

THE SOUTH CAROLINA COURT OF APPEALS

Danny Hozey and Terry Richey,

Appellants

v.

Abbeville County School Board,

Respondent

The Honorable Frank R. Addy, Jr.  
Abbeville County  
Case No: 2012-212023

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FINAL BRIEF OF APPELLANT

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Respectfully Admitted,

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SC COURT OF APPEALS

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## INDEX

Table of Cases.....	1
Questions Presented.....	2
Statement of the Case.....	3
Arguments and Authorities.....	4
Conclusion.....	8

TABLE OF CASES

*ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (S.C.2008).....7

*Bayle v. S.C. Dept. of Transp.*, 344 S.C. 115, 542 S.E.2d 736, (Ct.App.2001).....5

*Davis v. Richland County*, 372 S.C. 497, 642 S.E.2d 740 (2007).....7

*Logan v. Cherokee Landscaping and Grading, Co.*, 389 S.C. 611, 698 S.E.2d 879 (S.C.App.2010).....6

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130 (1992).....7

*Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)..5

## QUESTIONS PRESENTED

1. DID THE COURT ERR IN DISMISSING THE APPELLANTS' ACTION PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS?
2. DID THE COURT ERR IN DISMISSING THE APPELLANTS' ACTION WITHOUT ALLOWING SUFFICIENT TIME FOR THE PARTIES TO CONDUCT FULL DISCOVERY?
2. DID THE COURT ERR IN FINIDNG THAT THE PLAINTIFFS LACKED STANDING TO BRING THE UNDERLYING ACTION?

## STATEMENT OF THE CASE

The Plaintiffs in this matter are citizens and residents of the Calhoun Falls, South Carolina located in Abbeville County. Both parties live in the area served by the former Calhoun Falls High School which is located in the jurisdiction of, and regulated by, the Abbeville County School Board. In December of 2007 the Abbeville County School Board voted to close the Calhoun Falls High School. A charter school was organized and is currently operating in the facilities of the former Calhoun Falls High School since 2008. The Abbeville County School Board made no provisions for a replacement high school in this area. In 2008, the Calhoun Falls Charter School entered into an agreement with the Abbeville County School Board whereby the students from the Calhoun Falls Charter School are allowed to attend the Abbeville County Career Center provided they pay a fee for such attendance. The fee charged to students from the Calhoun Falls is significantly higher than fees charged to students from other facilities.

The Plaintiffs filed this action alleging that the Abbeville County School Board had failed to follow proper procedures regarding the closing of the high school and that the charging of higher fees to students from Calhoun Falls is fundamentally unfair and prejudicial to the Plaintiffs and others in the school district. The Defendant answered and filed a Motion to Dismiss and/or for Summary Judgment. The trial court dismissed the Plaintiffs' action for lack of standing and failure to file within the applicable statute of limitations. This appeal follows.

ARGUMENTS AND AUTHORITIES

**DID THE COURT ERR IN DISMISSING THE PLAINTIFFS' ACTION PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS?**

The Court ruled that the Plaintiffs' claim stated a violation of the Freedom of Information Act and therefore must be brought within one year from the date of such violation. (ROA, page 5) While the trial court did not find the date at which the statute would have begun to run, it referenced a public vote of December 7, 2007 and it is inferred that the court was ruling that the statute of limitations would begin to run at that time. Pursuant to the discovery rule, the statute of limitations would begin to run from the time the wrongful conduct is either discovered, or may have been discovered by the exercise of due diligence. See *Bayle v. S.C. Dept. of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001) Plaintiffs allege that the wrongful conduct committed by the Defendant was done secretly and in out of public sight. (ROA pages 99 to 101) and that they were unaware of the actions and the underlying cause of action. By their very nature, these actions were intended to be secret and shielded from public view. The Defendants seek to hide behind a statute of limitation and take advantage of the degree of their wrongful acts in hiding their information and action from the public. While the parties may conflict on when the wrongful acts should have been discovered, our Court has stated, "If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury." See *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338-39, 534 S.E.2d 672, 681-82 (2000). To dismiss the Appellants' claim due to their lack of knowledge of the Respondent's wrongdoing would be to award the Respondent for effectively hiding their actions. Accordingly, in light of the conflicting statements regarding the Plaintiffs' knowledge of

the wrongful acts of the Defendant, the trial court improperly ruled on this issue as a matter of law. Further, as outlined more fully below, the trial court did not allow the Appellants sufficient time to conduct discovery which would provide further evidence and proof on the issue of when the Appellants should have known their cause of action accrued.

**DID THE COURT ERR IN DISMISSING THE APPELLANTS' ACTION WITHOUT ALLOWING SUFFICIENT TIME FOR THE PARTIES TO CONDUCT FULL DISCOVERY?**

The Complaint was served on the Respondents on October 2, 2011. The Respondents filed their motion to dismiss immediately thereafter and a hearing was held on Respondent's motion on January 27, 2012. The parties had not had sufficient time to conduct discovery in this matter. The Appellants requested that the trial court hold the issue in abeyance until discovery had been completed as the very nature of the allegations indicated that the Respondents had hid information from the public. (ROA, pages 100, 101) In *Logan v. Cherokee Landscaping and Grading Co.*, 389 S.C. 611, 698 S.E.2d 879, (S.C.App. 2010) the appellant argued that the parties should be allowed to engage in pre-trial discovery prior to the trial court dismissing the action. While the Court declined to hear that issue as it was not preserved on appeal, it is clear from the dicta that the issue would be applicable if preserved for appeal. As stated above, the conflicting nature as to the claim of when the Appellants should have reasonably known of the existence of their cause of action give rise to the question of fact for the jury. Evidence regarding that issue can only be obtained through the discovery process. As such, the trial court's dismissal of the Appellants' claim was premature and improper.

**DID THE COURT ERR IN FINDING THAT THE APPELLANTS LACKED STANDING TO BRING THE UNDERLYING ACTION?**

In order for a party to bring an action the party must have standing. Standing may be acquired: (1) by statute; (2) through the rubric of “constitutional standing”; or (3) under the “public importance” exception. See *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (S.C. 2008)

In determining whether a party has constitutional standing, the Court has applied a three prong test:

1. The party must have suffered an “injury in fact”, an invasion of a legally protected interest which is concrete and particularized and actual or imminent.
2. There must be a causal connection between the injury and the conduct complained of. The injury must be fairly traceable to the action of the defendant and not the result of an action of some third party not before the court, and;
3. It must be likely that the injury will be redressed by a favorable decision.

See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct 2130, 119 L.Ed.2d 351 (1992)

The Appellants have suffered an injury in fact. As citizens of the district served by the former Calhoun Falls High School they have a vested interest in the educational serviced available in their area. Not only is their interest tied to their residence in the County, the home values are directly affected by the school system. The Appellants argued to the trial court that they stood in injury as a result of the Respondent’s actions. (ROA, pages 99, 100)

There is obviously a direct and clear causal relationship between the injury and the conduct complained of. But for the actions of the school board, the Appellants

would have had full disclosure to participate in School Board meetings and have the full and correct information provided prior to any vote to close their school. The actions of the Respondent directly eliminated this very important constitutional right of the Appellants.

It is also likely that this matter will be redressed by a favorable decision of the court. While this lack factor is less clear than the others, that fact is present as a direct result of the Appellants' inability to conduct full discovery. However, despite that fact, the record contains clear information supporting the Appellants' claims and the fact that this action most likely would be redressed by a favorable decision. See Appellants' Memorandum of Law in Opposition.

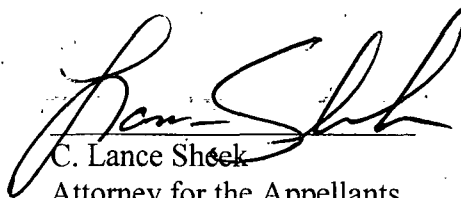
Even if the court were to conclude that the Appellants lacked constitutional standing, the Appellants clearly fall under the "public importance" exception. This exception allows for standing to be conferred upon a party when the issue is of such public importance as to require its resolution for future guidance. *Davis v. Richland County*, 372 S.C. 497, 642 S.E.2d 740 (2007). "It is the concept of "future guidance" that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance". See *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999) Obviously the issue at hand is one of public importance as it affects the entire community. Just as clear is the need for future guidance as it relates to a public bodies handling of community affairs and issues of openness and access of the public to information. One can think of no other example of an issue which exemplifies the "public importance" exception to the requirement of constitutional standing.

## CONCLUSION

The Appellants have a clear case in controversy with the Respondent. The Appellants have constitutional standing as residents of the community. Additionally, this matter falls squarely within the "public importance" exception to the normal requirement of constitutional standing. This matter was brought within the applicable statute of limitations based upon the "discovery rule". Even based on the Respondent's arguments that the Appellants failed to file within the required time frame, this matter is an issue for a jury and not proper for summary judgment. Further, the matter was decided prematurely by the court as the parties should be afforded the opportunity to conduct full discovery prior to a ruling on these issues.

Based on the facts of this matter, the Appellants respectfully request that this Court reverse the trial court's order and that this matter be remanded for full discovery and the issues raised in the Respondent's motion to dismiss be held in abeyance pending the completion of the discovery.

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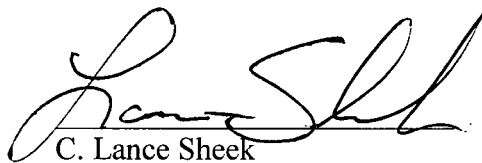
CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the Final Brief of the Appellant is identical to his Initial Brief except for citations to the Record on Appeal.

Respectfully Submitted,

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ABBEVILLE )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT  
C.A. No: 2011-DR-01-242

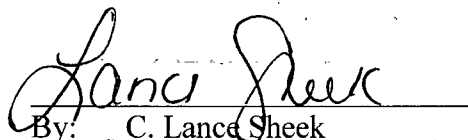
Danny Hozey and Terry Richey, )  
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Plaintiffs, )  
 )  
vs. )  
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Abbeville County School Board, )  
 )  
Defendant. )

**PROOF OF SERVICE**

The undersigned hereby certifies that on the 12<sup>th</sup> day of February, 2013, he served upon the Defendant a copy of the Final Brief of Appellant by placing the same in the U. S. mail, with the appropriate postage affixed thereto, addressed to the Defendant's attorneys of record, Laura Calloway Hart, P.O. Box 1486, Columbia, South Carolina, 29202.

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