In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001032

Caleb Snow and Mary Snow, as P.R. of the Estate of Chequita Snow Burgess, deceased, ... Plaintiffs,

v.

James Burgess, Michael Scott and Heike Scott, ... Defendants,

Michael Scott and Heike Scott, ... Third-Party Plaintiffs, Appellants,

v.

Eugene Rhinehart, ... Third-Party Defendant, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court correctly held that Appellants could not maintain an equitable indemnity claim against Respondent because Appellants and Respondent were, at most, joint tortfeasors as to the Plaintiffs.

II. Alternatively, the Circuit Court correctly held that Appellants have failed to allege facts sufficient to support a finding that a special relationship exists between Appellants and Respondent that is sufficient as a matter of law to support an equitable indemnity claim.

STATEMENT OF THE CASE

This appeal arises from an Order of the Circuit Court dismissing Appellants' third-party equitable indemnity claim against Respondent. On May 26, 2016, Chequita Snow Burgess was involved in a fatal motorcycle accident. The personal representatives of her Estate filed suit against Michael Scott, Heike Scott, and James Burgess. The Complaint alleges that at the time of the accident Ms. Burgess was riding on a motorcycle on Interstate 20 when the motorcycle crashed into a horse that had escaped from the Scotts' property. (R. pp. 8–9, ¶ 5). The Complaint alleges common law negligence against the Scotts based on their alleged failure to maintain their fence, failure to inspect their fence/locking mechanism, and failure to control the horse/allowing the horse to enter the roadway. (R. pp. 9–10, ¶ 8). The Complaint also alleges that the Scotts violated South Carolina Code § 47-7-110 by allowing the horse to run at large beyond the limits of their own land. (R. pp. 9–10, ¶ 8).

On September 7, 2018, the Scotts filed an Answer and Third-Party Complaint against Eugene Rhinehart claiming entitlement to equitable indemnity for the full amount of any judgment rendered against the Scotts. (R. pp. 12–16). This initial Third-Party Complaint alleges the Scotts are Rhinehart's neighbors and gratuitously allowed him to use their pastures to temporarily house his horses, without receiving any remuneration for this favor. (R. pp. 14–15, ¶¶ 3–5).

Thereafter, on September 12, 2018, Defendant James Burgess, the alleged driver of the motorcycle, filed an Answer and Crossclaim against the Scotts. (R. pp. 17–21). On October 11, 2018, when the Scotts answered this crossclaim, they filed a second Third-Party Complaint with their answer. The second Third-Party Complaint differs from the first in two ways. First, the second Third-Party Complaint alleges the Scotts are neighbors with Rhinehart and "therefore, hold a special relationship." (R. p. 25, ¶ 3). Additionally, the second Third-Party Complaint contains a new allegation that the Scotts had no fault in the injuries and damages alleged against them and have been forced to appear and defend themselves. (R. p. 25, ¶ 9).

Rhinehart filed a Motion to Dismiss the Third-Party Complaint[1] for failure to state a claim of equitable indemnity. Specifically, Rhinehart argued the "neighbor" relationship alleged in the Third-Party Complaint is not a "special relationship" sufficient, as a matter of law, to support a claim for equitable indemnity. On February 14, 2019, the Circuit Court held a hearing on Rhinehart's Motion to Dismiss. By Order dated May 24, 2019, the Circuit Court granted

[1] Appellants filed a second Third-Party Complaint prior to Respondent answering Appellants' initial Third-Party Complaint. *See* Rule 15, SCRCP (allowing a party to amend pleading once as a matter of course "at any time before or within 30 days after a responsive pleading is served"); (R. pp. 12–16 (filed September 7, 2018)); (R. pp. 22–26 (filed October 11, 2018)). Both Respondent and the Circuit Court treated Appellants' second Third-Party Complaint as an amendment of their initial Third-Party Complaint. The second Third-Party Complaint is the one Respondent answered and the one upon which Respondent based his Motion to Dismiss, which is at issue in this appeal. *See* (R. pp. 27–30); (R. p. 34 (quoting language from paragraph 3 of the second Third-Party Complaint regarding the existence of a special relationship because the Scotts are neighbors with Rhinehart)). The Circuit Court's Order dismissing the Third-Party Complaint also addressed the second Third-Party Complaint filed by the Scotts. *See* (R. p. 4). Therefore, the second Third-Party Complaint is the operative pleading in this appeal, and Appellants are bound by their allegations in that Third-Party Complaint. *See Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (stating that parties are judicially bound by their pleadings and "the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action"); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (same). Any reference hereinafter to the "Third-Party Complaint" refers to the second Third-Party Complaint—filed on October 11, 2018—unless otherwise noted.

Rhinehart's Motion to Dismiss the Scotts' third-party equitable indemnity claim. (R. pp. 1–6). On June 24, 2019, the Scotts filed their Notice of Appeal. (R. pp. 42–43).

STANDARD OF REVIEW

In reviewing the trial court's grant of Respondent's Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure 12(b)(6), this court applies the same standard of review as the trial court. *Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015). Dismissal is proper when none of the allegations in the Complaint and none of the reasonable inferences drawn from the allegations in the Complaint would entitle the Plaintiff to relief on any theory. *Id.* "As a general rule, important questions of novel impression should not be decided on a motion to dismiss. Where, however, the dispute is not as to the underlying facts but as to the interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office*, 346 S.C. 158, 165, 551 S.E.2d 263, 267 (2001).[2] "The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

An appellate court may affirm a trial court's order "on any ground appearing in the record." *Doe v. Doe*, 286 S.C. 507, 511, 334 S.E.2d 829, 832 (Ct. App. 1985); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("Under the present rules, a respondent— the "winner" in the lower court—may raise on appeal any additional reasons the appellate court

[2] Here the question involved is a question of law – whether the alleged relationship between Appellants and Respondent can support an equitable indemnity claim—and Appellants point to no factual issues that require further development. *See Unisys Corp.*, 346 S.C. at 165, 551 S.E.2d at 267 (holding issue properly decided on motion to dismiss where "the questions involved are questions of law and [appellant] points to no factual issues that require further development").

should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court."); Rule 220(c), SCACR.

SUMMARY OF THE ARGUMENT

Appellants cannot show, simultaneously, that they are "without fault" necessary to obtain indemnity and also alleged to be "at fault" for the conduct of Respondent such that they need to be indemnified. Appellants are either without fault, or they are "at fault" based solely upon their own conduct. At most, they would be joint tortfeasors with Respondent, based on the allegations of the Complaint. As such, the are entitled to indemnity from Respondent.

The Plaintiffs' allegations of negligence against Appellants fall into three categories: (1) allegations for which only the Appellants owed a duty; (2) allegations for which Appellants contend Respondent owed the same duty; and (3) allegations for which the Appellants contend only Respondent held a duty. Accordingly, where Appellants hold the same duty as Respondent, they are joint tortfeasors for whom indemnity is unavailable. As to the duties held by the Appellants alone, Respondent would not be at fault for any breach thereof and would not be responsible for indemnification of the same. Finally, Appellants are not entitled to indemnity for a breach of a duty held solely by Respondent because they themselves would not be liable to the Plaintiffs in that scenario. There is no allegation in the Complaint imputing liability to Appellants for the conduct of Respondent. Thus, none of the allegations against Appellants in the Plaintiffs' Complaint create a basis for Appellants' equitable indemnity claim.

Additionally, Appellants have not alleged facts that, if true, would establish any special relationship between them and Respondent. Rather, they allege they "gratuitously" allowed Respondent, their neighbor, to use their pasture to temporarily house his horses at his discretion. A sufficient relationship is one where the indemnitor's fault can be imputed to the indemnitee—

particularly where the indemnitor is acting as the agent or steward of the indemnitee when the damages to a third person occur. Appellants have not alleged that their neighbor relationship with Respondent imputes his fault upon them for their own conduct. In fact, they have not alleged imputed fault for Respondent's conduct at all. Appellants have alleged merely that they allowed Respondent to use their property subject to no conditions, not that Respondent held any duties toward them. Thus, they have failed to state a claim for equitable indemnity.

ARGUMENT

Under the facts of this case, Appellants cannot support the essential elements for their equitable indemnity claim against Respondent because they cannot at the same time be "without fault" necessary to obtain indemnity and also "at fault" based upon Respondent's conduct such that he is obligated to indemnify them. Therefore, Appellants cannot obtain equitable indemnity from Respondent, and the Circuit Court properly dismissed their Third-Party Complaint.

Alternatively, Appellants cannot show that the "special relationship" required for an equitable indemnity claim exists between them and Respondent. For this additional reason, the Circuit Court properly dismissed Appellants' Third-Party Complaint.

I. THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANTS COULD NOT MAINTAIN AN EQUITABLE INDEMNITY CLAIM AGAINST RESPONDENT BECAUSE APPELLANTS AND RESPONDENT WERE, AT MOST, JOINT TORTFEASORS AS TO THE PLAINTIFFS.

South Carolina law is clear that a tortfeasor has no right to equitable indemnity. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper*, 336 S.C. 53, 64, 518 S.E.2d 301, 307 (Ct. App. 1999). To recover under a cause of action for equitable indemnity, a party must plead and prove the following elements: 1) the indemnitor was liable for causing the Plaintiff's damages; 2) ***the indemnitee was exonerated from all liability*** for those damages; and 3) the indemnitee suffered

damages as a result of the Plaintiffs' claims against it which were proven to be the fault of the indemnitor. *Id.* (emphasis added).

Here, Appellants *cannot show that they are both liable to the Plaintiff* (necessary for them to obtain a recovery via indemnity in the first place) *and at the same time "exonerated from all liability for those damages."* Plaintiffs have not alleged any "pass through" or imputed liability to Respondent. Appellants and Respondent simply do not have the type of relationship that gives rise to vicarious liability.

A. None of the allegations against Appellants in the Plaintiffs' Complaint create a basis for equitable indemnity.

In the Plaintiffs' Complaint, the allegations of negligence against the Appellants come within three categories: (1) allegations for which only Appellants had a duty—making indemnity unavailable because Respondent could not be at fault under this theory; (2) allegations for which Appellants contend Respondent had the same duty—making them joint tortfeasors for which no indemnity is available; and (3) allegations for which Appellants contend only Respondent had a duty—making indemnity unavailable because Appellants would not be liable to the Plaintiffs under this theory. Specifically, the Complaint alleges that the Appellants were negligent:

(a) In then and there failing to maintain the fence in which the horse was located [Category 1];

(b) In then and there failing to control the horse [Category 2];

(c) In allowing the horse to enter into the roadway [Category 2];

(d) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances [Category 2];

(e) In allowing the livestock to run at large beyond the limits of their own land in direct violation of S.C. Code § 47-7-110 [Category 3];

(f) In allowing their livestock to run at large and damage the Plaintiffs in direct violation of S.C. Code § 47-7-130 [Category 3];

(g) In failing to inspect the fence and locking mechanism [Category 2];

(h) In failing to exercise that degree of care and caution as would a reasonably prudent person under the same or similar circumstances [Category 2].

(R. pp. 9–10, ¶ 8). None of these allegations provide a proper basis for Appellants' equitable indemnity claim.

(i) Solely Appellants' Liability

The Complaint alleges Appellants were negligent in "failing to maintain the fence in which the horse was located." (R. p. 9, ¶ 8(a)). There is no allegation in Appellants' Third-Party Complaint that Respondent had any duty to maintain their fence system. Thus, to the extent there is any liability for failure to maintain the fence, it would be the sole liability of Appellants as the owners of the fence and would not entitle them to any equitable indemnity from Respondent. *See Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983) (stating that equitable indemnity is available "where one person is exposed to liability by the wrongful act of another in which he does not join"). Thus, this allegation—Complaint ¶ 8(a)—provides no basis for Appellants' equitable indemnity claim.

(ii) Common Liabilities

The Complaint also alleges Appellants are liable for: (1) failing to control the horse; (2) allowing the horse to enter the roadway; (3) failing to inspect the fence and locking mechanism; and (4) failing to exercise reasonable care. (R. pp. 9–10, ¶¶ 8(b)–(d), (g)–(h)). Likewise, the Third-Party Complaint alleges Respondent is liable for: (1) failing to monitor/supervise the horse; (2) allowing the horse to leave the property unattended; (3) failing to properly secure the gate; and (4) failing to exercise reasonable care. (R. p. 25, ¶¶ 8(a)–(d)).

"Under South Carolina law, there can be no indemnity among mere joint tortfeasors." *Vermeer Carolina's, Inc.*, 336 S.C. at 64, 518 S.E.2d at 307. "Parties that have no legal relation to one another and who owe the same duty of care to the injured party share a common liability and are joint tortfeasors without a right of indemnity between them." *Id.*; *see also Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n*, No. 3:15-CV-01300-JMC, 2016 WL 3027552, at *19 (D.S.C. May 27, 2016) (stating that if the parties "share common liability as joint tortfeasors, the equitable indemnification claim fails under South Carolina law"). As to the above allegations, Appellants and Respondent satisfy the definition of joint tortfeasors. As shown above, Appellants allege Respondent owes the same duties to Plaintiff as Appellants allegedly owe to Plaintiff. In addition, Appellants and Respondent have no legal relation to one another.

Appellants allege they "gratuitously allowed" Respondent to use their pasture "at [his] discretion." (R. p. 25, ¶ 4). Such a gesture does not constitute a legal relationship. It is a favor between neighbors, and the Third-Party Complaint does not allege the existence of any conditions placed upon Respondent in exchange for his use of the pasture. Indeed, the only fact alleged in the Third-Party Complaint that could be considered a "term" of an agreement between the parties is that Respondent could use the pasture "at [his] discretion." Yet, his discretionary use is, by nature, not conditioned upon other factors or duties beyond his desire to use the pasture to temporarily house his horses. *See Discretion*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "discretion" as "[w]ise conduct and management *exercised without constraint*") (emphasis added).

The Third-Party Complaint does not allege that as a result of the Appellants' gesture Respondent undertook any duties regarding Appellants' property or that Appellants placed any conditions on his use of the pasture. There are no allegations that Respondent had duties to

Appellants—or others—regarding the maintenance of their property. Thus, the "gratuitous" act of allowing Respondent to use their pasture for his horse "at [his] discretion" was just that—a favor that did not confer responsibilities upon Respondent regarding Appellants' property and, therefore, did not create a legal relationship between the parties.

Thus, to the extent the liabilities raised by these allegations are common liabilities owed by both Appellants and Respondent to Plaintiffs, they are not a proper basis for an equitable indemnity claim. As explained below, to the extent the liabilities raised by these allegations are not common liabilities but solely liabilities for Respondent, they are also not a proper basis for an equitable indemnity claim.

(iii) Solely Respondent's Liability

Plaintiffs' Complaint asserts liability against Appellants based on their alleged violation of two statutes—South Carolina Code §§ 47-7-110 and 47-7-130. (R. p. 10, ¶ 8(e)–(f)). Those statutes provide in pertinent part:

> It shall be unlawful for the **owner** or **manager** of any domestic animal of any description willfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased, occupied or controlled by him....
>
> Whenever any domestic animals shall be found upon the lands of any other person than the owner or manager of such animals, the **owner** of such trespassing stock shall be liable for all damages sustained and for the expenses of seizure and maintenance....

S.C. Code §§ 47-7-110 and 47-7-130, respectively (emphasis added). In their Brief, Appellants allege that these statutes do not apply to them because they are not "owners" or "managers" of the horse. *See* (Appellants' Br. pp. 7–8). If Appellants are correct, then the Circuit Court could not find them liable for the Plaintiffs' injuries as a result of violating these statutes. In which case, these allegations will not provide a basis for damages against Appellants for which they could seek indemnification from Respondent. However, if Appellants are incorrect, then these statutes created

another common liability that Appellants and Respondent share. In any event, these allegations cannot be a proper basis for equitable indemnification.

To the extent that Appellants allege these statutes preclude all common law liability against them, then, if correct, the Circuit Court could not find them liable for the Plaintiffs' injuries at all. *See Reed v. Clark*, 277 S.C. 310, 313, 286 S.E.2d 384, 386 (1982) (stating that at common law owner of a domestic animal had no duty to keep animal off highway and "was not liable for damages to a motor vehicle or to a person riding therein caused by the animal(s) being at large on the highway"). In which case, no allegation in Plaintiffs' Complaint provides a basis for damages against Appellants for which they could seek indemnification from Respondent because Appellants are not "exposed to liability" by Respondent's acts. *See Rock Hill Tel. Co. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005) (stating that a right of indemnity exists "where one person is exposed to liability by the wrongful act of another in which he does not join").[3]

None of the allegations in the Complaint provide a proper basis for Appellants' equitable indemnity claim. The first allegation—failing to maintain the fence—is an allegation for which only Appellants could be liable as the owners of the fence. The remaining allegations are all either: (1) common liabilities shared by Appellants and Respondent, which precludes Appellants' equitable indemnity claim because they are joint tortfeasors; or (2) allegations for which Appellants could not have any liability, which precludes Appellants' equitable indemnity claim because there is no negligence imputed to them as a result of Respondent's conduct. *See Vermeer*

[3] If the Plaintiffs have sued Appellants without a proper basis for liability against them, then Appellants' remedy is to seek an award of costs and attorneys' fees from Plaintiffs under the Frivolous Proceedings Act—not seek equitable indemnification from Respondent. *See* S.C. Code § 15-36-10(G); *Ex parte Gregory*, 378 S.C. 430, 440, 663 S.E.2d 46, 51 (2008).

Carolina's, Inc., 336 S.C. at 60, 518 S.E.2d at 305 ("[I]f one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him."). Therefore, the Circuit Court's dismissal of Appellants' equitable indemnity claim was proper.

B. Because Appellants can never recover indemnification for any amounts that they may owe to the Plaintiffs, their claim for fees and costs cannot remedy the failure to state a valid third-party claim under Rule 14(a)(1).

Rule 14(a) governs third-party practice and provides, in pertinent part:

> [A] defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action ***who is or may be liable to him for all or part of the plaintiff's claim against him***....

Rule 14(a), SCRCP. The language of the rule is plain and unambiguous. A third-party claim is only proper where the Third-Party Plaintiff seeks recovery from the Third-Party Defendant for all or part of the underlying plaintiff's claim against the Third-Party Plaintiff. In this case, the third-party claim only satisfies the rule to the extent that Appellants seek recovery from Respondent for amounts that Appellants may ultimately owe to Plaintiffs. However, Appellants cannot recover their attorney's fees and costs against Respondent from defending the negligence action pled in the Complaint. Such damages are not the proper subject of a third-party claim under Rule 14. "The secondary or derivative liability notion is central . . . ." Wright, Miller & Kane, *Federal Practice and Procedure* § 1446.[4] "The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against defendant by the original plaintiff." *Id.*; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) ("Under Rule 14, the third-party plaintiff must have a substantive claim

[4] Note, Rule 14, SCRCP ("These Rules 14(a) through (c) are substantially the same as the Federal Rule, except for the omission of references to admiralty and maritime practice, and the addition of Rule 14(c) as to joinder.").

against the third-party defendant ***founded upon derivative liability***....[N]o right exists to implead a third-party defendant who is ***directly liable*** to the plaintiff." (emphasis added)). Although indemnity for amounts that Plaintiffs ultimately recovered from Appellants might constitute secondary or derivative liability if recoverable, indemnity for Appellants' own attorney's fees and costs is neither secondary nor derivative and, therefore, does not support a claim under Rule 14.

"Impleader also is proper only when a right to relief exists under the applicable substantive law; if it does not, the impleader claim must be dismissed." Wright, Miller & Kane, *Federal Practice and Procedure* § 1446. If a factfinder finds fault against Appellants, then Appellants are barred from seeking equitable indemnity under well-established South Carolina law. Therefore, the only possible avenue to pursue an equitable indemnity claim against Respondent would be if a jury determines that Appellants have absolutely no fault. In that case, Plaintiffs would never obtain a judgment against Appellants, and they have nothing for which to be indemnified. Their costs and fees are not derivative or secondary damages because Appellants could never owe those damages ***to Plaintiffs.*** For these reasons, the Third-Party Complaint fails to state a cause of action for equitable indemnity.

II. ALTERNATIVELY, THE CIRCUIT COURT CORRECTLY HELD THAT APPELLANTS FAILED TO ALLEGE A SPECIAL RELATIONSHIP WITH RESPONDENT SUFFICIENT TO SUPPORT AN EQUITABLE INDEMNITY CLAIM.

"In order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). This is in addition to the other equitable indemnity claim elements, which were set forth above. Appellants allege the existence of a special relationship with Respondent because they are his neighbors. (*See* R. p. 25, ¶ 3). However, this is insufficient to support their equitable indemnity claim.

A. The alleged neighbor relationship is insufficient to support an equitable indemnity claim.

Appellants are not entitled to equitable indemnity based upon their neighbor relationship with Respondent. South Carolina does not recognize a special relationship between neighbors. *See Rhett v. Gray*, 401 S.C. 478, 498, 736 S.E.2d 873, 883 (Ct. App. 2012) (denying a claim for equitable indemnity of attorney's fees in an easement dispute between neighbors because the case was not one of "implied indemnity," which requires a special relationship). Nevertheless, the Third-Party Complaint alleges the existence of a special relationship *based on* the Appellants' neighbor relationship with Respondent. (R. p. 25, ¶ 3) ("[The Scotts] and [Rhinehart] are neighbors and, *therefore*, hold a special relationship.") (emphasis added). Because South Carolina law does not recognize a special relationship between neighbors, the Circuit Court correctly dismissed Appellants' equitable indemnity claim.

Appellants do not point to any South Carolina law establishing that their gratuitous allowance of Respondent to use their pasture at his discretion constitutes a special relationship sufficient to support a claim for equitable indemnity. On the contrary, Appellants have alleged, essentially, that they are entitled to equitable indemnity because they had no fault in the injuries and damages alleged by the Plaintiffs. Specifically, Appellants' Brief argues: "Since the Scotts have had to defend in this action because of the tortious conduct of Rhinehart, there is a sufficient relationship giving rise to an indemnity cause of action." (Appellants' Br. p. 14). However, South Carolina requires more than this to recognize a special relationship and has already rejected this argument. In *Rock Hill Tel. Co.*, the South Carolina Supreme Court stated: "[T]here must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing." 363 S.C. at 390 n.3, 611 S.E.2d at 237 n.3.

In the cases where South Carolina courts have recognized a special relationship, the relationship is one where the indemnitor's fault can be imputed to the indemnitee—particularly where the indemnitor is acting as the agent of the indemnitee when the damages to a third person occur. *See, e.g., Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971) (allowing equitable indemnity when a building's landlords were compelled to pay damages to tenants because of a general contractor's negligence); *South Carolina Elec. & Gas Co. v. Utilities Const. Co.*, 244 S.C. 79, 135 S.E.2d 613 (1964) (allowing equitable indemnity where electric company had to pay damages to pedestrian who was injured due to defect in sidewalk repaired by electric company's contractor).

Alternatively, in cases where South Carolina courts refuse to recognize a special relationship, the relationship is one that does not subject the proposed indemnitee to vicarious liability for the proposed indemnitor's conduct. *See, e.g., Rock Hill Tel. Co.*, 363 S.C. at 390, 611 S.E.2d at 237-38 (holding no special relationship between utility and its distant independent contractor where utility was not vicariously liable for that contractor's negligence); *Toomer*, 344 S.C. at 493, 544 S.E.2d at 637 (holding no special relationship between railroad company and driver whose vehicle was struck while on train track causing fatal injuries to the passenger).

Appellants have alleged that the "neighbor" relationship they have with Respondent constitutes a special relationship. (R. p. 25, ¶ 3). A "neighbor" relationship does not impute the negligence of one neighbor to the other or cause one neighbor to be vicariously liable for the conduct of the other neighbor. It is not enough for Appellants to claim they are Respondent's neighbors and were sued because of his conduct. *See Rock Hill Tel. Co.*, 363 S.C. at 390 n.3, 611 S.E.2d at 237 n.3.

With regard to Appellants allowing Respondent to use their pasture, Appellants have also failed to demonstrate how this relationship imputes the alleged negligence of Respondent onto

Appellants or makes them vicariously liable for Respondent's alleged conduct with his horse. In fact, Appellants have alleged that they cannot be liable at all for the horse not being secure in the pasture because they were not owners or managers of the horse. (Appellants' Br. pp. 11–12, 14). Essentially, Appellants allege they lack the relationship to Respondent's horse to make them liable to Plaintiffs. This undermines any argument that this agreement between Appellants and Respondent created a special relationship. Therefore, Appellants cannot show the required type of special relationship with Respondent to entitle them to seek equitable indemnity from Respondent.

B. Appellants have failed to allege facts that, if true, would establish any special relationship between them and Respondent.

Furthermore, "[a] sufficient relationship exists when the at-fault party's negligence or breach of contract ***is directed at the non-faulting party*** and the non-faulting party incurs attorney's fees and costs in defending itself against the other's conduct." *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 307 S.C. 128, 132, 414 S.E.2d 118, 121 (1992) (emphasis added); *Toomer*, 344 S.C. at 492, 544 S.E.2d at 637 (same) (emphasis in org.). The relationship alleged by Appellants does not satisfy the South Carolina Supreme Court's standard set forth in *Town of Winnsboro*. Even taking as true the facts alleged in the Third-Party Complaint, Appellants have not alleged how Respondent's allegedly tortious conduct was directed at Appellants.

In *Town of Winnsboro*, a subcontractor breached its duty to the general contractor on a sewer project—the poor completion of which was the basis for the town's lawsuit against the general contractor. 307 S.C. at 129–30, 414 S.E.2d at 119. The South Carolina Supreme Court upheld the trial judge's award of equitable indemnity for the general contractor because the subcontractor's breach of its duties toward the general contractor ultimately resulted in the town's harm. *Id.* at 132, 414 S.E.2d at 120 ("[Subcontractor] negligently performed its contract with [General Contractor]. Because of [Subcontractor's] negligence and breach of contract directed

toward [General Contractor], [General Contractor] was forced to defend the action brought by the Town of Winnsboro.").

In contrast, the Third-Party Complaint asserts no allegations that the relationship between Appellants and Respondent conferred upon Respondent any duties towards Appellants. Thus, even taking the Third-Party Complaint's allegations as true, Respondent's alleged acts of negligence were not imputed to Appellants as required to show a special relationship. Therefore, Appellants cannot demonstrate the required special relationship with Respondent to support their equitable indemnity claim, and the Circuit Court properly dismissed the claim.

CONCLUSION

For the above-stated reasons, the Circuit Court properly dismissed the Third-Party Complaint. The Third-Party Complaint fails to state any claim for indemnity that satisfies Rule 14(a)(1) and South Carolina law. Appellants are no more than joint tortfeasors with Respondent, being alleged to have been negligent in their own right and directly at-fault for Plaintiffs' injuries. Their liability to Plaintiffs stands or falls based upon their conduct alone. There is no situation where Appellants could be liable to Plaintiffs for the conduct of Respondent—they cannot recover damages from Respondent under the claim asserted in the Third-Party Complaint. Therefore, the Respondent Eugene Rhinehart respectfully requests that this Court affirm the Circuit Court's grant of the Motion to Dismiss the Third-Party Complaint.

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Columbia, South Carolina
December 3, 2019

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001032

Caleb Snow and Mary Snow, as P.R. of the Estate of Chequita Snow Burgess, deceased .... Plaintiffs,

v.

James Burgess, Michael Scott and Heike Scott, ... Defendants,

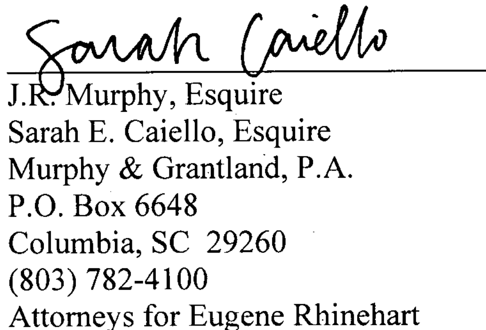
Michael Scott and Heike Scott, ... Third-Party Plaintiffs, Appellants,

v.

Eugene Rhinehart, ... Third-Party Defendant, Respondent.

CERTIFICATE OF COUNSEL

I, Sarah E. Caiello, Esquire, attorney for Respondent, certify that the Respondent's Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



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