurd result and prevents representative democracy from being a reality.

CONCLUSION

The Court should vacate the Order of Dismissal and permit the case to proceed through discovery.


The Court should reverse the Conclusion set forth in the Order dated May 5, 2014, and hold that in a special meeting called by a majority of the members of Council, the majority calling the meeting have control over the agenda for the meeting and §2.206 does not apply.

Respectfully Submitted



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The undersigned certifies that this Final Brief complies with the requirements of Rule 211(b).



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