

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

RECEIVED

NOV 08 2019

SC Court of Appeals

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40.....

Respondents.

INITIAL BRIEF OF RESPONDENT TONY DENNY

Turner Padget Graham & Laney, P.A.
Alan G. Jones
Post Office Box 1509
Greenville, South Carolina, 29602
Direct: 864-552-4626
Fax: 864-282-5989
agjones@turnerpadget.com
Attorney for Respondent Tony Denny

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

COUNTER-STATEMENT OF THE ISSUES ON APPEAL..... 2

STATEMENT OF THE CASE..... 2

STATEMENT OF THE FACTS..... 2

ARGUMENT..... 2

I. THE TRIAL COURT PROPERLY DISMISSED MR. DAVIS' CLAIMS AGAINST MR. DENNY BECAUSE MR. DAVIS VIOLATED THE TRIAL COURT'S AMENDED ORDER BY FAILING TO SERVE THE AMENDED COMPLAINT ON MR. DENNY WITHIN THE TIME FRAME REQUIRED BY THE TRIAL COURT'S PRIOR ORDER AND BY FAILING TO SERVE MR. DENNY AT ALL PURSUANT TO RULE 12(B)(5), SCRPC. 3

II. THE DISMISSAL OF MR. DAVIS' CLAIMS AGAINST MR. DENNY IS FURTHER SUPPORTED BY THE ADDITIONAL SUSTAINING GROUND THAT THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE THE AMENDED COMPLAINT FAILS TO ASSERT ANY FACTUAL ALLEGATIONS CAPABLE OF SUPPORTING SUCH CLAIMS. 3

CONCLUSION..... 4

TABLE OF AUTHORITIES

In the interests of judicial economy and the prevention of redundant briefing, Mr. Denny incorporates by reference all applicable authorities cited in the Table of Authorities section of the Brief of co-Respondents Cato Institute and Howard S. Rich. Additional authorities cited in this brief are listed below.

	Page(s)
Rule 208(b)(6), SCACR.....	2
Rule 12(b)(1), SCRCP	3
Rule 12(b)(2), SCRCP	3
Rule 12(b)(4), SCRCP	3
Rule 12(b)(5), SCRCP	3
Rule 12(b)(6), SCRCP	3

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against Mr. Denny because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint within the time frame required by the trial court's prior order?
2. Was the dismissal of Mr. Davis' claims against Mr. Denny further supported by the additional sustaining ground that the Amended Complaint fails to state a claim upon which relief can be granted because the Amended Complaint fails to assert factual allegations capable of supporting such claims?

STATEMENT OF THE CASE

In the interest of economy and efficiency, Mr. Denny adopts and incorporates by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich pursuant to Rule 208(b)(6), SCACR. To that Statement, Mr. Denny adds that he filed his own Motion to Dismiss on February 15, 2019, arguing dismissal was warranted because the Amended Complaint failed to state facts sufficient to support any cause of action against Mr. Denny and because Appellant Davis failed to comply with a prior court order that he amend his Complaint and serve the Amended Complaint within a specified period of time. *See* Tony Denny Mot. to Dismiss (R. ____). The Amended Complaint mentions Tony Denny only in the caption and when identifying who he is in the factual background section of the Amended Complaint. At no time does the Amended Complaint assert any specific facts or allegations with regard to Mr. Denny. The Amended Complaint lacks a single mention of any wrongdoing on behalf of Mr. Denny.

STATEMENT OF THE FACTS

In the interests of judicial economy and the prevention of redundant briefing, Mr. Denny adopts and incorporates by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich.

STANDARD OF REVIEW

Mr. Denny hereby adopts and incorporates by reference the Standard of review found in the brief of co-Respondents Cato Institute and Howard S. Rich.

ARGUMENT

Mr. Denny hereby incorporates by reference the Arguments found in the Brief of co-Respondents Cato Institute and Howard S. Rich, which are applicable to Mr. Denny as well, and

any other applicable arguments asserted by other co-Respondents. In addition, Mr. Denny asserts two additional sustaining grounds upon which this Honorable Court should affirm the decision of the Circuit Court.

- I. **The trial court properly dismissed Mr. Davis' claims against Mr. Denny because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint on Mr. Denny within the time frame required by the trial court's prior order and by failing to serve Mr. Denny at all pursuant to Rule 12(b)(5), SCRPC.**

The Circuit Court's order dismissing the claims against Mr. Denny should be affirmed because Appellant Davis failed to serve his Amended Complaint upon Mr. Denny within the time frame required by the Circuit Court's October 30, 2018 order. Specifically, and in addition, as of the date of this Initial Brief of Respondent, Mr. Denny still has not been properly served with the Amended Complaint. The public index for the case does not even show a Proof of Service as to Mr. Denny. Mr. Denny's Answer to the Amended Complaint, filed on February 15, 2019, asserts as a defense that he has not been served and moved the Court to dismiss the claim based on Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure. As it stands, nearly one year has passed since Appellant filed his Amended Complaint, Mr. Denny still has not been properly served. Based on Appellant's failure to comply with the Circuit Court's October 30, 2018, and by virtue of Appellant's failure to ever serve Mr. Denny, the decision below should be affirmed.

- II. **The dismissal of Mr. Davis' claims against Mr. Denny is further supported by the additional sustaining ground that the Amended Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), SCRPC because the Amended Complaint fails to assert any factual allegations capable of supporting such claims.**

The Amended Complaint contains a staggering dearth of factual support needed to

sustain any causes of action against Mr. Denny, and the dismissal of the case against Mr. Denny should therefore be affirmed. The sum total of factual allegations against Mr. Denny is found in Paragraph 27 of the Amended Complaint, which merely states (1) where he lives; (2) his position on the board of one co-Respondent; and, (3) his alleged position as a lobbyist for a different co-Respondent. Otherwise, the Amended Complaint neither alleges nor even hints at any acts on the part of Mr. Denny that could give rise to an actionable claim. In fact, there are more specific allegations against John Does in the Amended Complaint than there are against Mr. Denny, whom Appellant chose to name specifically in the suit. The Amended Complaint is therefore fatally deficient and the judgment below should be affirmed. *See generally* the authorities cited in the Briefs of Cato Institute and Mr. Rich at Argument II. A (R. ___).

CONCLUSION

Appellant Mr. Davis failed to comply with the Circuit Court's Order requiring Amendment and Service of the Amended Complaint within 15 days in regard to Mr. Denny. Further, Appellant Mr. Davis failed entirely to serve Mr. Denny with the Amended Complaint at all. Even if Mr. Davis could show that Mr. Denny was properly served, the Amended Complaint is fatally deficient with regard to Mr. Denny because it alleges no facts whatsoever that would sustain any cause of action, much less the litany of causes of action found in the Amended Complaint. For this reason, Mr. Denny respectfully requests that this Honorable Court affirm the judgment below and dismiss Mr. Denny from the case with prejudice.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

Turner Padgett Graham & Laney, P.A.



Alan G. Jones, SC Bar No. 100141

Post Office Box 1509

Greenville, South Carolina, 29602

Direct: 864-552-4626

Fax: 864-282-5989

agjones@turnerpadgett.com

Greenville, South Carolina
November 8, 2019

ATTORNEY FOR RESPONDENT
TONY DENNY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

RECEIVED
NOV 08 2019
SC Court of Appeals

Jefferson Davis, Jr. Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40

Respondents.

PROOF OF SERVICE

I certify that I have served the **Initial Brief of Respondent Tony Denny and Designation of Matter to be included in the Record on Appeal** upon the following parties via electronic mail to the addresses listed below:

Jefferson Davis, Jr.
jdavis@apogeetax.com

Miles E. Coleman, Esquire
Miles.coleman@nelsonmullins.com

M. Dawes Cooke, Jr., Esquire
mdc@barnwell-whaley.com

Justin Paul Novak, Esquire
jnovak@barnwell-whaley.com

Jason P Luther, Esquire
Jason.luther@dor.sc.gov

Benjamin P. Mustian, Esquire
bpmlawsc@gmail.com

Mark S. Barrow, Esquire
msb@swblaw.com

Martin S. Driggers, Jr., Esquire
msd@swblaw.com

Geoffrey K. Chambers, Esquire
g.k.chambers@gmail.com

Michael B. Wren, Esquire
mwren@dml-law.com

William H. Davidson, II, Esquire
w davidson@dml-law.com

Christopher S. Elliott, Esquire
Chris.elliott@llr.sc.gov

Kelly S. Cannon, Esquire
kcannon@hnblaw.com

Andrew Haselden, Esquire
ahaselden@hnblaw.com

Joseph M. McCulloch, Esquire
joe@mccullochlaw.com

Kathy R. Schillaci, Esquire
Kathy@mccullochlaw.com

Christopher J. Daniels, Esquire
Chris.daniels@nelsonmullins.com

Jennifer F. Nutter, Esquire
Jennifer.nutter@hoodlaw.com

James H. Goldin, Esquire
jgoldin@turnerpadget.com

Mark V. Gende, Esquire
mvg@swblaw.com

Brandon R. Gottschall, Esquire
brg@swblaw.com

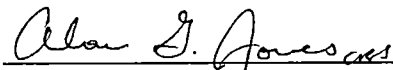
Joseph C. Chapelle, Esquire
Joe.chapelle@btlaw.com

J. Kenneth Carter, Esquire
kcarter@turnerpadget.com

Ross C. Durant, Esquire
rdurant@turnerpadget.com

Douglas W. Mackelcan, Esquire
dmackelcan@cskl.law

Turner Padget Graham & Laney, P.A.



Alan G. Jones, SC Bar No. 100141
Post Office Box 1509
Greenville, South Carolina, 29602
Direct: 864-552-4626
Fax: 864-282-5989
agjones@turnerpadget.com

Greenville, South Carolina
November 8, 2019

ATTORNEY FOR RESPONDENT
TONY DENNY

Turner Padget

Alan G. Jones
E-Mail: agjones@turnerpadget.com
Direct Dial: 864-552-4626
Direct Fax: 864-282-5989

November 8, 2019

VIA HAND-DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
NOV 08 2019
SC Court of Appeals

Re: Davis v Denny
Docket No.: 2018-CP-40-02425
Claim No: 039046677
TP File No.: 01464.07984

Dear Ms. Kitchings:


Enclosed please find the original and one copy of the Initial Brief of Respondent Tony Denny, Designation of Matter to be Included in the Record on Appeal, and a Proof of Service on all parties for the same. Please return a clocked copy to me in the enclosed self-addressed stamped envelope.

Should you have any questions or concerns, please do not hesitate to contact me.

With kind regards,

Sincerely,

TURNER PADGET GRAHAM & LANEY, P.A.



Alan G. Jones

AGJ/klb
Enclosures