

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2014-002055

Case No. 2004-CP-40-1915

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S.C. SUPREME COURT

Allegro, Inc., Respondent,

v.

Emmett J. Scully, Synergetic, Inc.,
George C. Corbin, and Yvonne Yarborough, Defendants,

Of Whom Emmett J. Scully, George Corbin, and
Yvonne Yarborough are Petitioners.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Respondent (Allegro) respectfully submits this Petition for Rehearing. The grounds for this petition are set forth below. Based on those grounds, Allegro respectfully requests an amended opinion that affirms the Court of Appeals.

I. This Court overlooked the fact that the only claim made against Petitioner Corbin was for civil conspiracy and, therefore, the *Todd* rule on special damages does not apply to the conspiracy claim against Corbin.

In *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 278 S.E.2d 607, 611 (S.C. 1981), this Court held that there is no cause of action of civil conspiracy if the complaint seeks the same damages for conspiracy that are also sought under another claim. Here, the majority applied the *Todd* rule to hold that Allegro has no civil conspiracy claim against any of the Petitioners. Respectfully, this was error because the only claim made against Petitioner Corbin was for civil conspiracy. Thus, the *Todd* does not and cannot apply to the conspiracy claim against Corbin. (See Resp. Br. 27-28). To hold otherwise allows a conspiracy tortfeasor to escape liability whenever other claims for the same damages are made against others but not the tortfeasor. Nothing in *Todd* or its progeny supports applying or extending the *Todd* rule to protect Corbin from liability for the only claim made against him.

II. This Court should overrule *Todd*.

The majority rejected Allegro's argument for overruling *Todd*. This rejection was not based on the merits of the argument. Rather, it was based on the length of time this case has been pending. Respectfully, the issue should be decided on the merits of the argument. Moreover, much of the delay in the case has been beyond the control of the parties.

The jury rendered its verdict in favor of Allegro on May 5, 2006. Petitioners made their post-trial motions on May 15, 2006, but the trial court did not issue its order thereon until more than two years later on July 14, 2008. (App. Vol. 1 at 18-30). Thereafter, the Petitioners made a 59(e) motion on July 23, 2008, but the trial court did not issue its order thereon until almost two years later on April 5, 2010. (App. Vol. 1 at 32-47). Thus, four years of the delay in this case (May 2006 – April 2010) was the result of the trial court's extended deliberations on the post-trial

motions. In addition, after the Court of Appeals issued its first decision in this case, this Court granted certiorari in May 2014, dispensed with further briefing, reversed in part, and then remanded certain issues back to the Court of Appeals based on that Court's misreading of this Court's opinion in *Futch v. McAllister Towing of Georgetown, Inc.*, 518 S.E.2d 591, 598 (S.C. 1999). (App. Vol. 3 at 1132-1134). Thereafter, the Court of Appeals issued its second opinion, which led to a second round of rehearing and certiorari petitions, with this Court ultimately granting certiorari for the second time in April 2015. All of this resulted in an additional delay of one year.

Finally, the trial on remand of the remaining causes of action will require the presentation of most if not all of the same evidence as in the first trial. Thus, there will be little if any additional time required to present the conspiracy claims(s) to the jury.

III. This Court overlooked the evidence of an oral contract.

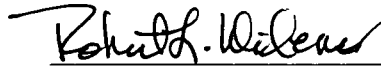
This Court held that there was no contract upon which to base Allegro's contract claims, because "no material terms [were] provided or alleged." Respectfully, this Court overlooked the evidence presented at trial on the existence of an oral contract, all of which was presented without objection or contradiction. (See Resp. Br. at 29-30 & n.10). Thus, the material terms of the contract were "provided" at trial and therefore, it is respectfully submitted that this Court erred in finding otherwise.

In addition, this Court ruled that the implied covenant of good faith and fair dealing could not be applied to an employment at-will situation. The Petitioners never made this argument to this Court and, therefore, it cannot be the basis for reversal under axiomatic principles of law.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should grant rehearing and issue an amended opinion that affirms the Court of Appeals.

Respectfully Submitted,



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September 7, 2016
Columbia, South Carolina

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CERTIFICATE OF SERVICE

I certify that I have served a copy of Respondent Allegro, Inc.'s Petition for Rehearing by depositing a copy of same in the United States Mail, sufficient postage prepaid, on September 8, 2016 addressed to the attorneys for the Petitioners, as follows and via email at the email addresses shown below:

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