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

Jefferson Davis, Jr.,

Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Alliance, 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 Department of Revenue, South Carolina Department 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, and John Doe(s) 1-40,

Respondents.

INITIAL BRIEF OF RESPONDENT
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STATEMENT OF THE ISSUES ON APPEAL

I. Did Judge Early correctly interpret and apply the order of Judge Benjamin to require that the Plaintiff amend his complaint within 15 days?

Or, as otherwise restated:

A. Did the Trial Court properly dismiss with prejudice the claims made against Defendant IMCUSA in the Amended Complaint because the Plaintiff did not timely serve the Amended Complaint in compliance with the prior court order allowing the amendment?

B. Can the dismissal of the claims made against Defendant IMCUSA in the Amended Complaint be sustained for the additional ground that the Plaintiff did not timely file the Amended Complaint in compliance with the prior court order allowing the amendment?

II. Can the Trial Court's dismissal of the claims made against Defendant IMCUSA be sustained on the additional grounds that the Plaintiff fails to state facts sufficient to state a claim upon which relief can be granted against this Defendant?

STATEMENT OF THE CASE

This action appears to arise from contentious interactions between the Plaintiff pro se and Defendant Ellen Weaver on the political issue of school choice.. The Plaintiff describes himself as a "volunteer grassroots advocate for private school choice," and he is affiliated with an organization known as Palmetto Kids FIRST Scholarship Program, Inc.[1] As alleged, Defendant Weaver is an officer and board member of Palmetto Promise Institute, a nonprofit organization that advocates on K-12 school choice options. Plaintiff filed his original complaint in the Court of Common Pleas for Richland County on May 3, 2018, naming as defendants: Ellen Weaver, individually, Palmetto Promise Institute (PPI), and John Does 1-20. Plaintiff attempted to allege causes of action against Weaver and PPI for defamation, false light publicity, invasion of privacy, negligence, intentional infliction of emotional distress, tortious interference with prospective contractual relations, unfair trade practices, pierce the corporate veil, and conspiracy. As to the unidentified John Does, the Plaintiff alleged that they have financial interests in government run K-12 school choice options and made generalized allegations of conspiracy with the named defendants. [ROA ___; Complaint.]

On motions to dismiss by Weaver/PPI, the Trial Court dismissed the causes of action for false light publicity, tortious interference, and unfair trade practices, but allowed the Plaintiff leave to amend to attempt to state his purported claims for invasion of privacy and conspiracy. The Trial Court also ordered "each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings." [ROA ___;

[1] The Plaintiff is an attorney licensed to practice law in the State of Georgia. However, he appears pro se in the action because he is not admitted in the State of South Carolina.

J. Benjamin Order, filed October 30, 2018.] The Plaintiff did not seek reconsideration of that order or notice any appeal from that order.

The Plaintiff filed an Amended Complaint on November 19, 2018, adding numerous named defendants, including this Respondent Institute of Management Consultants USA (IMCUSA). [ROA ___; Amended Complaint.] Plaintiff cannot show that he served this Defendant within 15 days or even 20 days; in fact, he acknowledged in his motion for reconsideration that none of the new defendants were served within the 15 days. [ROA ___; Motion.]

In the Amended Complaint, the Plaintiff has added numerous allegations and expanded the focus of his claims in attempting to assert causes of action against all Defendants for defamation, invasion of privacy, negligence, infliction of emotional distress; tortious interference with prospective contractual relations, unfair trade practices, pierce the corporate veil, and conspiracy. As to IMCUSA specifically, the Plaintiff's allegations are entangled with convoluted new allegations against Defendant Stephen Kirkland, a CPA and management consultant hired by the South Carolina Department of Revenue to perform a third-party audit of Plaintiff's Kid's First group. [ROA ___; Am. Compl. ¶ 120-23]. Plaintiff alleges that Defendant Kirkland's appointment was improper and Plaintiff filed ethics complaints against Defendant Kirkland with the South Carolina State Board of Accountancy and IMCUSA because of the alleged conflict. [ROA ___; Am. Compl. ¶ 127-28]. Plaintiff asserts that IMCUSA has been unusually slow in the ethics investigation of Defendant Kirkland because it is under pressure from "very powerful and influential [Defendants] and John Doe(s)" which has led to IMCUSA becoming complicit with the civil conspiracy. [ROA ___; Am. Compl. ¶ 147-49].

Respondent/Defendant IMCUSA filed both a Rule 12(b)(6) motion to dismiss and an answer to the Amended Complaint on January 11, 2019. [ROA ___, ___, ___; Motion with IMCUSA supporting memorandum, IMCUSA Answer.] In its answer to the Amended Complaint, IMCUSA set forth denials and defenses including specifically asserting as a defense the Plaintiff's failure to timely comply with Judge Benjamin's order:

> 39. That this Defendant was not named and served with the Amended Complaint within the Court's ordered deadline and therefore this action has not been timely commenced against this Defendant; as such, the Amended Complaint should be dismissed with prejudice.

[ROA ___.]

Other Defendants also filed motions to dismiss, which all came for hearing before Judge Early on February 2, 2019. Upon hearing the various arguments, Judge Early ruled that the Plaintiff had not complied with Judge Benjamin's order by failing to serve the amended complaint within 15 days, and an order of dismissal was entered on February 19, 2019. [ROA ___, Order of Dismissal.] The Plaintiff filed a motion for reconsideration which was denied. [ROA ___, ___; Motion 3/6/19, Order 3/27/19.]

STANDARD OF REVIEW

Interpretation and enforcement of an order is a question of law subject to de novo review. *Doe v. Bishop of Charleston*, 754 S.E.2d 494, 498, 407 S.C. 128, 134–35 (2014) (citing *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). An order of dismissal pursuant to Rule 12(b)(6) is subject to appellate review on the same standard of review as the trial court. *Id.*

ARGUMENT

I. The order of dismissal should be affirmed because Judge Benjamin required that the Plaintiff file and serve his amended complaint within 15 days.

Judge Benjamin's order reads "each John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings." That order was entered on October 29, 2018, but Plaintiff did not file his Amended Complaint until 20 days later and none of the new defendants where served until more than 20 days thereafter. While Judge Early indicated some concern as to the timeliness of the filing of the Amended Complaint, he based his order of dismissal on the failure to serve the Amended Complaint within the 15 days. This Respondent/Defendant submits that the order of dismissal can and should be affirmed on either or both grounds of untimely filing and untimely service.

A. The Plaintiff did not timely serve the Amended Complaint in compliance with the prior court order allowing the amendment.

Plaintiff makes a conclusory argument, without citation to supporting authority, that the 15-day limit only applied to the filing of the Amended Complaint and in the absence of any stated time limit on the service, he was entitled to any and all time allowed for service under the Rule 3.[2] *See Savannah Bank, N.A. v. Stalliard*, 734 S.E.2d 161, 164, 400 S.C. 246, 252 n.3 (2012) (If argument in appellate brief is conclusory and not supported by authority, the issue will be deemed abandoned.). The Plaintiff's argument that Judge Benjamin did not intend to require that the amended complaint be served within the designated 15-day period is not supported by the

[2] The only citation in Plaintiff's argument on this issue relates to his contention that untimely service was not raised as a ground for dismissal with sufficient specificity. However, he responded to the issue of timely filing and service on the merits at the hearing before Judge Early and he has not raised that point in his Statement of the Issues on Appeal as required by Rule 208(b)(1)(B). Moreover, this Defendant asserted the Plaintiff's failure to timely comply with Judge Benjamin's order as a defense in its answer to the Amended Complaint. [ROA ___; ¶ 39.]

unambiguous language of the order or the transcript of the motions hearing. Furthermore, even if Judge Benjamin did not intend that service be accomplished within the 15-day time period, the Plaintiff fails to realize or acknowledge that there is clear precedent from our Supreme Court holding that when an order permitting amendment of a complaint contains no time limitation, the Rules of Civil Procedure supply a 20-day time limit. *Jordan v. State Highway Dept.*, 188 S.C. 83, 198 S.E. 174 (1938); *see also Brown v. Easterling*, 59 S.C. 472, 38 S.E. 118, 122 (1901) (required to serve amended complaint within 20 days of entry of order).

In *Doe v. Bishop of Charleston*, 754 S.E.2d at 498, the Court discussed the general rule that court orders are to be construed as any other written instrument toward the primary objective of determining the intent of the court from the plain and unambiguous language of the entire order. Here, the language in Judge Benjamin's order is plain and unambiguous: "[E]ach John Doe referenced in the complaint shall be specifically named and served. This court allows the plaintiff 15 days to appropriately amend the pleadings." Plaintiff has argued that Judge Benjamin never mentioned the time for service and did not mean that service had to be made in 15 days because that amount of time was unreasonable to find and serve so many parties. [ROA ___; 2/2/19 Tr. 29-33.] However, the transcript of the hearing before Judge Benjamin reflects her intent as set forth in her written order. She specifically told Plaintiff that "you need to name them and serve them." [ROA ___; 10/1/18 Tr. 26/18-19.] Plaintiff himself asked Judge Benjamin how long he had to accomplish the amending. [ROA ___; 10/1/18 Tr. 26/22-23.] When Judge Benjamin replied: "It will be 15 days to amend," Plaintiff said "thank you" without presenting any question as to whether that applied to filing and service or expressing any concern as to whether that was sufficient time to accomplish service. [ROA ___; 10/1/18 Tr. 2/13-14.] As Judge Early pointed out, Plaintiff could have moved for additional time if he contemplated that he could not get

everyone served within 15 days. [ROA ___; 2/12/19 Tr. 29.] *See Brown v. Easterling*, 38 S.E. at 122 (remedy is to apply for additional time if plaintiff cannot prepare and serve amended complaint within time allowed in order or by Rule); *Jordan v. State Highway Dept.*, 198 S.E. at 180 (mention of failure to request extension for time to amend). Based on the language of the order as supported by the colloquy at the hearing, Judge Early correctly interpreted Judge Benjamin's order as requiring that service as well as filing be accomplished within 15 days.

As mentioned above, under the Court's decision in *Jordan v. State Highway Department*, even if Judge Benjamin did not intend that service be accomplished within the 15-day time period, he was required by Rule 6, SCRCP, to accomplish service within 20 days. The matter in *Jordan* came before the trial court on a motion to strike allegations of a complaint which the trial court granted and ordered the plaintiff to file and serve an amended complaint without specifying any time limit for the filing and service. When the plaintiff delayed in filing and serving the amended complaint for several months, the defendant moved to set aside the service which was granted. In affirming, the Supreme Court stated:

> Although an order permitting the filing of an amended complaint contained no time limitation, time was not unlimited in view of circuit court rule requiring compliance with its orders within 20 days unless otherwise directed. Circuit Court Rule 62.

198 S.E. at 179-80.

The modern Rule comparable to former Circuit Court Rule 62 is found in Rule 6(d), SCRCP, which contains the exact same language.

> In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have twenty days for that purpose, unless otherwise directed in the order.

Accordingly, whether the order or the Rule requires service within 15 or 20 days, the record clearly establishes that the Plaintiff did not meet either deadline, and Judge Early properly dismissed the Amended Complaint.

B. The Plaintiff did not timely file the Amended Complaint in compliance with the prior court order allowing the amendment.

Unquestionably, Judge Benjamin ordered that an amended complaint be filed within 15 days. The Defendant moved for dismissal on the ground that the Plaintiff did not file his Amended Complaint until 20 days after the entry of that order.[3] Plaintiff argued at the motions hearing,[4] that his filing was timely because he was entitled to an extra five (5) days under Rule 6(e), SCRCP, as applied under the new South Carolina Electronic Filing Policies and Guidelines which provide that:

> (4) Time to Respond Following Electronic Service. Computation of the time for a response after service by NEF is governed by Rule 6, SCRCP. In accordance with Rule 6(e), SCRCP, service by electronic means via an NEF is treated the same as service by U.S. Mail for purposes of determining the time to respond; therefore, five days shall be added to the prescribed period to respond from the date set forth in the Official File Stamp on the NEF.

At the hearing, Judge Early questioned whether Plaintiff was entitled to the extra 5 days:

> Does he get an additional five days? This is not like a regular filing. It's a judge filing an order giving you fifteen days to answer. Does it get extended five days? I don't know the answer to that; I'm going to have to research that. [ROA ___; 2/2/19 Tr. 25/3-7.]

Ultimately, Judge Early did not make a ruling on this question, instead dismissing the John Does on the ground of the untimely service. However, this Defendant submits that the Plaintiff was not

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[3] The untimely filing was explicitly raised by this Defendant in its answer, the memorandum in support of the motion to dismiss, and at the hearing before Judge Benjamin. [ROA ___, ___, __; Answer ¶39, Memo, 2/12/19 Tr. 4.]

[4][ROA ___; 2/12/19 Tr. 8.]

entitled to five extra days and the untimely filing is an additional ground upon which to sustain the dismissal. Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *State v. Johnson*, 301 S.E.2d 138, 139, 278 S.C. 668, 669–70 (1983) (authority to affirm on any ground of record).

An order is effective and final upon the official filing and entry by the clerk of court. *Bowman v. Richland Memorial Hospital*, 335 S.C. 88, 515 S.E.2d 259 (1999). In *Bowman*, the trial court had issued an order that allowed the plaintiffs leave "to amend their complaint" within ten days. On appeal, an issue arose as to whether the 10 days began to run from the signing of the order or the filing/entry by the clerk of court. The Supreme Court held that the order became effective when entered and the plaintiffs had timely complied by filing and serving the amended complaint within 10 days of that entry. *See also Witzig v. Witzig*, 325 S.C. 363, 479 S.E.2d 297, 299 (1996) (holding that Rule 6(e) does not apply to an order: "Rule 6(e) is a pleadings rule and applies only when service is effective upon filing."). Plaintiff was allowed 15 days – not 20 days – to file the Amended Complaint and his failure to comply justifies dismissal.

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Plaintiff argues that equity, fairness and justice demand that he be given an opportunity to serve his Amended Complaint. While the law generally favors amendments to pleadings in furtherance of justice, *Braudie v. Richland County*, 59 S.E.2d 548, 549–50, 217 S.C. 57, 59–60 (1950), when an amendment is granted upon conditions, such as time for filing and service, the party is required to comply with the terms of the order allowing amendment. *Jordan v. State Highway Dept.*, 198 S.E at 178 (when an order allowing amendment of a pleading specifies particular changes allowed, the amended complaint can be struck for failure to comply with order.); *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1990) (an amended

complaint is subject to dismissal with prejudice under Rule 41(b) for failure to comply with the conditions of the order allowing the amendment). Plaintiff did not comply and dismissal was proper.

II. The Trial Court's dismissal of the claims made against Defendant IMCUSA can be sustained on the additional grounds that the Plaintiff fails to allege facts sufficient to state a claim upon which relief can be granted against this Defendant.

On a Rule 12(b)(6) motion to dismiss, the court must consider the well-pleaded allegations of fact to determine if they state facts sufficient to constitute a cause of action against a particular defendant. In the Amended Complaint, the Plaintiff's allegations regarding IMCUSA specifically are only that it has been slow in conducting an investigation:

> 35. Defendant Institute of Management Consultants USA ("IMCUSA") is a New York non-profit with offices in the State of Florida.
>
> 128. Defendant Kirkland is currently under investigation by the Institute of Management Consultants USA ("IMCUSA") for his professional conflict as well.
>
> 147. Defendant IMCUSA has unusually been slow in the investigation of Defendant Kirkland's ethic complaint as well.
>
> 148. Defendant IMCUSA is under pressure from what is obviously very powerful and influential Defendant's and John Doe(s).
>
> 149. Upon information and belief IMCUSA has become complicit in the civil conspiracy given the above referenced pressure from other Defendant's and John Doe(s).

None of these allegations support causes of action against IMCUSA for defamation, invasion of privacy, negligence, infliction of emotional distress; tortious interference with prospective contractual relations, unfair trade practices, pierce the corporate veil, or conspiracy.

Defamation: To state a cause of action for defamation there must be an allegation that the defendant communicated a false, defamatory message about the plaintiff to someone else. *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497, 506 (1998). The Amended

Complaint does not contain any allegation that IMCUSA made false, defamatory statements about Plaintiff. Accordingly, IMCUSA is entitled to dismissal from the defamation causes of action.

Invasion of Privacy: To state a cause of action for invasion of privacy against this Defendant, the Plaintiff must show that IMCUSA: (1) publicized; (2) without waiver or privilege; (3) private matters to which the public has no concern; and (4) to bring shame or humiliation to a person of ordinary sensibilities. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 477-78, 514 S.E.2d 126, 130 (1990). As to the original Complaint, Judge Benjamin held the Plaintiff had not pled facts sufficient to constitute any cause of action for invasion of privacy because Plaintiff failed to allege that the information was publicized in any way, but she granted him leave to amend the complaint to detail the element of publicity. However, the Plaintiff did not make any additional allegation of publicity as ruled by Judge Benjamin to be necessary to sustain a cause of action for invasion of privacy; for which reason this cause of action should be dismissed. *Jordan,* 198 S.E at 178 (when an order allowing amendment of a pleading specifies particular changes allowed, the amended complaint can be struck for failure to comply with order.); Moreover, the Plaintiff alleges no facts in the Amended Complaint to even suggest IMCUSA publicized any private information about the Plaintiff.

Negligence: To establish a cause of action for negligence, the plaintiff must plead the following essential elements: "(1) a duty of care owed by the defendant to plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998). The limited factual allegations that IMCUSA was being slow with its investigation of Mr. Kirkland are not sufficient to state a cause of action against IMCUSA for breach of any legal duty owed that has proximately caused any compensable damage to Plaintiff.

Intentional Infliction of Emotional Distress: For the tort of intentional infliction of emotional distress, a plaintiff must show that "(1) the defendant intentionally or recklessly inflicted severe emotional distress ...; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' ...; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.'" *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). Again, nothing in the allegations that IMCUSA was slow in conducting an investigation of Defendant Kirkland, even as accepted as true for purposes of a Rule 12(b)(6) motion, state a claim for outrage.

Tortious Interference with Prospective Contractual Relations: "The elements of [tortious interference with prospective contractual relations] are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff." *United Educ. Distribs., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 14, 564 S.E.2d 324, 328 (Ct. App. 2002). Judge Benjamin ruled that there was no contract involved and dismissed this claim.[5] The Plaintiff is not allowed to reassert that cause of action in his Amended Complaint. *Georganne Apparel, Inc.*, 399 S.E.2d at 18 (affirming dismissal of an amended complaint with prejudice where the amended complaint added new causes of action not in compliance with earlier order).

Unfair Trade Practices: Judge Benjamin dismissed the UTPA cause of action without allowing any provision for amendment because this matter does not involve trade or commerce

[5] At the motion hearing on the original complaint held on October 1, 2018, Judge Benjamin was very emphatic as to the amendments allowed: "[T]hose are the only things that I am granting you leave to amend the complaint on is the invasion of privacy, conspiracy, and the John Does..." [ROA ___; 10/1/18 Tr. 26/13-18.]

under the South Carolina Unfair Trade Practices Act. Without appealing that ruling, Plaintiff has reasserted that cause of action in the Amended Complaint by restating with the same five paragraphs. Such amendment is subject to dismissal. *Georganne Apparel, Inc.*, supra. As with the original Complaint, the Plaintiff did not add any allegation that IMCUSA has participated in any trade or commerce actionable under SCUTPA.

Pierce the Corporate Veil: In addressing this cause of action in the original Complaint as asserted against Defendant Weaver and PPI, Judge Benjamin held that issue in abeyance for a later time. This Defendant maintains that the Plaintiff fails to allege facts sufficient to pierce the corporate veil of this non-profit. In South Carolina, courts use the two-pronged *Sturkie* test to determine whether piercing the corporate veil is appropriate. *See Mid-S. Mgmt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 649 S.E.2d 135 (Ct. App. 2007). The first part of the test consists of an eight-fact analysis, while the "second part requires ... there be an element of injustice or fundamental unfairness." *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984). Additionally, the burden of proving the second part of the test requires the plaintiff to show (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property. In this case, the Plaintiff's Amended Complaint is devoid of even any conclusory allegation relating to any of the elements; instead, Plaintiff appears to be attempting to use this cause of action to impose liability on the unspecified nonprofit corporation(s) for actions of Defendant Weaver. Nothing in the jurisprudence of piercing the corporate veil supports his outlandish theory of vicarious liability based on the allegations of fact made against IMCUSA.

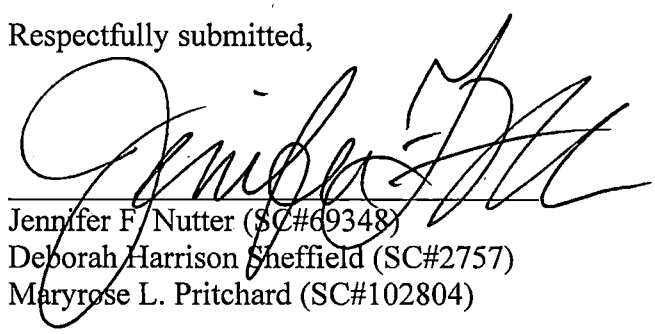
Conspiracy: Establishing a civil conspiracy requires elements of "(1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006) (citing *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988)). Furthermore, the plaintiff must plead "additional acts in furtherance of the conspiracy," rather than simply incorporating allegations from elsewhere in the complaint and then alleging a civil conspiracy. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) *rev'd on other grounds*, 283 S.C. 155, 321 S.E.2d 602 (1984) *quashed in part on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985). Judge Benjamin ruled that Plaintiff had not pled facts sufficient to constitute a cause of action of civil conspiracy, but allowed him to amend the complaint to detail special damages. While Plaintiff has added allegations of special damages, he has not pled any acts in furtherance of the conspiracy by IMCUSA.

CONCLUSION

Judge Benjamin granted the Plaintiff the opportunity to amend his original complaint to name the John Does and allowed him 15 days to file and serve an amended complaint. Inasmuch as Plaintiff did not serve the amended complaint within that 15-day time limit, Judge Early properly dismissed the Amended Complaint as to those newly named. Dismissal of the Amended Complaint can also be affirmed on the ground that the Amended Complaint was not timely filed within 15 days. In addition, the dismissal of the Amended Complaint can be affirmed as to IMCUSA because the bare allegations of fact against this Defendant are not sufficient to state any of the causes of action asserted in the Amended Complaint.

WHEREFORE, based on the foregoing, Respondent Institute of Management Consultants USA respectfully requests that the Order of Dismissal be affirmed.

Respectfully submitted,



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Respondents.

Certificate of Service

The undersigned certifies that on this 8th day of November, 2019, a copy of the Initial Brief on behalf of Respondent Institute of Management Consultants USA, was served by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following at the addresses listed below:

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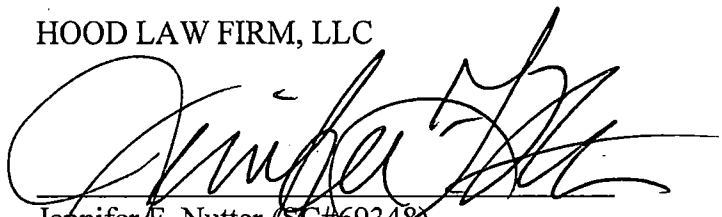

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Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Jefferson Davis, Jr. v. Ellen Weaver, *et al.*
Appellate Case No. 2019-000648
HLF File No. 17.092

Dear Ms. Kitchings:

Enclosed please find the original and one copy of Respondent Institute of Management Consultants USA's Initial Brief in the above matter, along with the Certificate of Service. I am serving all counsel of record with copies of the each. Please return a clocked-in copy of each in the envelope provided.

Kind regards,

Yours truly,

Jennifer F. Nutter

JFN/spc
Enclosure(s)
cc: Miles Coleman, Esquire
William Davidson, Esquire
Christopher Daniels, Esquire
Michael Wren, Esquire
Joseph M. McCulloch, Jr., Esquire
J. Kenneth Carter, Jr., Esquire
Benjamin Mustian, Esquire
M. Dawes Cooke, Jr., Esquire
Jefferson Davis, Jr., *Pro Se Plaintiff*
Brandon Gottschall, Esquire
Mark Barrow, Esquire
Geoffrey Chambers, Esquire
Douglas MacKelcan, Esquire
Martin Driggers, Esquire
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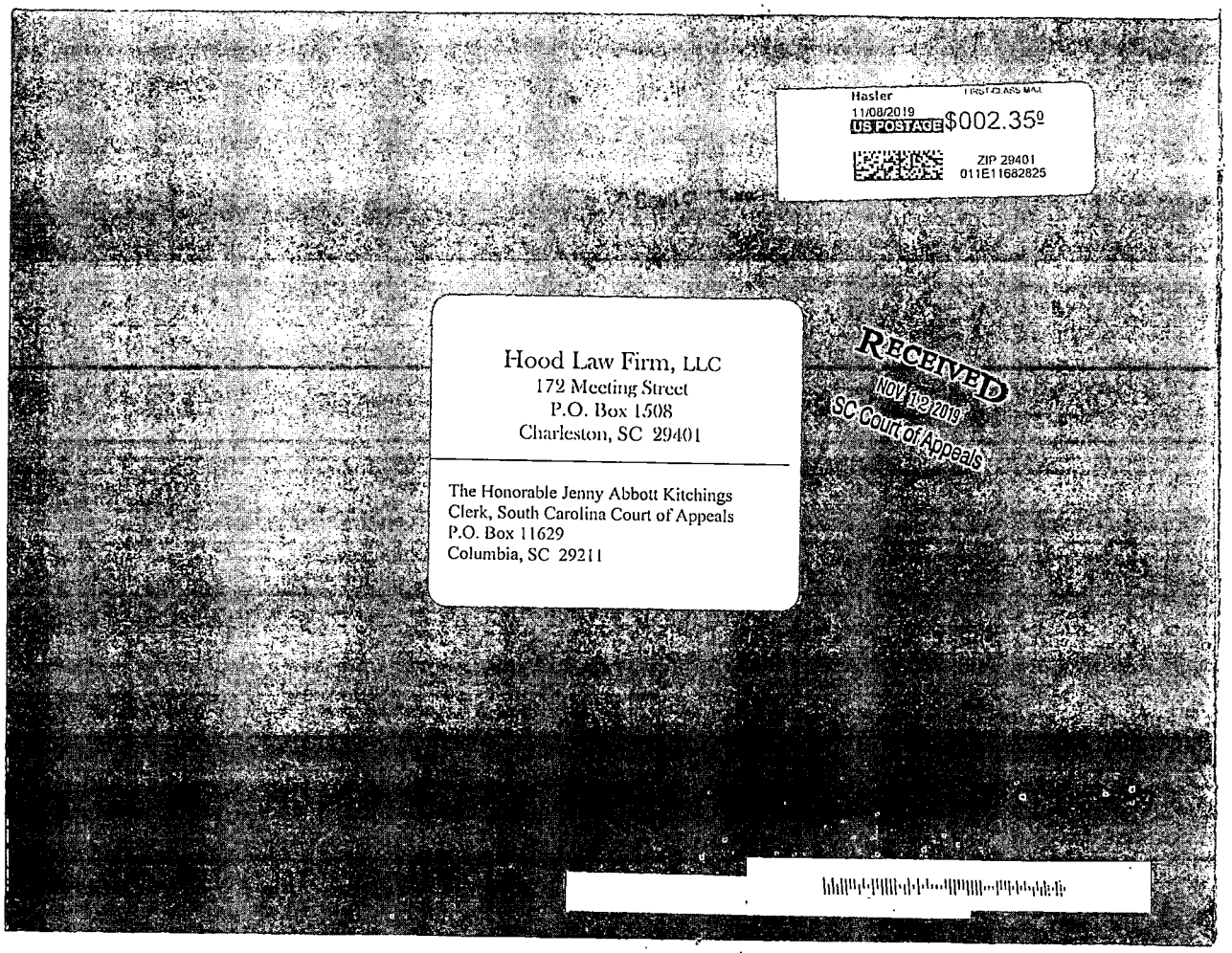
Kelley Cannon, Esquire
Jason P. Luther, Esquire
Justin P. Novak, Esquire
Mark V. Gende, Esquire



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The Honorable Jenny Abbott Kitchings
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