

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

JUL 20 2021

**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-001525

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,  
HANNAH ELIZABETH  
COLLIER, LINDA SMITH,  
NORTHGATE BAPTIST  
CHURCH,

Respondents.

INITIAL REPLY BRIEF OF APPELLANT

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.  
SC Bar No.: 102942  
310 Rutherford Street  
Greenville, SC 29609  
(864) 729-3428 t  
(864) 752-1424 f  
d.davis@dicksondavislaw.com  
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

Table of Authorities ..... iii

Argument in Reply..... 1

    I. The Lower Court Erred Dismissing Appellant’s Claims Against Respondents Before  
    Discovery Began and Pleadings were closed Under a Rule 56 Motion for Summary Judgment1

    II. The Lower Court Erred Dismissing Appellant’s Claims Against Respondent Northgate  
    Baptist Church by Ruling Upon the Underlying Merits of the Dispute Instead of Whether  
    Appellant Alleged a Viable Cause of Action..... 4

    III. The Lower Court Erred Dismissing Appellant’s Claims Against Respondent Northgate  
    Baptist Church When a Genuine Disputed Issue of Material Fact Exists that the Severance  
    Agreement Did Not Bar All Claims Appellant Had Toward Respondent Northgate Baptist  
    Church..... 6

    IV. The Lower Court Erred Dismissing Appellant’s Claims Against Respondents Charlotte  
    Collier, Hannah Elizabeth Collier, and Linda Smith by Ruling Upon the Underlying Merits of  
    the Dispute Instead of Whether Appellant Alleged a Viable Cause of Action that Would Merit  
    Any Relief Under Any Legal Theory ..... 8

    V. Conclusion ..... 13

## TABLE OF AUTHORITIES

### CASES

<i>Adams v. Daily Tel. Printing Co.</i> , 292 S.C. 273, 356 S.E.2d 118 (Ct. App. 1986)-----	10, 11, 12
<i>Berkebile v. Outen</i> , 311 S.C. 50, 426 S.E.2d 760 (1993)-----	8
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548 (1986)-----	1
<i>Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.</i> , 348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001)-----	5
<i>City of San Diego v. Roe</i> , 543 U.S. 77, 125 S. Ct. 521 (2004)-----	10
<i>Diminich v. 2001 Enters., Inc.</i> , 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987)-----	9
<i>Fields v. Melrose P'ship</i> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993)-----	5
<i>Firemen's Ins. Co. v. Cincinnati Ins. Co.</i> , 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990)-----	9
<i>Fisher v. Stevens</i> , 355 S.C. 290, 584 S.E.2d 149 (Ct. App. 2003)-----	8
<i>Flowers v. Price</i> , 192 S.C. 373, 6 S.E.2d 750 (1940)-----	11, 12
<i>Food Lion, Inc. v. United Food &amp; Commer. Workers Int'l Union</i> , 351 S.C. 65, 567 S.E.2d 251 (Ct. App. 2002)-----	5
<i>Garrard v. Charleston Cty. Sch. Dist.</i> , 429 S.C. 170, 838 S.E.2d 698 (Ct. App. 2019)-----	10
<i>Gregory v. Gregory</i> , 292 S.C. 587, 358 S.E.2d 144 (Ct. App. 1987)-----	9
<i>Herring v. Lawrence Warehouse Co.</i> , 222 S.C. 226, 72 S.E.2d 453 (1952)-----	10, 11
<i>Holtzscheiter v. Thomson Newspapers</i> , 332 S.C. 502, 506 S.E.2d 497 (1998)-----	11
<i>Hooper v. Ebenezer Senior Servs. &amp; Rehab. Ctr.</i> , 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009)-	1
<i>McBride v. Sch. Dist. of Greenville Cty.</i> , 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010)-----	10
<i>McCune v. Myrtle Beach Indoor Shooting Range, Inc.</i> , 364 S.C. 242, 612 S.E.2d 462 (Ct. App. 2005)-----	8
<i>Quality Towing, Inc. v. City of Myrtle Beach</i> , 340 S.C. 29, 530 S.E.2d 369 (2000)-----	4
<i>Rivers v. Florence Printing Co.</i> , 141 S.C. 364, 139 S.E. 781 (1927)-----	10
<i>Russell v. Columbia</i> , 305 S.C. 86, 406 S.E.2d 338 (1991)-----	9
<i>S.C. Elec. &amp; Gas Co. v. Combustion Eng'g, Inc.</i> , 283 S.C. 182, 322 S.E.2d 453 (Ct. App. 1984)	8
<i>Skydive Myrtle Beach v. Horry Cty.</i> , 426 S.C. 175, 826 S.E.2d 585 (2019)-----	3, 5
<i>Sloan Constr. Co. v. Southco Grassing, Inc.</i> , 377 S.C. 108, 659 S.E.2d 158 (2008)-----	4
<i>Spence v. Spence</i> , 368 S.C. 106, 628 S.E.2d 869 (2006)-----	3
<i>Swinton Creek Nursery v. Edisto Farm Credit</i> , 334 S.C. 469, 514 S.E.2d 126 (1999)-----	10
<i>Toussaint v. Ham</i> , 292 S.C. 415, 357 S.E.2d 8 (1987)-----	4, 5

### RULES

Rule 12(b)(6), SCRCF -----	passim
Rule 12(c), SCRCF -----	3, 4, 11
Rule 15(a), SCRCF -----	4
Rule 56(c), SCRCF -----	2, 3
Rule 56(e), SCRCF -----	2, 3
Rule 56, SCRCF -----	passim
Rule 60(b), SCRCF -----	7
Rule 60, SCRCF -----	4, 7

## ARGUMENT IN REPLY

Without restating the issues or making redundant arguments which have been thoroughly set forth in Appellant's initial brief, Appellant offers the following points of clarification and rebuttal to the arguments raised by Respondents.

### **I. THE LOWER COURT ERRED DISMISSING APPELLANT'S CLAIMS AGAINST RESPONDENTS BEFORE DISCOVERY BEGAN AND PLEADINGS WERE CLOSED UNDER A RULE 56 MOTION FOR SUMMARY JUDGMENT**

A motion for summary judgment is premature before pleadings have closed and adequate discovery has occurred. Rule 56, SCRCP; *see Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986). At this point, no preliminary discovery has occurred in this case (i.e., requests for admissions, requests for interrogatories, requests for production of documents). No depositions have occurred. Discovery is not closed. The pleadings are not closed. Appellant's cause of action for civil conspiracy has been waived upon appeal. (R. \_\_\_; Appellant Initial Br. p. 1). Any discussion related to the cause of action for civil conspiracy is moot. Whether the lower court erred dismissing the cause of action for negligent infliction of emotional distress is a matter of developing, modifying, or extending existing legal theory. The cause of action for negligent infliction of emotional distress has been presented before the Appellate Court as a question of undecided law in the application of this legal theory in this action beyond the "bystander" theory. (R. \_\_\_; Appellant Initial Br. pp. 45-46).

A Rule 12(b)(6) motion to dismiss transforms into a Rule 56 motion for summary judgment when the court considers matters outside of the pleadings:

Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of

the pleader be made by motion . . . failure to state facts sufficient to constitute a cause of action . . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Rule 12(b)(6), SCRCF.

Here, the lower court considered matters outside of the pleadings for Northgate. However, Northgate presented a redacted version of the severance agreement on March 25, 2020. (R. \_\_\_; Resp't Northgate Baptist Church Mot. Dismiss, Ex. A pp. 2-6). Northgate only presented an unredacted version of the severance agreement later on August 13, 2020. (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A pp. 2-6). The hearing for Northgate's motion to dismiss was held on August 18, 2020. The motion for a fully unredacted version of the severance agreement was not submitted ten (10) days before the hearing for James to have the opportunity and properly respond with an affidavit to counter the re-submitted, unredacted severance agreement. Rules 56(c), (e), SCRCF. Northgate relied upon the redacted information in its argument and at the hearing. (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss pp. 2, 6-7; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 3, 8; Tr. 5:9-25:5).

A Rule 12(c) motion for judgment on the pleadings transforms into a Rule 56 motion for summary judgment when the court considers matters outside of the pleadings:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Rule 12(c), SCRCF.

Here, the lower court did entertain matters outside of the pleadings for Hannah and her

grandmother. (R. \_\_\_; Tr. 40:24-54:18; Appellant's Resp. Resp'ts Mot. Dismiss and Mot. J. Pleadings, Ex. A pp. 2-13, Ex. B pp. 1-17, Ex. D pp. 2-6, Ex. E p. 2; Hannah Elizabeth Collier Aff. pp. 1-12; Resp'ts Hannah Elizabeth Collier and Linda Smith's Mem. Supp. Mot. Dismiss pp. 1-3, 6-7; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings pp. 1-10). On August 17, 2020, and the day before the hearing on August 18, 2020, Hannah submitted an affidavit in support of her Rule 12(c) motion for judgment on the pleadings that transformed into a Rule 56 motion for summary judgment. Hannah's grandmother Linda Smith never submitted any affidavits or other matters to support their position under Rule 56 motion for summary judgment. The motion with Hannah's affidavit was not submitted ten (10) days before the hearing for James to have the opportunity and properly respond with an affidavit to counter her affidavit. Rules 56(c), (e), SCRCF.

By contrast, Hannah's mother Charlotte Collier never submitted any affidavits to support their position under Rule 56 motion for summary judgment merely relying upon pleadings alone. Nonetheless, Charlotte relied upon matters outside of the pleadings submitted by other parties instead and facts never alleged in her amended answer. (R. \_\_\_; Tr. 26:12-40:21, 54:20-56:20; Resp't Charlotte Collier Am. Answer ¶¶ 2, 5-6, 8-9, 11, 13, 17, 19, 20, 22, 24, 26, 28; Appellant's Resp. Resp'ts Mot. Dismiss and Mot. J. Pleadings, Ex. A pp. 2-13, Ex. B pp. 1-17, Ex. D pp. 2-6, Ex. E p. 2; Hannah Elizabeth Collier Aff. pp. 1-12; Resp't Charlotte Collier Mem. Supp. Mot. Dismiss pp. 1-5, 7, 9; Order Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings pp. 1-8). The lower court erred granting Charlotte's Rule 12(c) motion for judgment on the pleadings whereby the remedy is to amend the complaint—not to dismiss the action. Rule 15(a), SCRCF; *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 179-80, 826 S.E.2d 585, 587 (2019); *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006); Rule 15(a), SCRCF;

*see Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373 (2000).

Therefore, the lower court erred dismissing James's claims prior to any developing the facts of the case through pleadings, discovery, affidavits, and other admissible evidence. The other matters considered by the court were not admissible evidence. Rules 12(b)(6), 12(c), 56, 60, SCRPC.

**II. THE LOWER COURT ERRED DISMISSING APPELLANT'S CLAIMS AGAINST RESPONDENT NORTHGATE BAPTIST CHURCH BY RULING UPON THE UNDERLYING MERITS OF THE DISPUTE INSTEAD OF WHETHER APPELLANT ALLEGED A VIABLE CAUSE OF ACTION**

A Rule 12(b)(6) motion to dismiss pertains to whether Appellant James Earl Tegeler ("James") alleged facts warranting sufficient causes of action against Respondent Northgate Baptist Church ("Northgate"). *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). James pled the following causes of action against Northgate: (1) false imprisonment; (2) defamation; (3) fraud in the inducement; (4) negligent misrepresentation; (5) negligent hiring, supervision, and retention of employees; (6) intentional infliction of emotional distress; (7) negligent infliction of emotional distress; (8) wrongful termination; and (9) civil conspiracy. Northgate presented no substantive arguments pertaining to James's allegations warranting sufficient pleading of the abovementioned causes of action. (R. \_\_\_; Resp't Northgate Baptist Church Mot. Dismiss pp. 1-2; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss pp. 2-9; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2-10).

The analysis pertains to whether James's allegations in James's complaint sufficiently pled the basis for recovery of James's causes of action. Rule 12(b)(6), SCRPC; *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112-21, 659 S.E.2d 158, 161-66 (2008); *see Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct.

App. 2001); *Toussaint*, 292 S.C. at 416. As the non-moving party, James's allegations in his complaint must be deemed and admitted as if true for a Rule 12(b)(6) motion to dismiss. *Food Lion, Inc. v. United Food & Commer. Workers Int'l Union*, 351 S.C. 65, 78-79, 567 S.E.2d 251, 257-58 (Ct. App. 2002) (citing *Fields v. Melrose P'ship*, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993)) (Stilwell, J., dissenting). The lower court may only look within the four corners of James's complaint for the sole purpose that James's allegations do, in fact, support James's causes of action against Northgate. *Food Lion, Inc.*, 351 S.C. at 69; *Skydive Myrtle Beach*, 426 S.C. at 175. Instead, the lower court erroneously entertained Northgate disputing the underlying merits of James's causes of action against Northgate when Northgate asserted that its severance agreement barred James's causes of action against Northgate. The underlying dispute of James's causes of action against Northgate attack the very formation and contractual interpretation of the severance agreement. Northgate only made substantive arguments to the underlying dispute as to the contract formation related to ambiguity of the severance agreement, application of the time-period for the severance agreement, and James's being under duress when signing the severance agreement. (R. \_\_\_; Resp't Northgate Baptist Church Mot. Dismiss pp. 1-2; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss pp. 1-2, 4-6; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 5-9). Alternatively, James argued legal theories disputing the underlying merits related to: (1) ambiguity in the severance agreement that does not bar James's claims arising on or after the date of signing the severance agreement; (2) unenforceable exculpatory provision in the severance agreement; (3) lack of contract formation due to duress, lack of assent, and mental incapacity arising from the causes of action for false imprisonment, fraud in the inducement, and negligent misrepresentation; and, (4) implied offer to return settlement amount from severance agreement. Rules 12(b)(6), 56, 60, SCRCF. (R. \_\_\_; Compl.

¶¶ 14-17, 59-112; Appellant's Resp. Mot. to Dismiss pp. 2-5, 7-18; Appellant Am. Mot. Reconsider p. 28, Ex. A pp. 2-10). Thus, the lower court erred ruling upon the underlying merits of the dispute instead of whether James sufficiently pled causes of action against Northgate. (R. \_\_\_; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 5-9).

**III. THE LOWER COURT ERRED DISMISSING APPELLANT'S CLAIMS AGAINST RESPONDENT NORTHGATE BAPTIST CHURCH WHEN A GENUINE DISPUTED ISSUE OF MATERIAL FACT EXISTS THAT THE SEVERANCE AGREEMENT DID NOT BAR ALL CLAIMS APPELLANT HAD TOWARD RESPONDENT NORTHGATE BAPTIST CHURCH**

First, a genuine disputed issue exists regarding the material fact of that the severance agreement does not bar James's causes of action against Northgate. Rules 12(b)(6), 56, 60(b), SCRCR. The dispute concerns the severance agreement as not legally binding, consisting of an unenforceable exculpatory clause, ambiguous in its application, and not applying to Northgate's conduct the day of and after the parties signed the severance agreement. When read as a whole, the pertinent provisions in the severance agreement entail various ambiguities that are construed against the drafter Northgate. The scope of the severance agreement only applies to barring claims against Northgate prior to the date of James's termination:

- In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company. (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A ¶3(A)).
- In exchange for the Company's agreement to provide the above payment, Employee agrees not to make any claims or demands or to commence any lawsuits against the Company on any matters arising from or related in any way to the Employee's employment with or termination from the Company . . . . (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A ¶3(A)).
- This [Section 3(A)] specifically includes, but is not limited to, a release of any and all rights, claims, and causes of action of any sort arising under . . . any other legal theory or cause of action, regardless of type, character or form, he may have; any and all causes of

action, whether in law and/or in equity, for any expense, reinstatement, loss, mental or physical injury, costs, attorneys' fees, mental anguish, pain and suffering, medical bills or costs, physical or mental impairment, damage to reputation, loss of enjoyment of life, loss of consortium, lost earnings or profits, lost wages of commissions, lost bonuses, lost seniority or retirement benefits, other lost employment benefits including, but not limited to, vacation, or holiday pay and long or short term disability, *or any other damage (whether actual, compensatory, punitive, treble or otherwise) suffered or which may be suffered by Employee due to any event which occurred prior to the date of this Separation Agreement and Release . . . .* (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A ¶ 3(A) (emphasis added)) [herein referred to as "exculpatory clause"].

- Employee further expressly agrees that *this Agreement may be treated as a complete defense* to any action or proceeding that may be brought by Employee . . . against the Company . . . for relief or damages of any kind arising from Employee's employment or termination from employment with the Company . . . . (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A ¶ 3(B) (emphasis added)).
- The intent of this Agreement is to fully and finally resolve all claims and possible claims against the Company that are waivable whether legal or equitable. *However, it is understood that Employee is not releasing or waiving any rights or claims which may arise after this Agreement is executed, any claims for the sole purpose of enforcing Employee's rights under this Agreement, or any claims which by law cannot be waived . . . .* (R. \_\_\_; Resp't Northgate Baptist Church Mem. Supp. Mot. Dismiss, Ex. A ¶ 3(D) (emphasis added)).

The severance agreement suffers from ambiguity in the release(s) concerning the application of Section 3(A) and Section 3(D) for James to bring viable causes of action against Northgate that arose from the day of and after signing the severance agreement. James's termination on April 10, 2018, gave rise to the following cause(s) of action: false imprisonment; fraud in the inducement; negligent hiring, supervision, and retention of employees; and, wrongful termination. (R. \_\_\_; Compl., ¶ 86-113). James's causes of action also accrued after James's termination for defamation; negligent hiring, supervision, and retention of employees; intentional infliction of emotional distress; and, negligent infliction of emotional distress. (R. \_\_\_; Compl., ¶ 86-113). Moreover, the exculpatory clause in Section 3(A) is an overly broad exculpatory clause that violates public policy by allowing Northgate to escape liability for its

own negligence, gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts. *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 248-52, 612 S.E.2d 462, 465-67 (Ct. App. 2005); *Fisher v. Stevens*, 355 S.C. 290, 295-97, 584 S.E.2d 149, 152-54 (Ct. App. 2003); *Berkebile v. Outen*, 311 S.C. 50, 53 n.2, 426 S.E.2d 760, 762 (1993); *S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc.*, 283 S.C. 182, 191, 322 S.E.2d 453, 458 (Ct. App. 1984). Because the exculpatory clause is overly broad, then such claims for negligence, gross negligence, reckless conduct, willful or wanton conduct, or, intentional acts cannot be waived by law under Section 3(D) of the severance agreement.

Second, a genuine disputed issue exists regarding the material fact of that the formation of the severance agreement is found wanting. James argued a lack of contract formation due to duress, lack of assent, and mental incapacity arising from the causes of action for false imprisonment, fraud in the inducement, and negligent misrepresentation. (R. \_\_\_; Compl. ¶¶ 59-112; Appellant's Resp. Mot. Dismiss p. 7-12, 14-18; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 5-9). These issues clearly remain in dispute as to contract formation as previously discussed without the full opportunity to develop discovery or consider further pleadings prior to the lower court prematurely dismissing James's claims against Northgate.

Therefore, the lower court erred barring James's causes of action based on the severance agreement because the contract formation and contractual interpretation are disputed issues of material fact as to the unenforceability of the severance agreement or applicability of the same to James's causes of action. (R. \_\_\_; Order Grant Resp't Northgate Baptist Church's Mot. Dismiss pp. 2-3, 5-9).

**IV. THE LOWER COURT ERRED DISMISSING APPELLANT'S CLAIMS AGAINST RESPONDENTS CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, AND LINDA SMITH BY RULING UPON THE UNDERLYING**

**MERITS OF THE DISPUTE INSTEAD OF WHETHER APPELLANT  
ALLEGED A VIABLE CAUSE OF ACTION THAT WOULD MERIT ANY  
RELIEF UNDER ANY LEGAL THEORY**

The lower court erred by dismissing James's causes of action against Hannah, her mother, and her grandmother. James pled the following causes of action against Hannah, her mother, and her grandmother: (1) defamation; (2) intentional infliction of emotional distress against; (3) negligent infliction of emotional distress; and, (4) civil conspiracy. Respondents Hannah Elizabeth Collier and Linda Smith waived the issue under the lower court granting their Rule 12(b)(6) motion to dismiss James's claims upon appeal because they only refer to the lower court's ruling on their Rule 12(c) motion for judgment on the pleadings. (R. \_\_\_; Resp'ts Hannah Elizabeth Collier and Linda Smith's Initial Br. pp. 1-16). For a Rule 12(c) motion for judgment on the pleadings, the analysis pertains to whether James's allegations in James's complaint sufficiently pled the basis for recovery under any legal theory of law after the pleadings are closed. Rule 12(c), SCRPC; *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); *Gregory v. Gregory*, 292 S.C. 587, 590, 358 S.E.2d 144, 147 (Ct. App. 1987); see *Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987). Again, the lower court must deem the facts alleged in the complaint as true. *Firemen's Ins. Co. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990). Ultimately, the lower court erred when it evaluated the causes of action against Hannah, her mother, and her grandmother for defamation and intentional infliction of emotional distress based on the underlying merits of the claim by raising affirmative defenses. (R. \_\_\_; Order Grant Resp'ts Hannah Elizabeth Collier and Linda Smith's Mot. Dismiss and Mot. Summ. J. Pleadings pp. 1-10; Order Grant Resp't Charlotte Collier's Mot. Summ. J. Pleadings pp. 1-10).

Affirmative defenses such as opinion, privileged communication, truth related to a cause

of action for defamation are not a basis for dismissal, especially before any discovery had taken place or the pleadings have closed. See *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 195-202, 838 S.E.2d 698, 711-15 (Ct. App. 2019) (opinion); *McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 852 (Ct. App. 2010) (privileged communication); *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484-85, 514 S.E.2d 126, 134 (1999) (privileged communication); *Herring v. Lawrence Warehouse Co.*, 222 S.C. 226, 232-35, 72 S.E.2d 453, 454-55 (1952) (citations omitted) (truth). (R. pp. \_\_\_; Order Grant Mot. Dismiss to Charlotte Collier p. 3-11; Order Grant Mot. Dismiss to Hannah Elizabeth Collier and Linda Smith p. 3-12). Moreover, a genuine disputed issue exists regarding the material fact of defamation and intentional infliction of emotional distress. Because, affirmative defenses by operation dispute an issue of fact for a factfinder or jury to decide. *Garrard*, 429 S.C. at 95-202 (opinion); *City of San Diego v. Roe*, 543 U.S. 77, 78-85, 125 S. Ct. 521, 522-26 (2004) (opinion); *Adams v. Daily Tel. Printing Co.*, 292 S.C. 273, 279, 356 S.E.2d 118, 122 (Ct. App. 1986) (citations omitted) (truth); *Rivers v. Florence Printing Co.*, 141 S.C. 364, 370, 139 S.E. 781, 782 (1927) (privileged communication). The entire discussion of affirmative defenses by Hannah, her mother, and her grandmother challenging defamation and intentional infliction of emotional distress is moot.

Second, the progression of facts is overlooked with respect to Hannah, her mother, and her grandmother reporting James to the pastor of Northgate Dr. Barry Jimmerson for having an “inappropriate relationship” with Hannah to Northgate firing James based on the same vernacular. (R. \_\_\_; Compl. ¶¶ 14-17, 21-22, 24-25, 27-29, 34-36, 59-113). On or around March 12, 2018, Hannah and her mother reported James of having an inappropriate relationship with Hannah. (R. \_\_\_; Compl. ¶ 59). The effect of Dr. Jimmerson hearing the accusation of

“inappropriate relationship” left the impression that a romantic relationship, a sexual relationship, or both occurred between James and Hannah. (R. \_\_\_; Compl. ¶ 60). At this point, the damage of the offensive, defamatory statement was done as soon as Hannah, her mother, and her grandmother open their mouths to say “inappropriate relationship.” *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-510, 506 S.E.2d 497, 501-02 (1998); see *Parrish v. Allison*, 376 S.C. 308, 321-23, 656 S.E.2d 382, 389-90 (Ct. App. 2007); *Adams*, 292 S.C. at 279 (citations omitted); *Herring*, 222 S.C. at 234-35 (citations omitted); *Flowers v. Price*, 192 S.C. 373, 377-78, 6 S.E.2d 750, 751-52 (1940) (Toal, A.J., concurring). Moreover, Hannah, her mother, and her grandmother approached Dr. Jimmerson as James’s employer related to his interactions with Hannah outside the scope of his employment. (R. pp. \_\_\_; Compl. ¶ 27, 32, 33, 41, 42, 54-58, 64; Appellant’s Resp. Resp’ts Mot. Dismiss pp. 18-22, Ex. D pp. 2-6, Ex. E p. 2). Hence, as a matter of slander per se that is actionable, Hannah, her mother, and her grandmother challenged James’s fitness in his profession, accused him of a crime of moral turpitude, and accused him with the commission of a crime in the characterization of Hannah as a child instead of a legal adult. (R. \_\_\_; Appellant Initial Br. pp. 5-12, 27-44).

The lower court may not unilaterally decide the meaning of “inappropriate relationship.” Rather, the lower court only determines whether a defamatory statement is capable of susceptible defamatory meaning or an offensive meaning in the mind of a reasonable listener. See *Parrish*, 376 S.C. at 321-23; *Adams*, 292 S.C. at 279; *Herring*, 222 S.C. at 234-35 (citations omitted); *Flowers*, 192 S.C. at 377-78. Defamation per se relates to any words that have an offensive meaning and are based on their ordinary and popular meaning. *Adams*, 292 S.C. at 279; *Flowers*, 192 S.C. at 377; *Parrish*, 376 S.C. at 325. Hannah, her mother, and her grandmother emphasize the wording “misinterpreted” or “statements taken out of context” as Northgate, Sue Lutz, Anne

Danciu, and Roy Sabeau understood the meaning of “inappropriate relationship.” (R. \_\_\_; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Initial Br. p. 10; Resp’t Charlotte Collier Initial Br. p. 9; Appellant’s Resp. Resp’ts Mot. Dismiss, Ex. B pp. 1-17). Again, the effect of the defamatory statement that leaves an impression on the listener is the crux of the analysis that the defamatory statement from an objective point of view—not a subjective point of view as to what the speaker meant. *Flowers*, 192 S.C. at 377-78. The speaker cannot make statements that are consciously indifferent while disregarding for the truth or falsity of the statement as to how another will perceive such an accusation of having an “inappropriate relationship” with another. (R. \_\_\_; Appellant Resp. Mot. Dismiss pp. 18-22). The ordinary and popular meaning of “inappropriate relationship” is an offensive statement without question. (R. \_\_\_; Appellant Initial Br. pp. 8, 28-38).

Despite that Hannah denied having a romantic relationship, sexual relationship, or both with James, such a response merely indicates that Hannah and her mother acted with a conscious indifference as to the truth or falsity of the statement knowing full well the loaded implication “inappropriate relationship” would mean to a James’s livelihood and reputation. (R. \_\_\_; Compl. ¶¶ 60-62). Moreover, Hannah’s grandmother perpetuates the same accusation of “inappropriate relationship” to third parties outside of Northgate. (R. \_\_\_; Compl. ¶ 83; Appellant’s Resp. Resp’ts Mot. Dismiss, Ex. B pp. 1-17). To pretend otherwise is asinine. An attempt to retract the loaded implication of Hannah accusing James of having an “inappropriate relationship” with her, her additional claim that she did not want James to get into trouble clearly indicates full wherewithal as to the enormity of her accusation and the implications resulting from it. (R. \_\_\_; Resp’ts Hannah Elizabeth Collier and Linda Smith’s Initial Br. p. 14). Additionally, Hannah, her mother, and her grandmother fail to incorporate James’s allegations that Dr. Jimmerson changes

his position toward the accusation of “inappropriate relationship.” After Laurel Shaler, who was the head of the personnel committee with Northgate, completed an investigation regarding James and Hannah. Laurel provided her assessment to Dr. Jimmerson that was contrary to Dr. Jimmerson’s first interview with Hannah and her mother. (R. \_\_\_; Compl. ¶¶ 63-112). Dr. Jimmerson became incensed and further shamed James based on the accusation of “inappropriate contact” and “inappropriate relationship” toward Hannah. (R. \_\_\_; Compl. ¶¶ 63-112). Hannah, her mother, and her grandmother hang onto certain facts in James’s complaint in isolation without following through to the ultimate effect of their accusation that led to Northgate firing James carrying the term “inappropriate relationship” all the way to his termination. (R. \_\_\_; ¶¶ 59-61, 66-112). Therefore, James has pled factual allegations sufficient to recovery under any legal theory, including defamation and intentional infliction of emotional distress.

#### V. CONCLUSION

For the reasons previously stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted this 16 day of July, 2021.

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.  
SC Bar No.: 102942  
310 Rutherford Street  
Greenville, SC 29609  
(864) 729-3428 t  
(864) 752-1424 f  
d.davis@dicksondavislaw.com  
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

**PROOF OF SERVICE OF INITIAL REPLY BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2020-CP-23-01213

**RECEIVED**

JUL 20 2021

SC Court of Appeals

JAMES EARL TEGELER,

Appellant,

v.

CHARLOTTE COLLIER,  
HANNAH ELIZABETH  
COLLIER, LINDA SMITH,  
NORTHGATE BAPTIST  
CHURCH,

Respondents.

**PROOF OF SERVICE**

I certify that I have served Appellant's Initial Reply Brief of Appellant on Respondents **CHARLOTTE COLLIER, HANNAH ELIZABETH COLLIER, LINDA SMITH, NORTHGATE BAPTIST CHURCH** electronically and by depositing a copy of it in the United States Mail, postage prepaid, or by South Carolina Supreme Court Order 2020-05-29-02, on July 16, 2021, addressed to the attorney of record, to the following address(es):

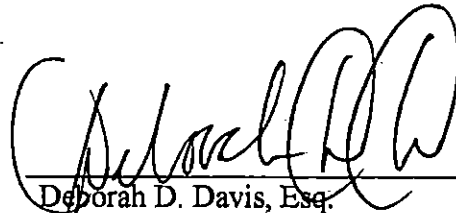
Northgate Baptist Church  
c/o Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Charles E. McDonald & S. Michael Nail  
300 North Main Street  
P.O Box 2757  
Greenville, SC 29602

Charlotte Collier  
c/o Clawson and Staubes, LLC  
Amy S. Snyder  
1000 East North Street  
Suite 200  
Greenville, SC 29601

Hannah Elizabeth Collier and Linda Smith  
c/o Duggan & Hughes, LLC  
Daniel R. Hughes  
457-B Pennsylvania Avenue  
P.O. Box 449  
Greer, SC 29652

Respectfully submitted this 16 day of July, 2021.

DICKSON DAVIS LAW FIRM, LLC



Deborah D. Davis, Esq.  
SC Bar No.: 102942  
310 Rutherford Street  
Greenville, SC 29609  
(864) 729-3428 t  
(864) 752-1424 f  
d.davis@dicksondavislaw.com  
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT



DICKSON DAVIS LAW FIRM

NOTICE OF MOTION INITIAL REPLY BRIEF  
OF APPELLANT

July 16, 2021

**RECEIVED**

JUL 20 2021

SC Court of Appeals

Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
P.O. Box 11629  
Columbia, SC 29211

**VIA EMAIL CTAPPFILINGS@SCCOURTS.ORG**

Re : Tegeler v. Collier et al.  
Case No. : 2020-CP-23-01213  
Appellate Case No. : 2020-001525  
File Id. : 2018-01-123

Dear Clerk of Court:

Please see the enclosed the Initial Reply Brief of Appellant.

Please let me know what further you require from me at this time. Thank you for assistance with this matter.

Respectfully submitted this 16 day of July, 2021

Deborah D. Davis, Esq.  
SC Bar No.: 102942  
Attorney for Appellant

cc: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Charles E. McDonald & S. Michael Nail  
300 North Main Street  
P.O. Box 2757  
Greenville, SC 29602  
(864) 241-1813

Clawson and Staubes, LLC  
Amy S. Snyder  
1000 East North Street  
Suite 200  
Greenville, SC 29601

(864) 331-8940

Duggan & Hughes, LLC  
Daniel R. Hughes  
457-B Pennsylvania Avenue  
P.O. Box 449  
Greer, SC 29652  
(864) 334-2500

ATTORNEYS FOR THE RESPONDENTS

/ddd

Dickson Davis Law Firm  
310 Rutherford Street  
Greenville, SC 29609



**RECEIVED**  
JUL 20 2021  
SC Court of Appeals

Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
P. O. Box 11629  
Columbia, SC 29211

