

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Hon. Benjamin H. Culbertson, Circuit Court Judge

Case No: 2018CP2200456

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SC Court of Appeals

Luke M. Smith, Erica Smith, Peggy Burger,
Individually and as Guardian ad Litem for
Caitlyn Burger, Shawonnah Davis, Individually
And as Guardian ad Litem for Sania Williams,
Edison Chichester, Individually And As Guardian
Ad Litem for Jennifer Chichester, Jenna Grace
Singleton and Dale Singleton Appellants

v.

Carolina's Got Talent, Wardell Brantley, South
Carolina Media Arts Academy, Winyah
Auditorium, City of Georgetown, County Of
Georgetown, WPDE ABC 15, WWMB CW21,
Sinclair Broadcast Group, Inc., Howard Stirk
Holdings, and Cunningham Broadcasting Corporation, Defendants

Of Which,

County of Georgetown, is Respondent.

Appellants' Final Brief

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I. Statement Of Issues On Appeal:

1. Were there genuine issues of material fact, novel legal issues, and incomplete discovery issues such that the trial court erred in granting Summary Judgment to Georgetown County on the grounds that (a) it has no connection, control, sponsorship or association with Winyah Auditorium or the other defendants; and (b) that it is immune from suit under the SC Tort Claims Act, *SC Code Ann. §15-78-60 (20)*?

II. Statement Of The Facts:

This case arises out of a talent competition organized by Defendant Brantley and his school, Defendant Academy while Brantley was the director of Winyah Auditorium. The competition was named Carolina's Got Talent, drawing a false comparison to the successful television competition, America's Got Talent. It proceeded in rounds or levels with the successful contestants going on to the finale. The semi-finals and the finale were advertised and promoted as being held at historic Winyah Auditorium, which had previously approved holding the event at its venue. The rounds were held between September of 2016 and March of 2017.

Prizes were promised for success at the levels and the finale. These included the following:

- A. Scholarship money with taxes/fees paid by the SC Media Arts Academy;
- B. Studio time, rehearsal space and artist development money;
- C. A portfolio with pictures, websites & video;
- D. Opportunities for paid and volunteer engagements;
- E. Opportunities for part time and full time work with SC Media Arts Academy;
- F. Prize money in varying amounts, including a \$10,000.00 prize to the winner, with taxes paid by the SC Media Arts Academy.

The competition required travel, rehearsal, costuming, planning and practice. It took effort from the minor Appellant/Plaintiffs, who participated in the contest, and from their parents, who supported them throughout the process. Participation caused the young performers to miss other performance opportunities and took time away from their and their parents' normal lives and schedules. All of the Appellants succeeded in the contest, appeared and performed at every level, and won various prizes and awards. Appellant Luke Smith won the competition and all the prizes listed above.

Despite the affiliation, endorsement and sponsorship of the co-Defendants, including Respondent Georgetown County, the competition paid only a small portion of the prizes, and did that after persistent contacts from the Appellants and numerous changes to the terms of the previous contracts. Most of the prizes have never been paid or awarded. Appellants learned after the competition that Defendant Brantley, then the director at Winyah, had a previous criminal record. Also, as a result of the investigation into this competition Brantley was charged with embezzlement and breach of trust, but those charges have apparently been dropped. Brantley never fulfilled his promises to the Appellants. None of the other Defendants, including Respondent Georgetown County, stepped up, although they were all involved in sponsoring, advertising, promoting or hosting the events and Georgetown County used public funds to support the auditorium and events held there.

The Appellants believed that the competition was legitimate because the semi-finals and finals were held at historic and prestigious Winyah Academy, an entity that was created by the efforts of the City and County of Georgetown in partnership with citizens of the county. Winyah's existence is promoted and sponsored via tax funds by Respondent Georgetown County. To promote the competition and the venue, it was broadcast on local television stations.

Because of the employment association and their prior relationship, Winyah, and Respondent Georgetown County knew or should have known of Brantley's criminal record. Defendant Academy, as Brantley's present employer, knew and should have known of Brantley's criminal record and the danger of allowing him charge of such a talent contest and, in turn, Georgetown County's oversight means that it should also have known of the risk and danger involved. Georgetown County had a public and private duty to the Appellants. Based on its history with Winyah and Brantley and its funding of Winyah and Brantley, the County had a duty to investigate and to vet Brantley, and this competition before agreeing to this rental and a duty to warn the contestants.

The facts and allegations cited above are supported by the record. (R. pp. 11-27, 119-133) Both the Complaint and the Affidavit(s) show that the Plaintiffs were induced to enter and continue with the competition, in part, because of the participation and involvement of prestigious and historic Winyah, which promotes its affiliation with and support from Georgetown County. By lending its support to Winyah, then director Brantley, and this competition, Georgetown County directly harmed and damaged the Appellants, who believed that Brantley and this competition had been properly investigated and vetted. And, as to the County's duty, since Brantley was director of Winyah at the time of CGT, his salary was being paid, at least in part, by tax and public funding provided by Respondent County.

At the time of Georgetown County's Motion for Summary Judgment, and the Court's granting of this motion as to the County, the discovery process had not been completed. Therefore, the Appellants do not have testimony or full documentation from Georgetown County and Winyah as to their relationship or the degree of approval, control, or oversight the County has and should exercise over Winyah. This is a novel case and involves breaches of trust and promises to minors

and their parents who invested substantial time, effort and funds in competing because they were misled and falsely induced into trusting the legitimacy of the competition. (R. pp. 11-27, 119-133, 34-44, 4-7, 99-106, 45-72) At a minimum, the Appellants were entitled to conduct full and complete discovery so that they and the Court would have had the necessary information before ruling on the duties and liabilities involved.

At its core, this case involves false inducements to minors and the public to participate in a competition whose very name falsely indicated a non-existent relationship with the nationwide, nationally televised ‘America’s Got Talent’ franchise. That, combined with its venue at a historic auditorium that promotes its affiliation with and support from government entities, misled the Appellants into believing that the competition was legitimate and worthy of their time and efforts. Winyah knew Brantley’s history when he was hired, and Georgetown County knew or should have known of Brantley’s background. Even without this knowledge, the name of the competition alone should have set off red-flag alerts requiring due diligence and monitoring. The Appellants and the public deserved that, but they did not get any diligence, due or otherwise.

III. Statement Of The Case:

This case began with the Appellants’ filing of a Summons and Complaint and the Defendants filing of either Answers or Motions to Dismiss. (R.pp. 11-33) The Appellants consented to the Motion to Strike Punitive Damages filed by the City of Georgetown. Subsequently, Georgetown County moved for and were granted Summary Judgment and the Appellants settled with the City of Georgetown and the media Defendants. (R.pp. 34-44, 4-7)

The Plaintiffs moved for reconsideration. It was denied and this appeal followed. (R.pp. 45-72, 8-10, 109-116, 76-99)

IV. Standard of Review:

The Court has described the standard of review for a Motion For Summary Judgment as follows:

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30 (S.C. 2009)

Further, if a case raises a novel question(s) of law, this court may decide the question(s) without deference to the trial court. *State v. McClinton*, 369 SC 167, 169, 631 SE2d 895, 896 (2006); *Hagood v. Sommerville*, 362 S.C. 191 (S.C. 2005)

IV. Argument:

A. Incomplete Discovery and Novel Questions of Law:

At the time that Georgetown County's Motion For Summary Judgment was heard and granted, discovery was incomplete. No depositions had been taken from the Appellants or from Georgetown County's agents, servants or employees. No depositions had been taken from Winyah. No discovery responses or documents had been received from Georgetown County. The documentation and testimony in the record from the Appellants were Affidavits and the Complaint. Regardless, the court granted Summary Judgment. (R.pp. 34-44, 119-133, 99-106)

Because of the lack of discovery, this Summary Judgment motion was essentially a 12(b)(6) Motion. The testimony consisted of Affidavits. (R.pp. 117-133) No testimony was in the record from Winyah, and since the hearing and after the Summary Judgment order, Plaintiffs

obtained and served a highly relevant Affidavit from Winyah Board Member Michelle Randolph. That Affidavit and testimony were not available to the Court at the time of Respondent County's motion. Issues in the case include whether an auditorium renovated and supported in part by County tax funds, including accommodation tax funds, along with similar funds from a City and the efforts of private individuals, and run by a director or administrator and a Board of Directors, give the County a duty of oversight and due diligence as to the operations and control of the auditorium, and the whether those obligations are precluded by the SC Tort Claims Act if the County acted recklessly or willfully in failing to perform those duties. These are novel legal issues.

It is not within the trial court's discretion to answer novel legal issues or questions of first impression with no factual record. *Farmer v. CAGC Ins. Co.*, 424 S.C. 579 (S.C. Ct. App. 2018) Important questions of novel impression should not be decided until they are fully developed by the parties, particularly if the underlying facts are in dispute. *Jackson v. Atlantic Soft Drink Co. Inc.*, 286 SC 577, 336 SE2d (1985); *Madison v. American Home Products Corp.*, 358 SC 449, 595 SE2d 493 (2004); *McCall v. Batson*, 285 SC 243, 329 SE2d 741 (1985).

The trial court's order considered the only factual evidence of record – the Affidavits – and concluded that the County owed no duty to the Plaintiffs under the facts of the case and that because the County owed no legal duty to the Plaintiffs, the case should be dismissed. (R.p. 5) The trial court found no legal authority to support the proposition that the County's support of the auditorium through tax funds, including accommodations taxes, and used this as a basis to find the absence of a legal duty. (R.p. 5) Additionally, the trial court held that under the SC Tort Claims act (*SC Code Ann. §15-78-10, et. seq.*), the County was not liable for the criminal acts of Brantley as he was not an employee or agent of the County. (R.p. 5)

The facts of this case are unique, and novel, as are the issues presented. Even the County acknowledges the lack of prior South Carolina cases dealing with issues arising from a talent

competition like this one. (R.pp. 99-116, 34-44, 134-138, 45-72) This case is rendered more novel and complex by the prior history with Brantley as the director of Winyah, the presently unknown legal involvement of the County with the creation and control of Winyah, and as to Winyah's agency relationship with the County, particularly given Winyah's public representations on its webpage. (R.pp. 119-133, 11-27, 54-72) Given the interplay of the novel issues with the Tort Claims Act and the lack of discovery, depositions and trial testimony, the Order erred in granting Summary Judgment to Georgetown County.

This is a case where the County, along with the City and private citizens, combined efforts and funding to renovate the historic Winyah Auditorium. The County was involved in the creation of the venue. The County also supports the auditorium with funding, which it claims to be solely accommodations taxes. However, discovery was not complete and was not really provided by the County, so at this stage of the litigation, the funding facts were supported solely by an Affidavit. The auditorium promotes its connection with the County, and the auditorium knew of Brantley's background when it hired Brantley as director and supported his use of the auditorium for this competition, which was televised and promoted to the public.

In granting Summary Judgment to the County at this stage of the litigation, without depositions or discovery, the trial court accepted and adopted Georgetown County's position, in its entirety, without having the facts necessary to frame the issues and make a ruling on these novel legal issues. This Court should reverse this Order and find that consideration of Summary Judgment to the County would be improper and erroneous, as a matter of law, until the discovery process is complete.

B. Genuine Issues Of Material Fact and the Summary Judgment Standard:

Summary Judgment may be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. **See: *Rule 56, SCRCP.***

The Complaint raises allegations supporting the County's relationship, connection, control & sponsorship of Winyah and of events held at Winyah and these allegations were supported by Affidavits from Burger and Smith. (R.pp. 11-27, 119-133) The County denies having any control over or legal association with Winyah and supports that with an Affidavit from County Attorney Wesley Bryant. (R.pp. 117-119)

The Appellants' allegations of the relationship and control by the County over Winyah arise from historical relationships, the representations of Winyah and authority of the County or apparent authority based on the relationships and representations, as well as from the County funding grants to Winyah. These allegations raise genuine issues of material facts which would have been supported and documented by written discovery responses from the County and by depositions. As alleged above, the Court should not have granted Summary Judgment without the full factual record provided by complete discovery.

Genuine issues of material fact exist, including, but not limited to, the following: the legal relationship between Winyah and the County, the present and former relationship of these parties with Wardell Brantley, the partnership between these entities and members of the public as represented on Winyah's webpage, the agency or apparent agency between the parties, the source of funds supporting Winyah, the control of County over Winyah, and the consideration given to allowing this event given these parties prior knowledge of Brantley, his job performance, and his criminal record.

Further, the court must view the evidence and all reasonable inferences drawn from it in the light most favorable to the Appellants. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). For purposes of this Summary Judgment motion, particularly in the absence of complete discovery and depositions, the Appellants' allegations must be viewed most favorably. This means that in considering Georgetown County's Summary Judgment motion, the

court must have assumed that the County – (a) participated in renovating and re-opening Winyah; (b) approved, controlled and sponsored Winyah and events held at Winyah; and (c) knew enough of Brantley’s criminal history that it should have investigated and vetted Brantley before involving Winyah with the CGT competition, endorsing it and sponsoring it; and (d) funded Winyah with taxes, including accommodations taxes designed to promote tourism, the arts and cultural events – like the CGT competition that lured and damaged the Appellants. (R.pp. 11-27, 119-133, 99-116, 45-72) **See Also:** *SC Accommodations Tax Act, S.C. Code Ann. §6-4-5 to 35; S.C. Code Ann. §6-4-10 and City of Myrtle Beach v. Committee, 755 S.E.2d 425 (S.C. 2014)*. Georgetown County disputed Plaintiffs’ allegations. (R.pp. 28-33, 117-119, 99-116)

The grant of Summary Judgment was erroneous because there were clear genuine issues of material fact, there were disputed material facts, and because the Summary Judgment standard and *Rule 56, SCRPC* were not properly applied.

C. Sovereign Immunity (The Tort Claims Act) And the Duty Owed:

The trial court held that (1) Sovereign Immunity applied and (2) Georgetown County Did Not Owe a Legal Duty To The Appellants. The Order cites *Repko v. Cnty of Georgetown, 424 SC 494, 818 SE2d 743 (2018)* as supporting the lack of duty in this case. (R.pp. 4-7, 5) *Repko* involved a lawsuit by a homeowner in a subdivision that arose after the County refused a Letter of Credit (LOC) from a second developer that had requested release of funds so that it could complete infrastructure in the subdivision. ***Id*** The case was tried and the trial court granted a directed verdict in the County’s favor on five grounds. Then it was appealed, and the Court of Appeals reversed the trial court on several grounds. The Supreme Court took *certiorari* and reversed the Court of Appeals, reinstating the trial court’s directed verdict on the grounds of sovereign immunity. The Plaintiff’s appeal was that although the gross negligence standard was not

contained in the exception to sovereign immunity at issue in that case that the standard should be read into all exceptions.

Citing *Chakrabarti v. City of Orangeburg* (403 SC 308, 743 SE2d 109 (Ct. App. 2013), the Supreme Court held that when an exception containing the gross negligence standard applies to a case, that the standard is read into any other applicable exception. In this case, the Order finds that *SC Code Ann. § 15-78-60(2)* is the waiver of sovereign immunity exception that applies in this case, and that the County is not liable for the act or omission of a person other than an employee, including the criminal acts of a third person. While that section does not contain the gross negligence standard, *SC Code Ann. § 15-78-60(12)* relates to the licensing and permitting authority of a government entity, including the powers of approval, registration or similar authority, and that section applies to this case and it does contain a gross negligence standard. Therefore, under *Repko* and *Chakrabarti*, the gross negligence standard must be read into the standard the Court found applicable in this case (*SC Code Ann. §15-78-60(2)* and when that standard is read into the licensing powers standard, the gross negligence principals apply to this case, making the County liable here not only for its own negligence, but potentially for Brantley's and the Winyah Board's as well. *See: Repko, supra.*

The Court also erred in finding that Georgetown County owed no legal duty to the Appellants. It focused solely on the fact that the Appellants didn't speak directly to the County and that the County pays out tax funds to Winyah and held that without direct contact, the payment of tax funds did not create a duty. (R.pp. 4-7) The Court accepted without analysis or verification (1) that the tax funds used to renovate and support Winyah all came from accommodations tax funds; (2) that use of the tax funds to renovate, control and support Winyah created no duty; and

(2) that no other source of duty was alleged by the Appellants. All of these conclusions are in error. (R.pp. 4-7, 99-116)

The Appellants' Affidavits allege that Georgetown County's use of public funds to renovate, run and support Winyah creates a duty. (R.pp. 119-133) And Plaintiffs' Complaint alleges that the actual and apparent relationship between the County and Winyah created a duty. (R.pp. 11-27) As Plaintiffs' Affidavits testify, Winyah's webpage holds Winyah out as being supported by the County and represents that Winyah exists by virtue of a partnership between the public, the City and the County. The County's money helped create the venue and continues to help run the venue. At one time, the County's money helped to pay former Winyah director and CGT creator Wardell Brantley. There is no dispute that funding an auditorium is a public purpose. *Ashmore et. al. v. Greater Gr'ville Sewer D. et al, 211 SC 77, 44 SE2d 88 (1947)*

A case with some similarities as to the venue and the obligations of a County arises out of the publicly funded Greenville Memorial Auditorium referenced by the Court in *Ashmore*. The rock band "Loverboy" was performing at the Greenville Auditorium before a crowd of over 6,000 people monitored and controlled by only 14 security guards. During the concert one patron threw a bottle, injuring another. Suit was filed and trial was held. The Court declined to direct a verdict and the jury returned a verdict for the Plaintiff. The County appealed claiming that it was not liable because (1) The event was not foreseeable because no patron had ever thrown a bottle to cause an injury before, so the Trial Court erred by not directing a verdict; and (2) The Trial Court erred in not dismissing the case based on *SC Code Ann. §15-78-60(20)*. *Greenville Memorial Auditorium v. Martin, 301 SC 242, 391 SE2d 546 (1990)*.

As to foreseeability, the Court said that it was not necessary that the County anticipated the exact event that occurred. It was sufficient if the County should have foreseen that its negligence

would probably cause injury to someone. Under the facts, depositions and trial testimony showed that the crowd was rowdy, pushing and shoving as they drank alcohol from glass bottles and smoked marijuana. The respondent/plaintiff testified that he didn't see the guards acting to stop the behavior and the head of security admitted that there was a greater potential for problems when rock groups like "Loverboy" performed. The Court held that viewing the evidence in the light most favorable to the respondent/plaintiff, there was ample evidence to find the injuries foreseeable and the County liable, so the Court did not err in submitting the case to the jury.

As to the Trial Court's failure to dismiss based on *SC Code Ann. §15-78-60(20)*, the Supreme Court noted that this is the Tort Claims Act exception that shields a governmental entity from liability for the act or omission of a person other than an employee, including the criminal act of a third party. The Supreme Court found that the Plaintiff's Complaint didn't claim that the County was liable because a patron threw a bottle, it alleged that the County was liable for failing to properly secure and maintain the event. *Greenville Memorial v. Martin*. The Supreme Court held that the Trial Court did not err in failing to grant the pre-trial Motion to Dismiss, saying as follows:

Appellant (County) cannot successfully defend that respondent's injuries were caused by the wrongful criminal act of a third party, where the very basis upon which appellant is claimed to be negligent is that appellant created a reasonably foreseeable risk of such third-party conduct. Consequently, the trial judge did not err in refusing to dismiss the action.
Id at p 247

Similarly, a member of the public who fell in a hole at the Colleton County Courthouse appealed the directed verdict granted to the County at the close of the plaintiff's case. *Padgett v. Colleton County, 383 S.C. 431 (S.C. Ct. App. 2009)* The County had retained a company, Simmons, for lawn care and maintenance. The appellate court reversed the directed verdict, noting

that the County's responsibility did not end because it signed a maintenance contract. Citing *Greenville Memorial*, and calling the courthouse a place of "public accommodations," the appellate court reversed the directed verdict, saying that even if the County wasn't liable for Simmons' negligence, that it could be liable for discharging its own duties and creating a reasonably foreseeable risk of harm from the landscaping company's services. *Padgett, supra*

In the present case, Plaintiffs make the same claim that the Supreme Court upheld against the same type of County entity. Plaintiffs claim that the County, directly and by its agents, created a reasonably foreseeable risk of the criminal conduct by Brantley. After all, Brantley had a prior criminal record, and he was hired as and employed as the director of Winyah at the time that Winyah approved, hosted, sponsored and promoted the CGT competition. Under these facts, by hosting the event at Winyah, and by promoting it to lure in contestants like the Appellants, the County, and the auditorium it supports and funds, created the reasonably foreseeable risk of the harm that the Appellants' suffered. In addition to the public purpose and aspects, it is to be noted that in this case the Appellants were targets of the CGT contest and promotion funded, sponsored and promoted, directly and indirectly, by the County. Therefore, the duty owed to the contestants was more direct than the duty owed to a member of the general public who fell at the courthouse, or one who was struck by a bottle thrown at a concert.

Even if the County's duty to the plaintiffs was to exercise 'slight care' there are allegations that the County failed to meet this burden. The county had actual notice and knowledge of Brantley's background and criminal history, the county knew that the CGT competition was being marketed to members of the public, including minors, who lacked information about Brantley's background and would or could be lured to trust the competition because of the involvement of Winyah and the County's publicized affiliation and support of Winyah. Despite this knowledge,

the County failed to intervene by acting to end Brantley's proposed use of the auditorium, by acting to monitor, supervise or control accounts associated with prize money and prize funds, and by failing to warn the public.

This Court's Order erred in holding that there was no duty and that the County was immune under *SC Code Ann. §15-78-60(20)*.

D. Considering the Summary Judgment Standard, the Order Fails to Consider or Properly Consider The Facts & Allegations of the Complaint, Credits the County's Improper Reliance and Fails to Credit the Plaintiffs' proper Reliance

The Order finds as fact that the Appellants allege claims arising from "the failure to award prizes promised by Defendants Carolina's Got Talent and Wardell Brantley." This is both incorrect and incomplete. (R.p.4)

The Order does not mention, reference or consider the complicated relationship between Brantley, Winyah and the City and County of Georgetown. It does not mention that Brantley was a prior affiliate and, at the time, the director of Winyah. He worked closely with the Board and was well-known by Winyah and the County. The Order does not even mention that Brantley was charged criminally for embezzlement of Board funds (which would include County tax money) and was charged for the fraudulent manner in which he ran the competition, lured in contestants, made promises of scholarships, money and future career opportunities to induce young people to spend time and money traveling to, practicing for, and participating in the competition. The Order fails to mention, consider or find that given their history, Winyah and the County knew, prior to the competition, that Brantley had a record that made his involvement with CGT alarming and troublesome. The Order fails to mention, consider or find that County had and/or has a role in creating, sponsoring, supporting and controlling Winyah. Essentially, the Order fails to consider any allegations in the Complaint. (R.pp. 11-27, 99-106, 34-44, 45-72)

The Order barely mentions the Affidavits of Erica Smith and Peggy Burger, Plaintiffs and parents of two of the winning contestants. When the Order does mention the Affidavits, it is to say that they allege

that Georgetown County is liable because of grants given to Winyah. That is incomplete, inaccurate, and wrong. The Affidavits address: (1) the annual funding by Georgetown County; (2) that the Appellants were induced to enter the competition because of the association between Georgetown County and Winyah (3) note that Brantley was the director of Winyah; (3) state that after Brantley's crimes were discovered that the County paused its funding of Winyah and conducted a full financial audit of the auditorium; (4) note that Winyah's webpage publicly represents and affirms that the County helped fund the renovation to reopen Winyah; (5) state that grants from the County continue to fund Winyah; and (6) note that while Brantley was director of Winyah, his salary was paid, in part, by funding from Georgetown County. (R.pp. 4-7, 119-133)

The Order supports the County's reliance on the Plaintiffs' discovery responses stating that they had no direct contact with the County as being proof that the County had no connection with the competition and, therefore, no duty to the contestants. This finding and ruling ignores the Complaint and Appellants' Affidavits, and fails to consider the importance of Winyah's public representations that it had an association and affiliation with the County. (R.pp. 11-27, 119-133, 4-7 The County never acted to have Winyah take these claims off of its webpage, thus endorsing Winyah's representations of an association. Those representations, the County's funding and the history involved mandate that the County has a duty to monitor and oversee the venue and events at Winyah. The existence of that duty is bolstered by the fact that Brantley was the director of Winyah, and that, as such, Winyah, the City and the County knew or should have known of his prior criminal history, and should have refused to rent or support the competition whereby Brantley would be luring competitors, in part, through his relationships with Winyah and the County.

Plaintiff's Complaint raises claims against the County for all of the following: Negligence, Negligent Misrepresentation, Unfair & Deceptive Trade Practice, Aiding & Abetting all of the following - Conspiracy, Conversion, Breach of the Covenants Of Good Faith & Fair Dealing, Breach of Contract, and Breach Of Contract Accompanied by Fraudulent Acts. The Court's Order errs and deals only with duty,

negligence, and the Tort Claims Act, and it fails to discuss, consider or rule upon the other claims raised by the Plaintiffs. (R.pp. 11-27)

This case is an appeal from a grant of summary judgment to the respondent County. Here, the reviewing court is required to consider all facts and inferences in the light most favorable to the CGT contestant Plaintiffs. *Cantrell v. Green*, 302 S.C. 557 (S.C. Ct. App. 1990); *Stratos v. King*, 282 S.C. 501, 319 S.E.2d 356 (Ct.App. 1984). The judgment may be affirmed only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *S.C.R. Civ. P. 56*. Not only did the trial court fail to consider all facts and inferences in the light most favorable to the Plaintiffs, the trial court failed to consider most of the facts and inferences, save those favorable to Georgetown County.

E. Granting Summary Judgment Was Contrary To Public Policy and The Public's Interests

In this case, given these facts, and the interests of the public, it was error to grant Summary Judgment. Winyah exists because of the partnership between the public, the City and the County. Given that Winyah employed Brantley as director, and the County funds and supports Winyah with public money, used, in part, to pay Brantley's salary, the County knew or should have known of Brantley's criminal history, and financial issues. Armed with this knowledge, the County should have exercised proper oversight over the competition, Brantley, use of Winyah and County funds, and it should have demanded the cancelation of the hosting arrangement for the competition as a condition of tax funding. After all, the County later stepped in and halted funding until after a full audit. (R.pp.119-133) The public has a strong interest in how public funds are used and in how the County regulates and oversees publicly funded events.

V. Conclusion:

Georgetown County partnered with the public and the city to renovate historic Winyah Auditorium to host events and promote the arts and tourism. The County used public funds for the effort and has continued to use public funds to support Winyah, save for pausing the funding and requiring an audit after the events involving Brantley and this competition. The fact that the County had the power and control to require an audit speaks to the relationship between the County and Winyah. The facts and details of that relationship have not been established because the trial court erroneously granted summary judgment in this novel action prior to the taking of depositions or the completion of discovery.

The Appellants are talented young people who saw the advertisements and promotion for Carolina's Got Talent. The name evoked thoughts of the national (but unrelated) competition called America's Got Talent and it drew the appellants' attention. When they and their parents checked out the competition, they saw that it was sponsored by reputable entities like Georgetown County, that the semi-finals and finals were being held at historic Winyah, which promoted its affiliation with the County on its webpage, and that the event was being televised. Because all of these factors, including Georgetown County's support and sponsorship of the competition and involvement with Winyah, the Appellants devoted their time, talents, money and energy to this competition, foregoing other interests and entertainment opportunities. They all won prizes that were promised but never received. None of them would have entered if they'd been warned by the County of the risks.

The CGT competition was created and spearheaded by Wardell Brantley, the director of Winyah. Since he was already a known quantity when he was hired by Winyah, the County knew, or should have known, that Brantley's criminal background and history made him unqualified as

director, and unreliable to dangerous as head of the CGT competition. Brantley's criminal background and history made this competition a risk for the contestants. The County gambled and agreed to take the risk, but did so without warning the contestants.

Not all members of the Winyah board supported the decision to hire Brantley or for Winyah to host, and sponsor the CGT Competition. Since the grant of Summary Judgment, Appellants obtained a strong Affidavit from a Winyah Board member about the member's outspoken issues and objections to Brantley and this competition. Because Summary Judgment was granted before discovery was complete or depositions were taken, that Affidavit was not considered prior to the grant of Summary Judgment. Dismissal of this novel action before the completion of discovery and depositions was an error, and Summary Judgment to the County on the grounds stated in the Order was erroneous.

The trial court's Order found that Georgetown County owed no duty to members of the public who signed up to take an unwarned risk that their time, talent and efforts would be wasted at the whim of a known conman. The Order also found that the *Tort Claims Act* rendered the County immune from Brantley's criminal acts, and it never considered that County's gross negligence and willful, wanton and reckless failures in oversight and supervision caused direct harm to the Appellants.

The County's decision to pause funding Winyah until an audit was completed was too little and too late to save the Appellants from being victimized by the County's gross negligence, and willful and reckless lack of timely oversight, but it does demonstrate that the County could have and should have been more diligent. The trial court's grant of Summary Judgment to Georgetown County was too little and too early to give the Appellants the chance to establish their claim in this novel situation.

This Court should reverse the grant of Summary Judgment to Georgetown County.

Respectfully submitted,

s/J. Dwight Hudson

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Dated: May 29, 2020

RULE 211(b) CERTIFICATION

The undersigned certifies that the foregoing *Appellants' Final Brief* complies with Rule 211(b), SCACR.

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