THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson Jr., Circuit Court Judge

RECEIVED
NOV 15 2018
S.C. SUPREME COURT

Appellate Case No.: 2016-001337
Published Opinion No. 5583 (S.C. Ct. App. Filed Aug. 1, 2018)

Leisel Paradis ..... Petitioner

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and Stephanie Spann, in their individual capacities, ...Respondents

---

PETITION FOR WRIT OF CERTIORARI

J. Lewis Cromer (# 1470)
J. Paul Porter (# 100723)
Cromer Babb Porter & Hicks, LLC
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Facsimile 803-799-9533
Attorneys for Petitioner

Other Counsel of Record:
Bob J. Conley
Emanuel Joseph Ferguson
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, South Carolina 29401
(843) 577-9626
Attorneys for Respondents James Island Charter High School and Robert Bohnstengel

Rene Stuhr Dukes
ROSEN ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Charleston, South Carolina 29401
(843) 577-6726
Attorney for Respondents Charleston County School District and Stephanie Spann

TABLE OF CONTENTS

CERTIFICATE OF COUNSEL

Counsel for Petitioner Leisel Paradis certifies that they filed a Petition for Rehearing on August 16, 2018 (J.A. 206-217), and the South Carolina Court of Appeals denied the petition on October 18, 2018 (J.A. 235).

QUESTIONS PRESENTED

1. Should the Court reverse the special damages pleading requirement on civil conspiracy claims arising from Todd v. S.C. Farm Bureau Mut. Ins. Co.?

2. If the Court preserves the Todd Rule, did the Court of Appeals err in ruling that special damages were not sufficiently pled?

INTRODUCTION

This Court ruled in *Todd v. S.C. Farm Bureau Mut. Ins. Co.* that separate or special damages and separate acts in furtherance of a conspiracy must be pled to establish an actionable civil conspiracy claim. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). The *Todd Rule* on special damages and acts in furtherance of a conspiracy was premised on a section of Corpus Juris Secundum dealing with damages and not pleading. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981); *citing* 15A C.J.S. Conspiracy § 33, at 178. Justice Pleicones squarely disputed the propriety of the *Todd* Rule two years ago in *Allegro, Inc. v. Scully*, dissenting and joined by Justice Beatty as to his reasoning; there he reasoned: "I would overrule *Todd* and its progeny to the extent they create a 'special damages' pleading and/or proof requirement for a civil conspiracy cause of action." *Allegro, Inc. v. Scully*, 418 S.C. 24, 37, 791 S.E.2d 140, 147 (2016), *reh'g denied* (Oct. 26, 2016). This Court's Majority did not disagree with Justice Pleicones' reasoning, but concluded that *Scully*, a twelve-year-old case arising from a post-trial motion, was not an "appropriate vehicle" to overrule *Todd*. *Scully*, 418 S.C. at 34, Fn. 3. Petitioner, in this three-year-old case arising from a Rule 12 Motion, respectfully posits that her case is an appropriate vehicle to overrule *Todd*. Petitioner argues in the alternative that she adequately pled special damages.

This is a civil conspiracy case arising out of Petitioner's termination from Charleston County School District and James Island Charter High School after approximately twenty years of teaching. Petitioner filed this case on September 17, 2015 alleging defamation against the entity respondents Charleston County School District and James Island Charter High School and civil conspiracy against the individual respondents Robert Bohnstengel and Stephanie Spann. The Court of Appeals, on appeal from an Order granting the Respondents' Motions to Dismiss, ruled that Petitioner's defamation claim was foreclosed by discretionary immunity, and her conspiracy claim failed because special damages were not sufficiently pled. Petitioner does not challenge the Court of Appeals' ruling on defamation

which reached the same result as the Circuit Court on that claim but employed an appropriate state tort claims act analysis to do so. Petitioner instead only challenges the Court of Appeals' civil conspiracy ruling on special damages including directly the propriety of *Todd* Rule.

STATEMENT OF THE CASE

This case was filed on September 17, 2015 alleging defamation and civil conspiracy. (J.A. 16-27). The civil conspiracy claim was pled against Respondents Bohnstengel and Spann in their individual capacities. (*Id.*). Respondents filed a Rule 12(b)(6), SCRCP Motion to Dismiss and alternative Motion for a More Definite Statement on November 30, 2015. That Motion was fully briefed. (*See*, J.A. 73-100). The Circuit Court granted Respondents' Motion to Dismiss on April 15, 2016 and later denied a subsequent Motion to Reconsider. (J.A. 5-16). Petitioner next appealed. The Court of Appeals ruled that the defamation claim was foreclosed by discretionary immunity under the South Carolina Tort Claims Act and that the civil conspiracy failed because special damages were not sufficiently pled. (J.A. 197-205). Petitioner next filed a Petition for Rehearing which was ultimately denied. (J.A. 206-218, 235-236). Petitioner challenges the holding on civil conspiracy by way of this Writ of Certiorari. Petitioner, in regard to her conspiracy claim, alleges that Respondents Bohnstengel and Spann caused her to be placed on a rigorous evaluation plan and set her up for termination based on personal dislike of her and a motivation to punish her for disciplinary referrals, even where necessary, because those referrals negatively effected their school's overall report card score. (J.A. 26-27 ¶¶ 34-36).

Petitioner, an English teacher for nearly twenty years, was terminated by James Island Charter School and Charleston County School District at the end of the 2014-2015 school year. (J.A. 20-21, 24 ¶¶ 1, 7, 22). Respondents Bohnstengel and Spann were the principal and assistant principal at James Island Charter School. (J.A. 21 ¶ 4-5). Petitioner successfully met her Goals Based Evaluation ("GBE") for 2012-2013 school year and had successful performance evaluations prior thereto. (J.A.

21 ¶ 7). Petitioner was verbally assaulted during that school year by a student who had an established disciplinary record. (J.A. 21 ¶ 8). Petitioner immediately reported the assault to Respondents Bohnstengel and Spann and informed them that she felt it was necessary to file a police report based on the assault. (J.A. 21 ¶ 9). Respondent Bohnstengel vehemently discouraged Appellant from filing the report on the basis that the report might negatively impact the Respondent Charter School's South Carolina Department of Education (SCDOE) report card. (J.A. 21 ¶ 9).

Although Petitioner received a successful 2012-2013 Goals Based Evaluation after her disagreement with Respondent Bohnstengel regarding the police report, shortly after receiving that evaluation Respondents Bohnstengel and Spann placed Paradis on a formal, rigorous evaluation plan for struggling teachers known as a SAFE-T plan for the 2013-2014 school year. (J.A. 22 ¶ 12). The SAFE-T plan had disciplinary implications and could result in Appellant's termination. (*Id.*). Respondent Bohnstengel cited a prior meeting with Paradis as his basis for placing her on the SAFE-T plan. (*Id.*). That meeting never occurred. (J.A. 22 ¶ 13). The SAFE-T plan required Paradis be subjected to periodic evaluations by three individuals and complete other difficult assignments throughout the 2013-2014 school year. (J.A. 22 ¶ 12). Consistent with her opposition to Petitioner filing a necessary police report, Paradis learned later that Respondent Spann recommended to Respondent Bohnstengel that Paradis be placed on a SAFE-T plan due to disciplinary referrals that she had made. (J.A. 22 fn. 1).

Petitioner, pursuant to the SAFE-T plan, was to be evaluated throughout the 2013-2014 school year by three individuals: Respondents Bohnstengel, Respondent Spann, and another employee; none of Appellant's evaluators had experience in her field. (J.A. 22 ¶ 14). Respondent Bohnstengel was terminated prior to the completion of Appellant's 2013-2014 SAFE-T evaluation, and another evaluator was appointed in his stead (who also had no experience teaching English). (J.A. 23 ¶¶ 15-16). The three evaluators observed Appellant less than 5% of her total teaching time during

the 2013-2014 school year; nevertheless, Petitioner received a failing score at the end of the year. (J.A. 23 ¶ 17). Petitioner was next forced to undergo the SAFE-T plan for a second year (the 2014-2015 school year) to avert termination. (*Id.*). Additionally, she was required to accept a full-time position; whereas, she was previously part-time. (*Id.*).

Petitioner's 2014-2015 SAFE-T evaluators included Respondent Spann (J.A. 23 ¶ 18). Petitioner was informed by a fellow employee, regarding Spann's continuation as an evaluator, that typically the evaluators are wholly replaced. (*Id.*). Petitioner was worried, at that time, that Respondent Spann would not be objective because Spann failed her the prior year and was involved in Paradis' placement on the SAFE-T plan in the first place. (J.A. 22-23 ¶ 18; *see also*, ¶ 12; *and*, fn. 1). Respondent Spann changed the plan's evaluation requirements multiple times throughout the 2014-2015 school year leaving Petitioner perpetually confused about what she had to do to succeed. (J.A. 23-24 ¶ 19). Petitioner regularly sought clarification on her assignments and requirements due to the same. (*Id.*). Appellant's appointed mentor Charity Scruggs met with Petitioner almost daily, and observed that Petitioner was suffering from severe work-related stress caused by the requirements of the SAFE-T program. (*Id.*). At the same time, Scruggs noted that Petitioner was working hard to meet her plan's shifting requirements by employing various teaching strategies, asking for assistance, and utilizing suggestions offered to her. (J.A. 20-21 ¶ 23-24). Respondent Spann, and her fellow evaluators, gave Appellant a failing grade for her 2014-2015 SAFE-T evaluation. (R. 21 ¶ 20). Oddly, Petitioner received higher scores on the plan at the beginning of the 2014-2015 school year in comparison to later in the year when she was implementing the strategies recommended to her. (*Id.*). Paradis was terminated on the stated basis that she failed the 2014-2015 SAFE-T evaluation. (R. 21 ¶ 22). Petitioner, regarding her conspiracy claim, alleges that Respondents Bohnstengel and Spann caused her to be placed on a rigorous evaluation plan and set her up for termination based on personal dislike

of her and a motivation to punish her for disciplinary referrals, even where necessary, because those referrals negatively affected their school's overall report card score. (J.A. 26-27 ¶¶ 34-36).

ARGUMENT

Special damages, in the civil conspiracy context, should be a matter of election of remedies not pleading. This Court's ruling in *Scully* and a review of the Corpus Juris Secundum citation in *Todd* which gave rise to the special damages rule supports this contention. Furthermore, a survey of comparative conspiracy law indicates that South Carolina is the only state which mandates that special damages be pled in support of a civil conspiracy claim. Moreover, the Court's ruling in *Scully* also indicates that the *Todd* rule, even if preserved, is not in play here because the sole remaining claim on appeal is conspiracy, so there is no longer a concern of duplicative damages or a double recovery. Last, even if the *Todd* rule is preserved, Petitioner sufficiently pled special damages when the standard of review is appropriately applied.

I. THE *TODD* RULE ON SPECIAL DAMAGES SHOULD BE REVERSED.

The Court's special damages requirement for a civil conspiracy claim is meant to prevent double recovery. As such, it is better suited as a mandate to elect remedies rather than a pleading requirement. The Court held in *Todd* that a plaintiff must plead and prove "special damages" to state a cause of action for civil conspiracy. *Todd v. S.C. Farm Bureau Mut. Ins.* Co., 276 S.C. 284, 292, 278 S.E.2d 607, 611 (1981); *citing* 15A C.J.S. Conspiracy § 33, at 178. Following *Todd*, special damages were treated as a pleading requirement on conspiracy claims. *See, e.g., Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under *Todd*.).

The *Todd* Court relied on 15A C.J.S. Conspiracy § 33 to require that special damages be pled and proven. *Todd*, 278 S.E.2d at 611. However, that C.J.S. authority addressed the well-established rule against double recovery, and the resulting need for an election of remedies when a claim for civil

conspiracy is for the same acts and same damages sought against the same defendant as another claim. That C.J.S. section provides:

> 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.

15A C.J.S. *Conspiracy* § 33. The *Todd* rule is more appropriately suited to allow multiple claims to allege the same damages with the caveat that double recovery is expressly prohibited, and it should not be applied to the determination of whether a complaint is sufficiently pled.

The Court recently supplied persuasive authority to this premise in *Allegro, Inc. v. Scully*. There, Former Chief Justice Pleicones, dissenting, reasoned: "that the *Todd* Court misread and misapplied [15A C.J.S. Conspiracy] § 33, which merely states a prohibition on double recovery, not a rule of pleading or proof[.]" *Allegro, Inc. v. Scully*, 418 S.C. 24, 37, 791 S.E.2d 140, 147 (2016), *reh'g denied* (Oct. 26, 2016). Chief Justice Pleicones continued: "I would overrule *Todd* and its progeny to the extent they create a 'special damages' pleading and/or proof requirement for a civil conspiracy cause of action." *Id.* 791 S.E. 2d at 147. Chief Justice Beatty concurred with the majority opinion in part but also dissented in part to agree with Chief Justice Pleicones: "advocating for this Court to overrule *Todd* and its progeny." *Id.* at 146. The majority, importantly, declined to overrule the *Todd* rule on specific procedural grounds because of the *Scully* case's age and procedural posture. The majority reasoned:

> While Chief Justice Pleicones and Justice Beatty would overrule *Todd*, we disagree this is an appropriate vehicle in which to do so given this case's age and procedural posture. This lawsuit was filed over twelve years ago and has already been through a lengthy trial. Given the pending retrial arising out of the remaining causes of action, we believe it would be unfair to the parties to change the pleading and proof requirements at this late stage in the litigation.

Id. at 145, Fn 3. Unlike *Scully*, Petitioner appeals a Rule 12 Order in a three-year-old case where discovery has not begun. This is an appropriate vehicle to reverse the *Todd* rule or modify it to only apply to a double recovery and the election of remedies.[1]

Furthermore, this Court has considered the law of other jurisdictions as persuasive authority where there is no contemporary governing law on point or a new rule is being considered. *Gardner v. Campbell*, 257 S.C. 209, 211, 184 S.E.2d 700, 701 (1971) ("As our Rule 44 is new, it is, of course, appropriate to look to persuasive authority from other jurisdictions having essentially the same rule, as to the proper interpretation and application of our rule."); *Williams v. Morris*, 320 S.C. 196, 200, 464 S.E.2d 97, 99 (1995) ("There are no opinions by this Court addressing the precise issue raised in this lawsuit. Nevertheless, there is persuasive authority from the state of Maine[.]"). Here, where Petitioner requests a reversal of the *Todd* rule considering the treatment of civil conspiracy by other jurisdictions would be appropriate. Petitioner has performed a nation-wide survey of civil conspiracy law and it appears that while all states and the District of Columbia recognize conspiracy as a tort, no state other than South Carolina requires that special damages be pled.

The elements are of a civil conspiracy claim in Alabama, and several similar jurisdictions, require concerted action by two or more persons to achieve an unlawful purpose or a lawful purpose by unlawful means. *Ex parte Alamo Title Co.*, 128 So.3d 700, 713 (Ala. 2013) ("The elements of civil conspiracy in Alabama are: (1) concerted action by two or more persons (2) to achieve an unlawful purpose or a lawful purpose by unlawful means." [2] Justice Pleicones referenced this statement of the

---

[1] Petitioner will appropriately file a Motion to Argue Against Precedent, regarding *Todd*, should this Writ of Certiorari be granted. Rule 217, SCACR. ("Permission of the appellate court shall not be required to argue against precedent in the brief. Oral argument against precedent shall not be permitted except upon leave of the appellate court[.]").

[2] A majority of other jurisdictions, though at times requiring special damages in an election of remedies context, set forth the same or similar elements as Alabama. *See, Davis v. King Craig Trust*, 2017 WL 2209879, at *3 (Alaska, 2017) (citing *Morasch v. Hood*, 222 P.3d 1125, 1131–32, 232 Or. App. 392, 402 (Or. App. 2009)). *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension*

elements in *Scully*. 418 S.C. at 36; *citing, King v. Jones*, 110 Eng. Rep. 485, 487 (K.B. 1832). This Court has, however, held that an unlawful act or process is not necessary to establish a civil conspiracy claim. *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) ("[A]n unlawful act is not a necessary element of the tort."); *quoting, Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct.App.1986). Therefore, a conspiracy cause of action in South Carolina, absent special damages, would appear to mirror the elements set forth by Arkansas and a large minority of other jurisdictions. *Chambers v. Stern*, 64 S.W.3d 737, 743, 347 Ark. 395, 404 (Ark. 2002). ("[I]n order to prove a civil conspiracy, [one] must show a combination of two or more persons to accomplish a purpose that is unlawful or oppressive or to accomplish some purpose, not in itself unlawful, oppressive or

---

Trust Fund, 38 P.3d 12, 36, 201 Ariz. 474, 498 (Ariz. 2002) (Same); *Stauffer v. Stegemann*, 165 P.3d 713 (Colo. App. 2006) (Same); *Charter Oak Lending Group, LLC v. August*, 14 A.3d 449, 460-61, 127 Conn.App. 428, 446 (Conn. App. 2011); *AeroGlobal Capital Management, LLC v. Cirrus Industries*, Inc., 871 A.2d 428 (Del.Supr. 2005) *Griva v. Davison*, 637 A.2d 830 (D.C. 1994); *Walters v. Blankenship*, 931 So.2d 137, 140 (Fla.App. 5 Dist.,2006); *Miyashiro v. Roehrig, Roehrig, Wilson & Hara*, 228 P.3d 341, 362, 122 Hawai'i 461, 482 (Hawaii App. 2010); *Taylor v. McNichols*, 243 P.3d 642, 660, 149 Idaho 826, 844 (Idaho,2010); *Redelmann v. Claire Sprayway, Inc.*, 375 Ill.App.3d 912 (Ill. App. 1 Dist. 2007); *Birge v. Town of Linden*, 57 N.E.3d 839, 845 (Ind.App. 2016); *Basic Chemicals, Inc. v. Benson*, 251 N.W.2d 220 (Iowa 1977); *State ex rel. Mays v. Ridenhour*, 811 P.2d 1220, 1224, 248 Kan. 919, 923 (Kan. 1991). *Smith v. Coyne*, 2004 WL 1433638, at *4 (Me.Super. 2004); *Mackey v. Compass Marketing, Inc.*, 892 A.2d 479, 485, 391 Md. 117, 128 (Md. 2006); Mays v. Three Rivers Rubber Corp., 352 N.W.2d 339, 341, 135 Mich.App. 42, 48 (Mich. App. 1984); *Robert Allen Taylor Co. v. United Credit Recovery, LLC*, 2016 WL 5640670, at *11 (Minn. App. 2016); *Gallagher Bassett Services, Inc. v. Jeffcoat*, 887 So.2d 777, 786 (Miss. 2004); *Higgins v. Ferrari*, 474 S.W.3d 630, 642 (Mo. App. W.D. 2015); *Schumacker v. Meridian Oil Co.*, 956 P.2d 1370, 1373, 288 Mont. 217, 221, 1998 MT 79, ¶ 18 (Mont. 1998); *In re Appeal of Armaganian*, 784 A.2d 1185, 1189, 147 N.H. 158, 163 (N.H. 2001); *Banco Popular North America v. Gandi*, 876 A.2d 253, 263, 184 N.J. 161, 177 (N.J. 2005); *Mace v. Pyatt*, 203 N.C.App. 245 (N.C. App. 2010); *Hurt v. Freeland*, 589 N.W.2d 551 (N.D. 1999); *Edwards v. Urice*, 220 P.3d 1145, 1152, 2009 OK CIV APP 20, ¶ 20 (Okla. Civ .App. Div. 1 2008); *Morasch v. Hood*, 222 P.3d 1125, 1131-32, 232 Or. App. 392, 402 (Or. App. 2009); *Skipworth by Williams v. Lead Industries Ass'n, Inc.*, 690 A.2d 169, 174, 547 Pa. 224, 235 (Pa. 1997); Kirlin v. Halverson, 758 N.W.2d 436, 455, 2008 S.D. 107, ¶ 59 (S.D. 2008); *PNC Multifamily Capital Institutional Fund XXVI Ltd. Partnership v. Bluff City Community Development Corp.*, 387 S.W.3d 525 (Tenn. Ct. App. 2012); *MVS International Corporation v. International Advertising Solutions, LLC*, 545 S.W.3d 180 (Tex. App. El Paso 2017); *Harvey v. Ute Indian Tribe of Uintah and Ouray Reservation*, 416 P.3d 401 (Utah 2017); *Commercial Business Systems, Inc. v. Bellsouth Services, Inc.*, 453 S.E.2d 261, 267, 249 Va. 39, 48 (Va. 1995); *Woody v. Stapp*, 146 Wash.App. 16 (Wash. App. Div. 3 2008); *Dunn v. Rockwell*, 689 S.E.2d 255, 268, 225 W.Va. 43, 56 (W.Va. 2009); *White v. Shane Edeburn Const., LLC*, 285 P.3d 949, 958, 2012 WY 118, ¶ 29 (Wyo. 2012).

immoral, by unlawful, oppressive or immoral means, to the injury of another.").[3] Regardless of distinctions in the elements of civil conspiracy set forth in several states, it is compelling that no state but South Carolina considers special damages to be a pleading requirement for conspiracy.[4]

All things considered: the Court's dissent in *Scully*, the majority's determination that *Scully* was not an appropriate vehicle to reverse *Todd* based on extrinsic factors not present in this case, a review of *Todd*, and a persuasive assessment of comparative law all counsel in favor of reversing the *Todd* rule on special damages. Therefore, Petitioner respectfully posits that special damages are not a suitable basis for Rule 12, SCRCP dismissal, that Certiorari is warranted, and that the Court of Appeals ruling against her on conspiracy should be reversed.

II. PETITIONER'S CONSPIRACY DAMAGES ARE SPECIAL DAMAGES

Petitioner respectfully submits that, even if the Court preserves the *Todd* rule, the Court of Appeals' holding that she did not allege special damages in support of her civil conspiracy was reversible error. Specifically, Petitioner's civil conspiracy claim is legally viable, without regard to

---

[3] The following jurisdictions, in addition to Arkansas and similar to South Carolina law as it presently stands, do not appear to require conspiracy claims to be predicated on an unlawful act or process. *Peoples Bank of Northern Kentucky, Inc. v. Crowe Chizek and Co. LLC.* 277 S.W.3d 255, 261 (Ky.App. 2008); Butz v. Lynch, 710 So.2d 1171 (La. App. 1 Cir. 1998); *DeNourie & Yost Homes, LLC v. Frost*, 854 N.W.2d 298, 316, 289 Neb. 136, 156–57 (Neb. 2014); *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 971 P.2d 1251, 1256, 114 Nev. 1304, 1311 (Nev. 1998); *Cain v. Champion Window Co. of Albuquerque, LLC*, 164 P.3d 90, 98, 142 N.M. 209, 217, 2007 -NMCA- 085, ¶ 28 (N.M. App. 2007); *Great Lakes Motor Corp. v. Johnson*, 156 A.D.3d 1369 (N.Y.A.D. 4 Dept. 2017); *Mangelluzzi v. Morley*, 40 N.E.3d 588, 601, 2015 -Ohio- 3143, ¶ 54 (Ohio App. 8 Dist. 2015); *North Highland Inc. v. Jefferson Machine & Tool Inc.*, 377 Wis.2d 496 (Wis. 2017)

[4] Although not necessarily germane to the instant issue, Petitioner notes, for full context, that many states also require conspiracy to be predicated on the commission of another tort and that Massachusetts requires proof of coercion absent an underlying tort. *See i.e., Mustaqeem-Graydon v. SunTrust Bank*, 258 Ga.App. 200 (Ga. App. 2002); *Great Lakes Motor Corp. v. Johnson*, 156 A.D.3d 1369 (N.Y.A.D. 4 Dept. 2017); *Bainum v. Coventry Police Department*, 156 A.3d 418, 421 (R.I. 2017); *Davis v. Vile*, 2003 WL 25746021, at *3 (Vt. 2003); *and*, Kurker v. Hill, 689 N.E.2d 833, 836, 44 Mass.App.Ct. 184, 188 (Mass. App. Ct. 1998).

special damages, because: (1) conspiracy is Petitioner's only remaining claim: (2) the only claim against the Individual Respondents was civil conspiracy, and (3) because her conspiracy damages were distinct in nature and form from her defamation damages.

A. Civil Conspiracy is the Sole Remaining Claim; so, Petitioner's Damages Are Naturally Special Damages.

Regardless of this Court's willingness to overturn the *Todd* rule, Petitioner does not appeal the Court of Appeals' holding on her defamation claim; thus, any potential for duplicative damages has been erased. The *Todd* Court was explicit that the problem with the plaintiff's special damages were that they were the same damages sought on his other claims:

> 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.

Todd, 278 S.E.2d at 611 (1981). This Court echoed that holding in *Hackworth v. Greywood at Hammett, LLC*:

> In this case, Greywood has repeated verbatim the same damages in its civil conspiracy claim as are alleged in its claim for breach of contract accompanied by a fraudulent act. Nothing in the claim informs the Hackworths what special damages are alleged as part of Greywood's civil conspiracy claim. Accordingly, we believe under the case law cited above, Greywood failed to properly plead its civil conspiracy cause of action, and therefore, the trial court did not err in dismissing the claim.

Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875–76 (Ct. App. 2009). Petitioner's conspiracy damages, though she maintains they were distinct from her defamation damages, are now the only damages she seeks. Thus, when the Court of Appeals affirmed the dismissal of Paradis' defamation claim, it removed the special damages problem and rendered its dismissal of her conspiracy claim unwarranted.

B. Petitioner's Damages were Special Damages because they were the Only Damages Sought Against the Civil Conspiracy Respondents.

Moreover, Petitioner's conspiracy claim was solely brought against Respondents Bohnstengel and Spann to begin with; thus, the problem of special damages was null from the outset. Former Chief Justice Pleicones alluded to this sort of situation in his *Scully* dissent:

> Even if the Court were to preserve the *Todd* rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the "special damages" rule created by *Todd* does not apply.

Allegro, Inc., 791 S.E.2d at 147. The portions cited above from *Todd* and *Hackworth,* dismissing conspiracy claims where the same damages were sought against the same defendants in all relevant claims, highlight this distinction. Here, there can be no problem of special damages where the conspiracy damages are the only damages sought against the conspiracy Respondents.

C. Special Damages were Sufficiently Pled.

Last, even if the *Todd* rule were both preserved and applicable to this case, Petitioner respectfully asserts that the Court of Appeals misapplied the standard of review to conflate her defamation and conspiracy damages.

"[T]he appellate court [on Rule 12(b)(6)] applies the same standard of review implemented by the trial court." *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 279, 648 S.E.2d 295, 298 (Ct. App. 2007) *citing, Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). "The [Trial Court's Order] will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams*, 553 S.E.2d at 499; *citing, Brown v. Leverette,* 291 S.C. 364, 353 S.E.2d 697 (1987); *McCormick v. England,* 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997). "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams*,

553 S.E.2d at 499-500; *citing, Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999).

Petitioner alleged the following damages for her defamation claim:

> 32. That such statements and actions were false, known to be false, and given with reckless disregard for the truth, were maliciously made, and have proximately caused Plaintiff's severe and continuing damages including the loss of her job, loss of income, loss of earning capacity, and future income and benefits associated therewith. Further, Plaintiff has sustained embarrassment, humiliation, damage to her reputation, emotional distress, and pain and suffering, which will continue into the foreseeable future. As a result of these actions, Plaintiff lost a considerable amount of sleep and her self-confidence.

(J.A. 26). Petitioner next alleged the following damages for her civil conspiracy claim:

> 36. Such actions taken by the Defendants and others amount to an unlawful civil conspiracy and approximately cause special damages to the Plaintiff for being blacklisted and ostracized from the profession of education.
>
> 37. Plaintiff is further entitled to an award of punitive damages from the Individual Defendants for their intentional, malicious, and evil actions.

(R. 27). This Court concluded that Petitioner's damages for ostracism and blacklisting were "precisely the damages one would expect from defamatory statements." (J.A. 204). Petitioner respectfully contends that the Court of Appeals' conclusion on this point denied her the benefit of the governing standard of review. When Petitioner's conspiracy claim is assessed against the appropriate review framework, giving her the benefit of all reasonable inferences and in the light most favorable to her, her conspiracy damages were sufficiently distinct in both word and form from her defamation damages.

CONCLUSION

Petitioner Liesel Paradis respectfully asks this Honorable Court to grant her Writ of Certiorari and ultimately reverse the holding of the Court of Appeals and remand this case for the reasons discussed above.

Respectfully Submitted,

CROMER, BABB, PORTER & HICKS, LLC

J. Lewis Cromer, Esquire (# 1470)
J. Paul Porter, Esquire (# 100723)
1418 Laurel Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone: (803) 799-9530
Fax: (803) 799-9533
Attorneys for Appellant

Columbia, South Carolina
November 15, 2018

RECEIVED
NOV 15 2018
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-001337

Leisel Paradis ..... Petitioner

v.

Charleston County School District, James Island Charter High School, Robert Bohnstengel, and Stephanie Spann, in their individual capacities, ...Respondents

PROOF OF SERVICE

I certify that I, the undersigned employee of Cromer Babb Porter & Hicks, LLC, caused to have served **Petitioner's Petition for Writ of Certiorari and Joint Appendix** by depositing a copy of it in the United States Mail, postage prepaid and electronic mail, on November 16, 2018, to attorney of record, Rene S. Dukes, Esq., ROSEN, ROSEN, HAGOOD, LLC, P.O. Box 893, Charleston, SC 29402, and Bob J. Conley, Esq., CLEVELAND AND CONLEY, LLC, 171 Church Street, Suite 310, Charleston, SC 29402.

CROMER BABB PORTER & HICKS, LLC

BY: _____

J. Lewis Cromer (# 1470)
J. Paul Porter (# 100723)
1418 Laurel Street, Suite A
Post Office Box 11675 (29211)
Columbia, South Carolina 29201
Phone 803-799-9530
Fax 803-799-9533
Attorney for Petitioner

November 16, 2018
Columbia, South Carolina