THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case No. 2019-001032

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No.: 2018-CP-38-00766

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,

v.

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

v.

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

APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S RULE 12(B)(6) MOTION TO DISMISS.

A. The trial court erred in finding the parties are joint tortfeasors.

B. The trial court erred in finding the relationship between the parties as neighbors was insufficient to maintain the Third-Party Complaints.

STATEMENT OF THE CASE

This appeal arises out of dismissal of the Defendants/Third-Party Plaintiffs/Appellants (the "Scotts") Third-Party Complaints against the Third-Party Defendant/Respondent ("Rhinehart") pursuant to Rule 12(b)(6), SCRCP.

A Complaint filed on June 25, 2018, in which the Plaintiffs allege the Scotts are liable for injuries caused to them when three (3) horses owned by Rhinehart escaped and wandered approximately six (6) miles away from where they were being kept. The horses wandered onto I-20 and collided with a motorcycle being operated by Defendant Burgess.[1] The Plaintiff's daughter was tragically killed as a result of the collision. The Complaint also alleges negligence against the Defendant Burgess.

The Defendant Burgess filed and served an Answer and Cross-Claim also alleging the Scotts were negligent in allowing the horses to escape their property, which allegedly resulted in him suffering personal injuries.

The Scotts filed and timely served Answers and Third-Party Complaints. The Third-Party Complaints alleged the horses involved in this matter are owned solely by Rhinehart. The Third-Party Complaints further alleged the Scotts granted Rhinehart a limited license to use their property to graze his horses and that the Scotts charged Rhinehart no fee and no rent for his use of the pasture. The Third-Party Complaint alleges that Rhinehart is solely liable for the acts or omissions complained of.

Rhinehart filed and timely served Answers to the Third-Party Complaints as well as Motions to Dismiss pursuant to Rule 12(b)(6), SCRCP. Rhinehart argued the Third-Party Complaints could not be maintained because no special relationship existed

[1] Defendant Burgess is the husband of the decedent in this matter.

between him and the Scotts. Rhinehart further argued the parties are merely neighbors and "joint tortfeasors."

On February 14, 2019, a hearing was held on Rhinehart's Motions to Dismiss. On May 24, 2019, the trial court filed an Order granting Rhinehart's Motion to Dismiss with prejudice. A Notice of Appeal was filed and timely served.

STATEMENT OF FACTS

In addition to the information set forth above, the Third-Party Complaints made the following allegations against Rhinehart:

> The Scotts and Rhinehart are neighbors;
>
> That Scotts gratuitously allowed Rhinehart to use their pastures at Rhinehart's discretion to temporarily house his horses;
>
> The Scotts did not receive any remuneration for allowing Rhinehart to use the pasture, they did not own the horse at issue in this case or provide the horse care or maintenance;
>
> The Scotts' property was properly fenced with locking gates and was appropriate to coral a horse;
>
> Rhinehart or his agents or servants were solely responsible for putting and taking the horse from his property to the Scotts' property and back again at the times of his choosing.
>
> Rhinehart was negligent, willful, wanton, malicious and/or grossly negligent in one or more of the following respects:
>
> a) In failing to exercise ordinary and reasonable care to maintain and keep the horse;
>
> b) In failing to monitor and/or supervise the horse;
>
> c) In failing to properly secure the gate(s);
>
> d) In allowing the horse to leave the property unattended.

[R. pp. 22-28]. The Third-Party Complaints' prayer for relief requested that if Plaintiff or the cross-claimant obtained a verdict against the Scotts for money damages, that the Scotts be awarded a judgment in the same amount against Rhinehart. [*Id.*].

STANDARD OF REVIEW AND APPLICABLE LAW

The trial court may dismiss a claim when the pleading demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action. *Flateau v. Harrelson*, 355 S.C. 197, 201–03, 584 S.E.2d 413, 415–16 (Ct. App. 2003) citing *Williams v. Condon,* 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). In ruling on a 12(b)(6) motion, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Id.* citing *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995).

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Id.* citing *Gentry v. Yonce,* 337 S.C. 1, 522 S.E.2d 137 (1999).

On appellate review in deciding if the motion to dismiss was properly granted, the Court ". . . must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *Id.* citing *Gentry,* 337 S.C. at 5, 522 S.E.2d at 139. "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." *Id.* citing *Tatum v. Medical Univ. of South Carolina,* 346 S.C. 194, 552 S.E.2d 18 (2001).

In *Jourdan,* the court held "dismissal on the basis of a Rule 12 motion was premature. The allegations of the Complaint . . . are not determinative of . . . the right to indemnity. Rather, such a determination is based on the evidence and the facts found by the fact finder. *Jourdan v. Boggs/Vaughn Contracting, Inc.,* 324 S.C. 309, 313-14, 476 S.E.2d 708, 711 (Ct. App. 1996) (internal citations omitted). Additionally, in *Addy*, this

Court overruled *JRT Company v. Hardwick*, which held that the right to indemnity was to be determined on the face of the pleadings, rather than by facts in evidence at trial. *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971).

"Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Winnsboro v. Wiedeman-Singleton*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), affirmed 307 S.C. 128, 414 S.E.2d 118 (1992). The right is created by operation of law "in cases of imputed fault or where some special relationship exists between the first and second parties." *Id.* 303 S.C. at 57, 398 S.E.2d at 503.

In *Jourdan*, the Court explains the policy rationale behind South Carolina's indemnification rule:

> We note that the modern trend concerning the right to indemnity is to look to principles of equity. According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join.

Id. at 313, 476 S.E.2d at 710.

Ordinarily, if 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 had thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury. *Addy*, 257 S.C. 28 at 34, 183 S.E.2d 708 at 710 (quoting *Atlantic Coast Line R.R. Co. v. Whetstone*, 243 S.C. 61, 132 S.E.2d 172 (1963).

Rule 14, SCRCP, permits a third-party plaintiff to implead the third-party defendant for "all or part of" plaintiff's claim. In *Rhett*, the court stated,

> In order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established. A sufficient relationship exists [for indemnification] 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 fees and costs in defending itself against the other's conduct.

Rhett v. Gray, 401 S.C. 478, 498, 736 S.E.2d 873, 884 (Ct. App. 2012) (emphasis added) (insertion in original) (internal citations omitted).

ARGUMENTS

I. THE TRIAL COURT ERRED IN GRANTING RHINEHART'S RULE 12(B)(6) MOTION TO DISMISS.

A. The trial court erred in finding the parties are joint tortfeasors.

First, the trial court dismissed the Third-Party Complaint on the grounds that the Scotts and Rhinehart were joint tortfeasors and, therefore, the Scotts could not maintain an action for equitable indemnity. [R. pp. 2-3]. In support of its ruling, the trial court stated the following:

> The Scotts knew they were housing Rhinehart's horse in their pasture. They had a duty to secure their own pasture, keeping the horse within the enclosure. Likewise, Rhinehart had a duty to secure the gates to the Scotts' pasture after he took care of his horse each day. Because the Scotts held the same duty of care to secure their pasture as Rhinehart, the Scotts are joint tortfeasors with him in any action that arises out of the escape of Rhinehart's horse from their pasture.

[*Id.*]. Interestingly, the trial court also noted the additional information, which is not only irrelevant to the motion before it, but was not contained in the pleadings:

> Indeed, Rhinehart has already entered into a settlement with the Plaintiffs in the underlying suit, subject to allocation between the Estate of Chequita Snow Burgess and Defendant James Burgess. Rhinehart has already undertaken responsibility for his own liability in the underlying action. Therefore, the Scotts' attempt to shift liability for their own conduct is improper considering they are joint tortfeasors with Rhinehart.

[*Id.*, at fn. 1].

The only case law cited by the trial court in reaching its decision is the general principal that "there is no right to equitable indemnity between mere joint tortfeasors because each are potentially liable for causing harm to the plaintiff." [*Id.*, citing *Vermeer Carolinas, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 64, 518 S.E.2d 301, 307 (Ct. App. 1999).

As alleged in the Third-Party Complaints, the Scotts allowed Rhinehart to use their pastures for his horses. Although the use of the pastures was without remuneration, the most analogous relationship between the parties was that of a landlord-tenant. *Bruce v. Durney*, 341 S.C. 563, 569–70, 534 S.E.2d 720, 724 (Ct. App. 2000) citing *Columbia Ry., Gas & Electric Co. v. Jones,* 119 S.C. 480, 112 S.E. 267(1922). (stating "[a] tenant is one who occupies the premises of another in subordination to that other's title and with his assent, express or implied"); *see also* S.C. Code Ann. § 27-33-10 (defining "*Tenant at will* - Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing, shall be deemed a '*tenant at will*'").

South Carolina has established that a landlord is not liable for injuries caused by an animal kept by a tenant on leased property. *Bruce v. Durney*, 341 S.C. at 571, 534 at 725. It is the owner of the animal that is tasked with ensuring the animal does not escape, cause injury to others, and does not damage the property of others. See S.C. Code Ann. § 47-7-130 ("[w]henever 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 Ann. § 47-7-110 ("[i]t shall be unlawful for the *owner or*

manager of any domestic animal of any description wilfully 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. Any *owner, manager* or person violating the provisions of this section shall be subject to a fine for each offense of not more than twenty-five dollars or to imprisonment for not more than twenty-five days.") (emphasis added).

The statute does not define the terms "owner" or "manager." When the statute does not define a word, our Supreme Court has held, "[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. *Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009). An "owner" is "[s]omeone who has the right to possess, use, and convey something; a person in whom one or more interests are vested." *Owner, Black's Law Dictionary* (10th ed. 2014). A "manager" is "[s]omeone who administers or supervises the affairs of a business, office, or other organization. *Manager*, *Black's Law Dictionary* (10th ed. 2014).

Contrary to the trial court's ruling, based upon the pleadings and law in South Carolina, the Scotts had no duty to ensure Rhinehart's horses were secured within their pastures and, therefore, the parties are not joint tortfeasors. The trial court erred in dismissing the Third-Party Complaints on the grounds that the parties were joint tortfeasors.[2]

B. The trial court erred in finding the relationship between the parties as neighbors was insufficient to maintain the Third-Party Complaints.

[2] As an additional ground, the trial court clearly entertained matters outside of the Third-Party Complaints when it referenced Rhinehart's settlement negotiations as grounds to find joint liability. [R. p. 3, fn. 1]. As such, the trial court erred in dismissing the Third-Party Complaints. *Flateau*, 355 S.C. at 201–03, 584 S.E.2d at 415–16 (stating in ruling on a 12(b)(6) motion, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint"].

The trial court also dismissed the Third-Party Complaints finding "[e]quitable indemnity requires the existence of a special relationship between the indemnitees and the indemnitor, and South Carolina does not recognize a special relationship between neighbors." [R. p. 3, citing *Rhett v. Gray*, 401 S.C. at 498, 736 S.E.2d at 883].

First, the trial court erred in expanding the holding in *Rhett* to apply to the facts alleged in the present action. The *Rhett* court ***did not*** hold there was no special relationship between neighbors. The *Rhett* court affirmed the denial of the trial court's award of attorneys' fees on the ground the case was not one of equitable indemnity. 401 S.C. at 499, 736 S.E.2d at 884. While the "special relationship" requirement was mentioned, there was no specific holding in that case as to that issue. Moreover, the issue in *Rhett* involved an easement and the only relationship between the parties in that case was that of adjoining landowners. *Id.*

Next, the pleadings in this case allege more than just the general relationship between the parties as neighbors. As stated above, the relationship could be construed to be a landlord-tenant relationship. Regardless, the pleadings allege that the Scotts gratuitously granted Rhinehart access to and the use of their property for Rhinehart's sole benefit and that of his horses. While the allegations in this case have not been addressed by a South Carolina court, they are enough to survive a motion to dismiss for failure to state a claim. *Madison v. Am. Home Prod. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004) (stating "[a]s a general rule, important questions of novel impression should not be decided on a motion to dismiss").

Finally, the trial court dismissed the Third-Party Complaints finding the Scotts failed to show a sufficient relationship based upon fees and costs incurred in the defense

of the Complaint and Cross-Claim. [R. p. 4]. The trial court held the Scotts failed to demonstrate that: "(1) they were not at-fault in contributing to the horse's escape; (2) Rhinehart's conduct was directed at the Scotts; and (3) they would incur costs in the underlying action arising solely from defending themselves against Rhinehart's conduct and not their own." [*Id.*].

"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).

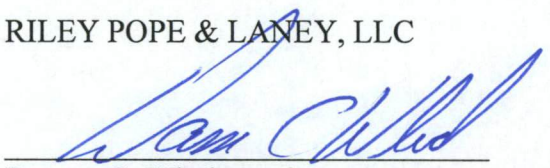
As previously argued, the Third-Party Complaints allege that Rhinehart was the sole owner and manager of the horses at issue. The pleadings allege that Rhinehart or his agents were solely responsible for moving the horses between his property and the Scotts property. The pleadings also allege that Rhinehart is solely responsible for the horses being on I-20 when the accident occurred.

Since it is the owner of the animal that is tasked with ensuring the animal does not escape, cause injury to others, and does not damage the property of others, the Scotts are not liable. See S.C. Code Ann. § 47-7-130. 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. Therefore, it was in err for the trial court to dismiss the Third-Party Complaints.

CONCLUSION

For the reasons set forth, Appellants respectfully request that the trial court's Order dismissing the Third-Party Complaints be reversed and this be matter be remanded to proceed accordingly.

RILEY POPE & LANEY, LLC



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CERTIFICATE OF COMPLIANCE

This is to certify that Appellants' Final Brief complies with Rule 211(b), SCACR.

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