

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case No. 2019-001032

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SC Court of Appeals

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 ScottThird-Party Plaintiffs, are the Appellants,

v.

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

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION 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.

Michael Scott and Heike Scott,
Third-Party Plaintiffs,

v.

Eugene Rhinehart,

Third-Party Defendant.

**ORDER GRANTING THIRD-PARTY
DEFENDANT’S MOTION TO DISMISS
THIRD-PARTY COMPLAINT**

This matter came before the Court on Third-Party Defendant Eugene Rhinehart’s Motion to Dismiss the Third-Party Complaint. The Court held a hearing on this Motion on February 14, 2019 in the Orangeburg County Courthouse. After hearing the able arguments of counsel and reviewing the memorandum and case authority submitted by Third-Party Plaintiffs and Third-Party Defendant, I find that the Third-Party Defendant’s Motion to Dismiss is proper and therefore, that Motion is hereby granted.

BACKGROUND

This action arises out of a fatal motorcycle accident on May 26, 2016. The Plaintiffs Caleb Snow and Mary Snow as P.R. of the Estate of Chequita Snow Burgess allege that a horse kept at the property of Defendants Michael and Heike Scott escaped its enclosure and entered Interstate 20, causing the motorcycle driven by James Burgess to crash, resulting in the death of Chequita Snow Burgess. Defendants Michael and Heike Scott (hereinafter the “Scotts”), who had control over their own pasture housing the horse, then sought equitable indemnity from Third-Party

Defendant Eugene Rhinehart (“Rhinehart”), their neighbor and the owner of the horse. Rhinehart filed a Motion to Dismiss the claim against him for failure to allege facts sufficient to support an equitable indemnity claim. For the reasons set forth below, the Court grants the Motion to Dismiss the Third-Party Complaint.

I. There can be no equitable indemnity between mere joint tortfeasors.

An equitable indemnity claim may arise when a third-party makes a claim against the indemnity plaintiff for damages the third-party sustained as a result of another party’s tortious conduct. Stoneledge at Keowee Owner’s Assn. v. Clearview Constr., LLC, 413 S.C. 615, 625, 776 S.E.2d 426, 432 (Ct. App. 2015). An equitable indemnity claim has three elements: “(1) the indemnitor was liable for causing the Plaintiff’s damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff’s claims against it which were eventually proven to be the fault of the indemnitor.” Vermeer Carolinas, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). However, there is no right to equitable indemnity between mere joint tortfeasors because each are potentially liable for causing harm to the plaintiff. See id., 336 S.C. at 64, 518 S.E.2d at 307.

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. (“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.”). Thus, there can be no equitable indemnity for the Scotts. *Id.* The Scotts and Rhinehart are liable, if at all, for their own, separate conduct contributing to the horse’s escape and subsequent motorcycle accident – Rhinehart is responsible only for conduct that is his own.¹

II. The relationship between neighbors is insufficient to support an equitable indemnity claim.

Furthermore, the Scotts are not entitled to equitable indemnity based upon their neighbor relationship with Rhinehart. Equitable 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. *Rhett v. Gray*, 401 S.C. 478, 498, 736 S.E.2d 873, 883 (Ct. App. 2012) (denying claim for equitable indemnity in an easement dispute because there is no special relationship between neighbors). South Carolina recognizes a special relationship only where there is some form of business transaction between the parties. *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); *Stuck v. Pioneer Logging Machinery, Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983) (allowing equitable indemnity for a truck driver when the seller of the vehicle represented to the driver that it was roadworthy and the concealed defective condition of the truck later caused the underlying accident). The Scotts allege nothing more than “Third-Party Plaintiffs and Third-Party are neighbors and, therefore, hold a special relationship.” (Third-Party Compl. ¶ 3). This relationship is insufficient under South Carolina law to support the Scotts’ equitable indemnity claim.

¹ 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.

Finally, “[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). The Scotts have failed to establish a special relationship under Town of Winnsboro because they have not demonstrated 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. Thus, they have alleged no special relationship that would support their equitable indemnity claim.

CONCLUSION

At most, the Scotts and Rhinehart are joint tortfeasors, and the Scotts have no special relationship with him that would entitle them to equitable indemnity, even if they were not joint tortfeasors. The Scotts have alleged merely that “Third-Party Plaintiffs and Third-Party are neighbors and, therefore, hold a special relationship.” (Third-Party Compl. ¶ 3). This allegation does not support an equitable indemnity claim under South Carolina law, and the Scotts make no other allegations of a special relationship between themselves and Rhinehart. Thus, the Scotts have failed to allege facts sufficient to support an equitable indemnity claim, and the Court finds that dismissal of the Scotts’ claims against Rhinehart is appropriate.

For the reasons set forth above, the Third-Party Defendant’s Motion to Dismiss is hereby **GRANTED** and the Third-Party Complaint is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina

_____, 2019



Orangeburg Common Pleas

Case Caption: Caleb Snow VS James Burgess

Case Number: 2018CP3800766

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-05-24 10:51:41 page 6 of 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Caleb Snow and Mary Snow, as Personal)
Representatives for the Estate of)
Chequita Snow Burgess, Deceased,)
Plaintiffs,)

vs.)

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

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2018-CP-38-00766

SUMMONS
(JURY TRIAL REQUESTED)

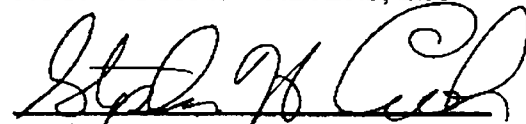
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2018 JUN 25 PM 1:01
CLERK OF COURT
ORANGEBURG, SC

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at **Koon Cook & Walters, LLC, at 2016 Gadsden Street, Columbia, SC 29201**, within thirty (30) days, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

KOON COOK & WALTERS, LLC

By:



Stephen H. Cook
2016 Gadsden Street
Columbia, SC 29201
(803) 256-4082
Attorneys for the Plaintiff

Columbia, South Carolina

June 21, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Caleb Snow and Mary Snow, as Personal)
 Representatives for the Estate of)
 Chequita Snow Burgess, Deceased,)
 Plaintiffs,)
)
 vs.)
)
 James Burgess and Michael Scott and)
 Heike Scott,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT

2018-CP-38-00766

COMPLAINT
 (JURY TRIAL REQUESTED)

CLERK OF COURT
 ORANGEBURG, SC

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FILED FOR RECORD
 WINNIFRA B. CLARK

The Plaintiffs, complaining of the Defendants, would respectfully show unto this court as follows:

1. The Plaintiffs, Caleb Snow and Mary Snow, are citizens and residents of Marion County, and bring this action in their capacity as the duly appointed Personal Representatives of the Estate of Chequita Snow Burgess, deceased, pursuant to Order of the Probate Judge for Orangeburg County. The deceased, Chequita Snow Burgess, was a citizen and resident of Orangeburg County, South Carolina at the time of her death.
2. The Defendant, James Burgess, is a citizen and resident of Orangeburg County, South Carolina and was at the time of the wreck.
3. The Defendants, Michael Scott and Heike Scott, are citizens and residents of Aiken County, South Carolina.
4. The Plaintiffs bring this wrongful death action for the benefit of the statutory heirs of the deceased pursuant to the common law and statute laws of South Carolina, particularly S.C. Code Ann. Sections 15-78-10 to 15-78-170 and 15-5-90.
5. On May 26, 2016, Chequita Snow Burgess was riding on the back of a motorcycle

driven by Defendant James Burgess in a western direction on Interstate 20 in Aiken County, South Carolina. That a horse being kept at property of Defendants Michael Scott and Heike Scott entered Interstate 20 causing the motorcycle to crash into the horse and ejecting both the driver and passenger from the motorcycle. Chequita Snow Burgess tragically died as a result of the crash.

6. Venue is proper in Orangeburg County because the Defendant James Burgess resided in Orangeburg County at the time of the wreck.

7. The Defendant James Burgess was negligent and careless in the following particulars:

- (a) In failing to maintain a proper look-out;
- (b) In failing to keep his vehicle under proper control;
- (c) In traveling too fast for the conditions;
- (d) In failing to apply his brakes, if any he had;
- (e) In failing to timely apply his brakes;
- (f) In failing to take proper evasive action to avoid the horse;

All of which were the direct and proximate cause of the injuries and damages suffered by Chequita Snow Burgess and her heirs, said acts being in violation of the Statute Laws and common law of the State of South Carolina, or combining and concurring with the negligence and recklessness of Defendants Michael Scott and Heike Scott to cause said injuries.

8. The Defendants, Michael Scott and Heike Scott, were willful, wanton, reckless, negligent and careless in the following particulars:

- (a) In then and there failing to maintain the fence in which the horse was located;
- (b) In then and there failing to control the horse;

- (c) In allowing the horse to enter into the roadway;
- (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;
- (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;
- (f) In allowing their livestock to run at large and damage the Plaintiffs in direct violation of S.C. Code § 47-7-130.
- (g) In failing to inspect the fence and locking mechanism;
- (h) In failing to exercise that degree of care and caution as would a reasonably prudent person under the same or similar circumstances.

All of which were the direct and proximate cause of the injuries and damages suffered by Chequita Snow Burgess and her heirs, said acts being in violation of the Statute Laws and common law of the State of South Carolina, or combining and concurring with the negligence of Defendant James Burgess to cause said injuries.

FOR A FIRST CAUSE OF ACTION
(Wrongful Death)

9. The Plaintiffs repeat each and every allegation of paragraphs 1 through 8 as if repeated here verbatim.

10. This action is brought pursuant to South Carolina Code of Laws Ann. Sections 15-78-10 to 15-78-190 to recover damages for the wrongful death of the deceased.

11. As a result of the negligence and carelessness and recklessness of the Defendants as set forth above, Chequita Snow Burgess was injured and died as a result of those injuries.

12. The Plaintiffs are informed and believe that they are entitled to judgment against the Defendants in an appropriate amount of actual damages and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Survival Action)

13. Plaintiffs repeat each and every allegation of paragraphs 1 through 12 as if repeated verbatim herein.


14. The Plaintiffs bring this action in their fiduciary capacity, and by virtue of Section 15-5-90 of the Code of Laws of South Carolina, 1976, as amended, to recover for injuries and damages consciously suffered and sustained by the deceased prior to her death.

15. The acts and omissions of the Defendants as set forth above caused said damage and without which the injuries and damages consciously suffered by the deceased would not have occurred.

16. Because of the willful and reckless acts of the Defendants, the deceased consciously suffered great pain, incurred medical expenses and lost personal items, and the Plaintiffs, as Personal Representatives of her estate, are entitled to recover actual and punitive damages.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for actual and punitive damages, for the costs of this action, and for such other and further relief as the court may deem just and proper.

KOON COOK & WALTERS, LLC



By: Stephen H. Cook
2016 Gadsden Street
Columbia, South Carolina 29201
(803) 256-4082

Columbia, South Carolina

June 21, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

C/A NO.: 2018-CP-38-00766

Caleb Snow and Mary Snow, as Personal
Representatives for the Estate of Chequita
Snow Burgess, Deceased,

Plaintiffs,

v.

James Burgess and Michael Scott and
Heike Scott,

Defendants.

**AMENDED ANSWER
AND
THIRD-PARTY COMPLAINT
(JURY TRIAL DEMANDED)**

Michael Scott and Heike Scott,

Third-Party Plaintiffs,

v.

Eugene Rhinehart,

Third-Party Defendant.

Defendants Michael Scott and Heike Scott, by and through their undersigned
counsel and by way of Answer to Plaintiffs' Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. That Plaintiffs have failed to allege facts sufficient to constitute a cause of
action against these Defendants and, therefore, the Complaint should be dismissed.

FOR A SECOND DEFENSE

1. That each and every allegations not hereinafter specifically admitted is
denied.

2. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraphs 1 and 2 and, therefore, the allegations are denied and strict proof is demanded thereof.

3. That paragraph 3 is admitted.

4. That paragraph 4 is a legal statement to which no response is required.

5. In response to paragraph 5, Defendants admit, upon information and belief, that an accident occurred between the decedent, Defendant Burgess, and a horse owned and cared for by Defendants' neighbors. The remaining allegations are denied.

6. That paragraphs 6 is denied.

7. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 7 and, therefore, the allegations are denied and strict proof is demanded thereof.

8. That paragraph 8 is denied and strict proof is demanded thereof.

9. That paragraph 9 is answered as set forth above.

10. That paragraph 10 is a legal statement to which no response is required.

11. That paragraphs 11 and 12 are denied as to these Defendants.

12. That paragraph 13 is answered as set forth above.

13. That paragraph 14 is a legal statement to which no response is required.

14. That paragraphs 15 and 16 are denied as to these Defendants.

FOR A THIRD DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions.

FOR A FOURTH DEFENSE

1. That Plaintiffs' damages were the sole and proximate cause of a party other than these Defendants.

FOR A FIFTH DEFENSE

1. That Defendant pleads the open and obvious nature of the condition as a complete bar to the cause of action.

FOR A SIXTH DEFENSE

1. That Defendant pleads Act of God as a complete bar to the cause of action

FOR A SEVENTH DEFENSE

1. That Defendant pleads the sole and/or intervening negligence of another party or non-party as a complete bar to the cause of action.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendant requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

THIRD-PARTY COMPLAINT

1. That Third-Party Plaintiffs citizens and residents of Aiken County, South Carolina.

2. That Third-Party Defendant is a citizen and resident of Aiken County, South Carolina.

3. Third-Party Plaintiffs and Third-Party are neighbors.

4. That Third-Party Plaintiff gratuitously allowed the Third-Party Defendant to use their pastures at the Third-Party Defendant's discretion to temporarily house his horses.

5. That Third-Party Plaintiffs did not receive any remuneration for allowing the Third-Party Defendants to use the pasture, they did not own the horse at issue in this case or provide the horse care or maintenance.

6. That the Third-Party Plaintiffs' property was properly fenced with locking gates and was appropriate to corral a horse.

7. That Third-Party Defendant or his agents or servants were solely responsible for putting and taking the horse from Third-Party Defendant's property to Third-Party Plaintiff's property and back again at the times of his choosing.

8. That Third-Party Defendants 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.

WHEREFORE, if the Plaintiff obtains a verdict against the Defendants for money damages relating to damages allegedly sustained, Third-Party Plaintiff prays for a judgment in the same amount against the Third-Party Defendant.

RILEY POPE & LANEY, LLC

s/Damon C. Wlodarczyk
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Telephone (803) 799-9993
Facsimile (803) 239-1414

Attorneys for Defendants Michael Scott and
Heike Scott

Columbia, South Carolina

September 7, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG)	
)	
)	
CALEB SNOW and MARY SNOW, as)	
Personal Representatives for the Estate)	
of Chequita Snow Burgess, Deceased,)	
)	CASE NO. 2018-CP-38-00766
Plaintiffs,)	
)	
v.)	
)	
JAMES BURGESS and MICHAEL)	
SCOTT and HEIKE SCOTT,)	
)	
Defendants.)	

ANSWER AND CROSS CLAIM OF DEFENDANT JAMES BURGESS

COMES NOW the Defendant, James Burgess, and responds to the Complaint alleged against him and asserts his Crossclaim against Defendants Michael Scott and Heike Scott, as follows:

FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not hereinafter admitted is expressly denied.

SECOND DEFENSE

2. Defendant Burgess admits his residency in Orangeburg County and further admits the subject accident occurred but would deny any fault for the accident and refers to the allegations in his Crossclaim as to how the subject accident occurred.

THIRD DEFENSE

3. Pursuant to S.C. Code Ann. § 15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOURTH DEFENSE

4. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. § 15-32-530.

FIFTH DEFENSE

5. Such injury or loss as the Plaintiffs sustained, if any, as alleged in the Complaint, was proximately caused and occasioned by the sole negligence, gross negligence, willfulness and wantonness of a third party, in failing to exercise due care and reasonable care for safety for others, which was the direct and proximate cause of injuries or losses suffered by the Plaintiffs, if any, and without which the same would not have occurred. Therefore, Defendant Burgess pleads the sole negligence, willfulness, wantonness, carelessness, recklessness, and gross negligence of a third party as a complete bar to this action against him.

SIXTH DEFENSE

6. Defendant Burgess would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eight and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that the Defendants could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant Burgess can be compelled to give testimony against himself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is

violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs claim for punitive damages violates Defendant Burgess' right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills Defendant Burgess' exercise of that right; the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive finds shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claim for punitive damages should be dismissed.

SEVENTH DEFENSE AND CROSS-CLAIM AGAINST
DEFENDANT MICHAEL SCOTT AND DEFENDANT HEIKE SCOTT

7. On or about May 26, 2016, Defendant Burgess was operating his motorcycle in a westerly direction on Interstate 20 in Aiken County, South Carolina. That a horse being kept at property of Defendants Michael Scott and Heike Scott entered Interstate 20 causing the motorcycle to crash into the horse and ejecting both Defendant Burgess and Chequita Snow Burgess from the motorcycle.

8. As a result of this collision, Defendant Burgess suffered serious and permanent injuries to his body, including his left arm, right hip, and head, which have caused and will continue to cause physical pain and suffering, mental anguish and emotional distress, loss enjoyment of life, impairment of health and bodily efficiency, and the incurrence of medical expenses.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

9. Defendant Burgess repeats and realleges paragraphs one (1) through nine (9) as though set forth herein verbatim, and would further allege by way of Cross-Claim against Defendants Michael Scott and Heike Scott the following:

10. Defendants Michael Scott and Heike Scott were willful, wanton, reckless, negligent and careless at the time and place above mentioned in the following particulars:

- (a) In failing to maintain the fence in which the horse was located;
- (b) In failing to control the horse;
- (c) In allowing the horse to enter the roadway;
- (d) In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- (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;
- (f) In allowing their livestock to run at large and damage Defendant Burgess in direct violation of S.C. Code § 47-7-130;
- (g) In failing to inspect the fence and locking mechanism;
- (h) In failing to exercise that degree of care and caution as would a reasonably prudent person under the same or similar circumstances;
- (i) In such other and further particulars as the evidence in trial may show; all of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Defendant Burgess herein, said acts being in violation of the statutes and common laws of the State of South Carolina.

WHEREFORE, Defendant Burgess prays that the action against him be dismissed with prejudice and prays for judgment against Defendants Michael Scott and Heike Scott in a sum sufficient to adequately compensate for actual damages, for such punitive damages as a jury may reasonably award, for the costs of this action and for such other and further relief as this Court may deem just and proper.

/s/ Sonja R. Tate

SONJA R. TATE, Esquire
SC Bar No.: 16206
Attorney for Defendant James Burgess

OF COUNSEL:
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/s/David N. Truitt

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Augusta, Georgia
September 12, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

C/A NO.: 2018-CP-38-00766

Caleb Snow and Mary Snow, as Personal
Representatives for the Estate of Chequita
Snow Burgess, Deceased,

Plaintiffs,

v.

James Burgess and Michael Scott and
Heike Scott,

Defendants.

**ANSWER TO CROSS-CLAIM
AND
THIRD-PARTY COMPLAINT
(JURY TRIAL DEMANDED)**

Michael Scott and Heike Scott,

Third-Party Plaintiffs,

v.

Eugene Rhinehart,

Third-Party Defendant.

Defendants Michael Scott and Heike Scott, by and through their undersigned
counsel and by way of Answer to the Cross-Claim, herein allege as follows:

FOR A FIRST DEFENSE

1. That Cross-Claimant has failed to allege facts sufficient to constitute a
cause of action against these Defendants and, therefore, the Complaint should be
dismissed.

FOR A SECOND DEFENSE

1. That each and every allegations not hereinafter specifically admitted is
denied.

2. That no response is required to paragraphs 1 through 6.

3. In response to paragraph 7, Defendants admit, upon information and belief, that an accident occurred between the Defendant Burgess and Chequita Snow Burgess, and a horse owned, d cared for by Defendants' neighbors. The remaining allegations are denied.

4. That paragraph 4 is a legal statement to which no response is required.

5. In response to paragraph 5, Defendants admit, upon information and belief, that an accident occurred between the decedent, Defendant Burgess, and a horse owned, housed, and cared for by Defendants' neighbors. The remaining allegations are denied.

6. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 8 and, therefore, the allegations are denied and strict proof is demanded thereof.

7. That paragraph 9 is answered as set forth above.

8. That paragraph 10 is denied and strict proof is demanded thereof.

FOR A THIRD DEFENSE

1. Plaintiff's claims for punitive damages violate the United States and South Carolina Constitutions.

FOR A FOURTH DEFENSE

1. That Plaintiffs' damages were the sole and proximate cause of a party other than these Defendants.

FOR A FIFTH DEFENSE

1. That Defendant pleads the open and obvious nature of the condition as a complete bar to the cause of action.

FOR A SIXTH DEFENSE

1. That Defendant pleads Act of God as a complete bar to the cause of action

FOR A SEVENTH DEFENSE

1. That Defendant pleads the sole and/or intervening negligence of another party or non-party as a complete bar to the cause of action.

FOR AN EIGHTH DEFENSE

1. That if Defendants were negligent, grossly negligent, careless, reckless, willful and wanton as alleged, which allegations are herein expressly denied, the cross-claimant was himself negligent, careless, reckless, willful and wanton and the negligence, carelessness, recklessness, willfulness and wantonness on the part of the cross-claimant combined and concurred with any negligence, gross negligence, carelessness, recklessness, willfulness and wantonness on the part of this Defendants, proximately contributed to any injuries or damages sustained by the cross-claimant, and Defendants plead that the cross-claimant's claim should either be barred or his recovery diminished under the doctrine of comparative negligence.

WHEREFORE, having fully responded to the cross-claim, Defendant requests that the same be dismissed with fees and costs awarded to Defendant, and for such other and further relief as this Court may deem just and proper.

THIRD-PARTY COMPLAINT

1. That Third-Party Plaintiffs are citizens and residents of Aiken County, South Carolina.
2. That Third-Party Defendant is a citizen and resident of Aiken County, South Carolina.

3. Third-Party Plaintiffs and Third-Party are neighbors and, therefore, hold a special relationship.

4. That Third-Party Plaintiff gratuitously allowed the Third-Party Defendant to use their pastures at the Third-Party Defendant's discretion to temporarily house his horses.

5. That Third-Party Plaintiffs did not receive any remuneration for allowing the Third-Party Defendants to use the pasture, they did not own the horse at issue in this case or provide the horse care or maintenance.

6. That the Third-Party Plaintiffs' property was properly fenced with locking gates and was appropriate to coral a horse.

7. That Third-Party Defendant or his agents or servants were solely responsible for putting and taking the horse from Third-Party Defendant's property to Third-Party Plaintiff's property and back again at the times of his choosing.

8. That Third-Party Defendant 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.

9. That the Third-Party Plaintiffs had no fault in the injuries and damages alleged against them by the Plaintiff and cross-claimant, but have been forced to appear and defend this action to protect their interests.

WHEREFORE, if the Plaintiff obtains a verdict against the Defendants for money damages relating to damages allegedly sustained, Third-Party Plaintiff prays for a judgment in the same amount against the Third-Party Defendant.

RILEY POPE & LANEY, LLC

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Attorneys for Defendants Michael Scott and
Heike Scott

Columbia, South Carolina
October 11, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION NO: 2018-CP-38-00766

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

Plaintiffs,

**EUGENE RHINEHART'S ANSWER TO
THIRD-PARTY COMPLAINT**

v.

James Burgess, Michael Scott and Heike Scott,

Defendants.

Michael Scott and Heike Scott,

Third-Party Plaintiffs,

v.

Eugene Rhinehart,

Third-Party Defendant.

TO: DAMON C. WLODARCZYK, ESQUIRE, ATTORNEY FOR THIRD-PARTY PLAINTIFFS AND TO THE THIRD-PARTY PLAINTIFFS ABOVE NAMED:

Third-Party Defendant, Eugene Rhinehart, answering the Third-Party Plaintiffs' Third-Party Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Third-Party Defendant denies each and every allegation of the Third-Party Plaintiffs' Complaint that is not hereinafter expressly admitted, modified or explained.
2. Paragraph one (1) of the Third-Party Complaint is admitted upon information and belief.
3. Paragraph two (2) of the Third-Party Complaint is admitted.
4. Paragraph three (3) of the Third-Party Complaint is admitted upon information and belief.
5. Paragraph four (4) of the Third-Party Complaint is denied.
6. Paragraph five (5) of the Third-Party Complaint is denied.

7. Paragraph six (6) of the Third-Party Complaint is admitted upon information and belief.

8. Paragraph (7) of the Third-Party Complaint is admitted upon information and belief.

9. Paragraph eight (8) of the Third-Party Complaint is denied.

FOR A SECOND DEFENSE

10. Third-Party Defendant would show that the Third-Party Plaintiffs have failed to state facts sufficient to constitute a cause of action upon which relief might be granted against this Defendant, and, accordingly, Third-Party Plaintiffs' Third-Party Complaint should be dismissed.

WHEREFORE, having fully answered the Third-Party Complaint, the Third-Party Defendant prays that the Third-Party Complaint be dismissed with costs.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy

J.R. Murphy, Esquire (SC Bar #7941)

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Columbia, South Carolina 29260

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Attorneys for the Third-Party Defendant,

Eugene Rhinehart

Columbia, South Carolina

November 7, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
CIVIL ACTION 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.

MOTION TO DISMISS

Michael Scott and Heike Scott,
Third-Party Plaintiffs,

v.

Eugene Rhinehart,
Third-Party Defendant.

**TO: DAMON C. WLODARCZYK, ESQUIRE, ATTORNEY FOR THIRD-PARTY
PLAINTIFFS AND TO THE THIRD-PARTY PLAINTIFFS ABOVE NAMED:**

YOU WILL PLEASE TAKE NOTICE that the Third-Party Defendant, Eugene Rhinehart, by its undersigned attorney will move before the Presiding Judge of the County Court of Common Pleas at the Orangeburg County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard for an Order dismissing the Third-Party Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(6) on the grounds that **the Third-Party Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.** The basis for this motion is more clearly set out in the attached memorandum of law.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy
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Columbia, South Carolina
November 7, 2018

Attorneys for the Third-Party Defendant,
Eugene Rhinehart

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION 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.

**THIRD-PARTY DEFENDANT'S
MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS**

Michael Scott and Heike Scott,

Third-Party Plaintiffs,

v.

Eugene Rhinehart,

Third-Party Defendant.

TO: DAMON C. WLODARCZYK, ESQUIRE, ATTORNEY FOR THIRD-PARTY PLAINTIFFS AND TO THE THIRD-PARTY PLAINTIFFS ABOVE NAMED:

Third-Party Defendant Eugene Rhinehart, by and through his undersigned counsel, hereby submits this Memorandum of Law in support of his Motion to Dismiss this matter pursuant to Rule 12(b)(6), SCRCF, for failure to state facts sufficient to constitute a cause of action.

SUMMARY

This action arises out of a fatal motorcycle accident on May 26, 2016. The Plaintiffs in the underlying lawsuit allege that a horse kept at the property of Third-Party Plaintiffs escaped its enclosure and entered Interstate 20, causing the motorcycle to crash. Now, Third-Party Plaintiffs, who had control over their own pasture housing the horse, are seeking equitable indemnity from Third-Party Defendant, their neighbor and the owner of the horse. However, there is no right to equitable indemnity among joint tortfeasors, and the neighbor relationship between Third-Party Plaintiffs and Third-Party Defendant does not qualify as a "special

relationship” necessary for an equitable indemnity claim. Therefore, Third-Party Plaintiffs have not alleged facts sufficient to support an equitable indemnity claim, and the Court should grant Third-Party Defendant’s Motion to Dismiss the Third-Party Complaint.

ARGUMENT

An equitable indemnity claim may arise when a third-party makes a claim against the indemnity plaintiff for damages the third-party sustained as a result of another party’s tortious conduct. Stoneledge at Keowee Owner’s Assn. v. Clearview Const., LLC, 413 S.C. 615, 625, 776 S.E.2d 426, 432 (Ct. App. 2015). An equitable indemnity claim has three elements: “(1) the indemnitor was liable for causing the Plaintiff’s damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff’s claims against it which were eventually proven to be the fault of the indemnitor.” Vermeer Carolinas, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). However, there is no right to equitable indemnity between mere joint tortfeasors because each are liable for causing harm to the plaintiff. See id. at 64, 518 S.E.2d at 307.

Third-Party Plaintiffs knew they were housing the horse in their pasture. They had a duty to secure their own pasture, keeping the horse within the enclosure. Likewise, Third-Party Defendant had a duty to secure the gates to Third-Party Plaintiffs’ pasture after he took care of his horse each day. Because Third-Party Plaintiffs held the same duty of care to secure the pasture as Third-Party Defendant, they are joint tortfeasors in any action that arises out of the escape of Third-Party Defendant’s horse from that pasture. Id. (“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.”). Thus, there can

be no equitable indemnity for Third-Party Plaintiffs. Id. Third-Party Plaintiffs and Third-Party Defendant are liable, if at all, for their own, separate conduct contributing to the horse's escape and subsequent motorcycle accident—Third-Party Defendant should be held liable only for conduct that is his own.¹

Even if Third-Party Plaintiffs and Third-Party Defendant were not joint tortfeasors, Third-Party Plaintiffs are not entitled to equitable indemnity based upon their neighbor relationship with Third-Party Defendant. South Carolina does not recognize a special relationship between neighbors. Rhett v. Gray, 401 S.C. 478, 498, 736 S.E.2d 873, 883 (Ct. App. 2012) (denying a claim for equitable indemnity in an easement dispute because there is no special relationship between neighbors). South Carolina recognizes a special relationship only where there is some form of business transaction between the parties. 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); Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983) (allowing equitable indemnity for a truck driver when the seller of the vehicle represented to the driver that it was roadworthy and the concealed defective condition of the truck later caused the underlying accident). Third-Party Plaintiffs allege nothing more than a neighbor relationship with Third-Party Defendant, which is not recognized under South Carolina law. Thus, the neighbor relationship alleged is insufficient to support Third-Party Plaintiffs' equitable indemnity claim.

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

¹ Indeed, Third-Party Defendant has already entered into a settlement with Plaintiffs in the underlying suit, subject to allocation between the Estate of Chequita Snow Burgess and Defendant James Burgess. Third-Party Defendant has already undertaken responsibility for his own liability in the underlying action, but Third-Party Plaintiffs are seeking to shift their liability onto him as well, which is improper considering their common liability as joint tortfeasors.

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). Third-Party Plaintiffs have failed to establish a special relationship under Town of Winnsboro because they have not demonstrated that: (1) they were not at-fault in contributing to the horse's escape; (2) Third-Party Defendant's conduct was directed at Third-Party Plaintiffs; and (3) they would incur costs in the underlying action arising solely from defending themselves against Third-Party Defendant's conduct and not their own.

Third-Party Plaintiffs are joint tortfeasors with Third-Party Defendant and have no special relationship with him that would entitle them to equitable indemnity, even if they were not joint tortfeasors. Third-Party Plaintiffs have alleged merely that "Third-Party Plaintiffs and Third-Party are neighbors and, therefore, hold a special relationship." (Third-Party Compl. ¶ 3). This allegation does not support an equitable indemnity claim under South Carolina law, and Third-Party Plaintiffs make no other allegations of a special relationship between themselves and Third-Party Defendant. Thus, Third-Party Plaintiffs have failed to allege facts sufficient to support an equitable indemnity claim, and the Court should grant Third-Party Defendant's Motion to Dismiss.

CONCLUSION

For the reasons stated above, Third-Party Defendant Eugene Rhinehart respectfully requests that this Court grant his Motion to Dismiss the Third-Party Complaint with prejudice and for all other relief deemed appropriate by the Court.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy

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Eugene Rhinehart

Columbia, South Carolina
November 8, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

C/A NO.: 2018-CP-38-00766

Caleb Snow and Mary Snow, as Personal
Representatives for the Estate of Chequita
Snow Burgess, Deceased,

Plaintiffs,

**THIRD-PARTY PLAINTIFFS'
MEMORANDUM IN OPPOSITION
TO MOTIONS TO DISMISS**

v.

James Burgess and Michael Scott and
Heike Scott,

Defendants.

Michael Scott and Heike Scott,
Third-Party Plaintiffs,

v.

Eugene Rhinehart,
Third-Party Defendant.

BACKGROUND

This Third-Party Complaint arises out of a Complaint filed on June 25, 2018, in which the Plaintiffs allege the Defendants/Third-Party Plaintiffs (the "Scotts") are liable for injuries caused to them when three (3) horses owned by Third-Party Defendant ("Rhinehart") escaped his property on May 26, 2016,¹ and wandered approximately six (6) miles away from his property and into the road on I-20 and collided with a motorcycle being operated by Defendant Burgess.² The Plaintiffs' daughter was tragically killed as a result of the collision. The horses involved in this matter are owned solely by Rhinehart.

¹ Rhinehart asserts in his Memorandum in Support of Motion to Dismiss that the horses in this matter escaped from the Scott property. However, this has not been established, and generally the horses were stabled at Rhinehart's and only grazed on the Scott property.

² Defendant Burgess is the husband of the decedent in this matter.

The Scotts granted Rhinehart a limited license to use their property to graze his horses. The Scotts charged Rhinehart no fee and no rent for his use of the pasture.

Rhinehart now attempts to argue no special relationship exists between him and the Scotts and argues they are merely neighbors and “joint tortfeasors.” However, in this case the parties are not just neighbors who casually greet each other when they pass in the street—instead they are parties that came to an agreement in which the Scotts trusted Rhinehart to enter their land and graze his horses.

The Scotts ask this court to deny Rhinehart’s Motion to Dismiss on the grounds that under South Carolina law, any verdict rendered against them would be directly owed to them by Rhinehart on the ground he was fully at fault for the Plaintiffs’ injuries and they were not at fault.

ARGUMENT

“A ruling on a 12(b)(6) motion to dismiss must be based solely upon allegations set forth on the face of a complaint.” State Bd. of Medical Examiners v. Fenwick Hall, 300 S.C. 274, 387 S.E.2d 458, 459 (1990). “The motion cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” McCormick v. England, 328 S.C. 627, 494 S.E.2d 431, 433 (Ct. App. 1997).

In Jourdan v. Boggs/Vaughn Contracting, Inc., 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. 324 S.C. 309, 313-14, 476 S.E.2d 708, 711 (Ct. App. 1996) (internal citations omitted). Additionally, in Addy v. Bolton, the

Court of Appeals 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. 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 v. Boggs, 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 v. Bolton, 257 S.C. 28 at 34, 183 S.E.2d 708 at 710 (1971) (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. Here, the Scotts assert Rhinehart is

responsible for the entirety of Plaintiffs' suit. Rhinehart claims impleader is improper since the Scotts were "joint tortfeasors in any action arising out of the escape [of the horse]. (cite). At this stage of the litigation, it has not been established the Scotts were negligent. Should that be proven, indemnification would not be allowed. However, Rhinehart's mere allegations of the Scotts' negligence may not defeat their right to seek indemnification. Id. at Winnsboro.

In Rhett v. Gray, 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.

401 S.C. 478, 498, 736 S.E.2d 873, 884 (Ct. App. 2012) (emphasis added) (insertion in original) (internal citations omitted).³ To the extent Rhinehart argues no special relationship exists, and in addition to their relationship establish by the granting of a license between neighbors, by virtue of the Scotts being sued and forced to defend a claim for which he is the sole tortfeasor, under South Carolina law a sufficient special relationship is established.

³ Rhinehart has supplied this Court with the Rhett case as holding, "South Carolina does not recognize a special relationship between neighbors. Rhett v. Gray, 401 S.C. 478, 498, 736 S.E.2d 873, 883 (Ct. App. 2012) (denying a claim for equitable indemnity in an easement dispute because there is no special relationship between neighbors)." [Third-Party Defendant's Memorandum of Law in Support of Motion to Dismiss, page 3.] This case did **not** hold there was no special relationship between neighbors. The Court of Appeals 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. 478, 499, 736 S.E.2d 873, 884 (Ct. App. 2012). Additionally, he cites the Addy case for the proposition, "South Carolina recognizes a special relationship only where there is some form of business transaction between the parties." [Third-Party Defendant's Memorandum of Law in Support of Motion to Dismiss, page 3.] As stated in the Rhett, a sufficient relationship exists as a result of having to defend an action in which it was not at fault.

For purposes of belying the assertion the Scotts and Rhinehart are joint tortfeasors, the Scotts would assert that under South Carolina law, 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]henver 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 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. 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).

Under South Carolina law, only owners or managers of the animal shall be liable for the damages or trespasses of an animal. So to the extent Rhinehart attempts to characterize the parties as joint tortfeasors by virtue of the Scotts owning the land upon which the horse was permitted to graze, this is not the law in South Carolina. Owners and managers are solely responsible for their animals. Rhinehart is the owner and manager of the horse and the person solely responsible for any and all damages caused by the horse.

In the alternative, should the Court find the Scotts' Third-Party Complaint improper, the Scotts request this Court use the broad authority granted to it in Branham v. Ford Motor Company, and realign the parties as co-defendants so as to prevent additional litigation over issues arising out of the same facts and occurrences in this matter. 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010).

CONCLUSION

The Scotts have a right to indemnity from Rhinehart, and their third-party claims have been properly pled. The motion to dismiss the third-party complaint should be denied.

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Columbia, South Carolina
 February 8, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

RECEIVED

JUN 24 2019

SC Court of Appeals

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/Appellants,

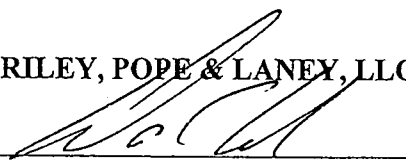
v.

Eugene Rhinehart, Third-Party Defendant/Respondent.

NOTICE OF APPEAL

Michael Scott and Heike Scott appeal the trial order granting the Third-Party Defendant/Respondent's Motion to Dismiss the Third-Party Complaint pursuant to Rule 12(b)(6), SCRCF filed on May 24, 2019. Appellants received written notice of entry of the Order on May 24, 2019 through electronic notification.

RILEY, POPE & LANEX, LLC



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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 ScottThird-Party Plaintiffs, are the Appellants,

v.

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

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all the material proposed to be included by any of the parties and not any other material.

RILEY, POPE & LANEY, LLC

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