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FEB 24 2022

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Alison Renée Lee, Circuit Court Judge

Appellate Case No. 2021-000804

Johnnie Cordero .....Appellant

v.

Matthew Kisner, in his official capacity as  
Chair of The Richland County Democratic  
Party; The Richland County Democratic Party;  
Trav Robertson, Jr., in his official capacity as  
Chair of The South Carolina Democratic  
Party; The South Carolina Democratic Party..... Respondents.

**APPELLANT'S RETURN IN OPPOSITION  
TO RESPONDENT'S JOINT MOTION TO STRIKE  
PORTIONS OF "INITIAL BRIEF OF APPELLANT (AMENDED)"**

Appellant, acting on his own behalf, hereby responds to the above referenced  
Joint Motion of Respondents and respectfully requests that the motion be denied in its  
entirety for the reasons set forth more particularly hereinafter.

**Procedural Background**

On February 17, 2022, Respondents filed the above referenced motion  
requesting that enumerated portions of the my Initial Brief (Amended) be stricken  
because "[n]othing in the South Carolina Appellate Court Rules, South Carolina Rules of  
Civil Procedure, or this Court's deficiency letter dated January 7, 2022, permits  
Appellant to make such amendments to his initial brief."

Respondents' argument is an admission that they can find no reason for the unnecessary and frivolous motion except perhaps to increase their billables. Moreover, there is in the South Carolina Rules of Civil Procedure an applicable rule but unfortunately it does not support Respondents' position:

The following is excerpted from the Respondents' argument in *Cordero v. Kisner*, 3:20-cv-02195-JFA Date Filed 08/20/20 Entry Number 30 Page 2 - 4 of 5. Appellant adopts and submits Respondents' argument as his own in this matter, *verbatim*.

"Plaintiff's Motion to Strike (ECF 27) should be denied because Defendants' filings that Plaintiff seeks to strike are not subject to Fed. R. Civ. P. 12(f), and Defendants' Joint Reply (ECF 24) does not violate Local Civil Rule 7.07 (D.S.C.).

**I. DEFENDANTS' MOTION TO DISMISS AND SUPPORTING BRIEFS ARE NOT PLEADINGS SUBJECT TO A MOTION TO STRIKE UNDER RULE 12(f).**

Rule 12(f) of the Federal Rules of Civil Procedure provides, "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f) (emphasis added). Plaintiff argues that "[a]lthough Rule 12(b)(6) is denominated a motion it is, in effect, an attack on a complaint which is a pleading." (ECF 27.) However, Rule 7(a) explicitly defines a "pleading" as a complaint, an answer to a complaint, an answer to a counterclaim or crossclaim, a third-party complaint, an answer to a third-party complaint, and "if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a). By omission from Rule 7(a), motions and briefs necessarily do not constitute pleadings. *Id.*; see also 2 Moore's Federal Practice, § 12.37 (Matthew Bender 3d Ed.) ("Motions, briefs or memoranda, objections, or affidavits may not be attacked by the motion to strike."). District courts in this Circuit consistently have held that a party's brief is not a pleading under the Federal Rules of Civil Procedure and, therefore, is not subject to a motion to strike under Rule 12(f). See *Dalenko v. Stephens*, 917 F. Supp. 2d 535, 541 (E.D.N.C. 2013) ("Defendants' Motion to Dismiss and memorandum in support thereof is not a 'pleading' within the meaning of the Federal Rules of Civil Procedure, and therefore Rule 12(f) is inapplicable."); *James v. Experian Info. Sols., Inc.*, No. 3:12cv902, 2014 U.S. Dist. LEXIS 242, at \*21 (E.D. Va. 3:20-cv-02195-JFA Date Filed 08/20/20 Entry Number 30 Page 2 of 5 3 Jan. 2, 2014) ("By virtue of Rule 7(a), the defendant's reply brief is not a 'pleading' that is subject to the Rule 12(f) motion to strike."); *Int'l Longshoremen's Ass'n, S.S. Clerks Local 1624 v. Va. Int'l Terminals*, 904 F. Supp. 500, 504 (E.D. Va. 1995) ("Plaintiffs have attempted to use such a motion to strike Employer Defendants' reply brief and accompanying affidavits. Briefs and affidavits, however, are not pleadings.")

Further, this Court specifically has held that Rule 12(f) does not apply to a motion to dismiss filed pursuant to Rule 12(b)(6), as Plaintiff contends it does. *Coleman v. Boeing Co.*, No. 2:16-CV-1451-DCN-MGB, 2017 U.S. Dist. LEXIS 108766, at \*25 (D.S.C. June 22, 2017) (“A motion to dismiss ‘is not a “pleading” within the meaning of the Federal Rules of Civil Procedure, and therefore Rule 12(f) is inapplicable.”). Neither Defendants’ Memorandum in Support of their Motion to Dismiss (ECF 9-1) nor Defendants’ Joint Reply to Plaintiff’s Response in Opposition to Defendants’ Motion to Dismiss (ECF 24) is a pleading properly subject to a motion to strike under Fed. R. Civ. P. 12(f). Plaintiff’s Motion should be denied accordingly.”

According to Respondents’ own argument “Motions, briefs or memoranda, objections, or affidavits may not be attacked by the motion to strike.” Apparently, a motion to strike is inappropriate because a brief is not a pleading.

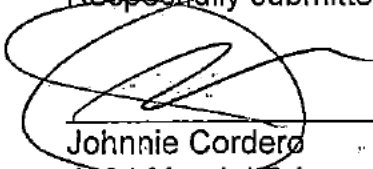
Perhaps more importantly, Appellant was directed by the Court to amend his Initial Brief. Appellant argues that in the absence of a rule to the contrary a directive to file an amended initial brief has the effect of dismissing the initial brief and requires the filing of a new brief by direction of the Court. In effect, the original brief no longer exists and the new deadline to file the amended brief becomes the deadline set forth in the Court Order.

Curiously, Respondents do not argue that they have been prejudiced in any way. Nor could they. Appellant’s Initial Brief (Amended) was served on counsel for the Respondents on January 18, 2022, by hand delivery. Counsel filed a Motion for Extension on January 27, 2022 requesting until February 14, 2022, to file their Initial Brief. The Court denied the motion noting that the “current deadline for Respondents’ initial brief . . . is February 17, 2022.” In short, Respondents were given the full thirty days (January 18 - February 17) to respond as required by S.C.App.Ct.R.208(a) and therefore, cannot be heard to complain having not been prejudiced in any way.

**Conclusion**

For the foregoing reasons Appellant respectfully requests that Respondent's Motion to Strike be denied in its entirety.

Dated: February 21, 2022  
Columbia, SC 29210

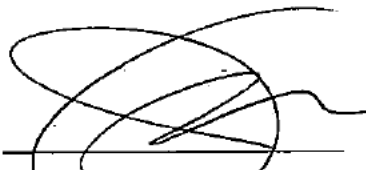
Respectfully submitted,  
  
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Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210  
Tel.: (803)753-8091  
Appellant, pro se

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**CERTIFICATE OF SERVICE**  
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I, Johnnie Cordero, hereby certify that I did serve an exact copy of APPELLANT'S RETURN IN OPPOSITION TO RESPONDENT'S JOINT MOTION TO STRIKE PORTIONS OF "INITIAL BRIEF OF APPELLANT (AMENDED)" on the attorneys for the Respondents by mailing a copy of same via USPS first-class mail, and addressed as follows: BURNETTE SHUTT & MCDANIEL, PA, 912 Lady Street, Columbia, SC 29202.

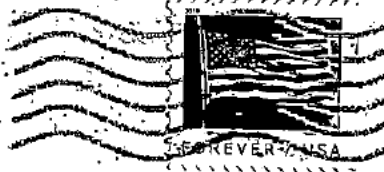
Dated: February 21, 2022  
Columbia, South Carolina

  
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Johnnie Cordero

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