THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr.
Circuit Court Judge

Appellate Case No.: 2018-001134

Glenda R Couram ..... Appellant,

v.

Nationwide Mutual Insurance Company, Titan Indemnity Company, Eugene Matthews in his individual capacity, Sherwood Plumbing Service, LLC, dba, Beatrice T. Tidwell, Rick Skurko in his official and individual capacity and Tracey Peer in her official and individual capacity
..... Respondents

FINAL BRIEF OF APPELLANT

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II. The lower court erred and abused its discretion in denying Appellant's Motion to Amend *according to well established laws in both federal and State court under Rule 15*

III. The lower court erred and abused its discretion in dismissing pro se Appellant's claims for civil conspiracy

STATEMENT AND FACTS OF THE CASE

This matter came before the Richland county Court of common Pleas by way of a complaint filed by Appellant on or about July 3, 2017 and amended complaint filed prior to receipt of an answer from the Respondents on July 17, 2017.

In the Complaint Appellant brought causes of action for intentional infliction of emotional Distress (IIED) and negligent infliction of emotional distress (NIED), vicarious liability and negligent entrustment against Sherwood Plumbing Service, LLC and Beatrice Tidwell); common law civil conspiracy, tortious interference with employment relationship and punitive damages as deemed appropriate.

The above claims or causes of actions were *never* litigated previously nor were any of the named defendants named in any other action before this court[1]

Respondent Matthews filed initial answer to the initial complaint on or about July 14, 2017 along with the a Motion for Judgment on the Pleadings and Sanctions dated July 17, 2017; and a supplement to the Judgment on the Pleadings and Sanctions on or about July 21, 2017. (ROA pp 180-206).

[1] Nationwide and Indemnity was named in Couram v Tidwell but per an Order signed by Judge Hood they were dropped with the stipulation that they could be named later (ROA pp 326 Transcript pp 1-65)

Respondent Tidwell Plumbing Service LLC and Beatrice Tidwell filed their initial Answer on or about August 7, 2017 along with a Motion to Dismiss and Judgment on the Pleadings on or about August 7, 2017. (ROA pp 298-308)

Respondents Nationwide Insurance, Titan Indemnity, et. al., filed an answer on about August 8, 2017 and an Amended Answer on or about August 15, 2017 along with a Motion to Dismiss and a Memorandum in Support for the Motion to Dismiss on September 5, 2017 and Motion for Judgment on the Pleadings August 24, 2017 (ROA pp 122-148).

Plaintiff filed an Answer to the Motions to Dismiss, Sanctions and Judgment on the Pleadings on August 18, 2017 and September 1, 2017.

The pro se Appellant then filed a first time Amended Complaint requiring Court permission on December 4, 2017, pursuant to SCRCP/FRCP Rule 15 requesting to add two new defendants Rick Surko and Tracy Peer with Nationwide Insurance and Indemnity. (ROA pp 64-83).

Appellant filed motion for Continuance dated November 21, 2017 and protection it was granted January 25, 2018; Order dated February 25, 2018. (ROA pp 23a and ROA 348-353).

The Motion hearing was held on or about February 12, 2018, where the response of the court was to have each separate party write their own proposed/outcome and reasons to dismiss or not to dismiss at which time the RESPONDENTS was allowed the opportunity to commit fraud upon the court. (Transcript pages 1-68) and (Proposed Orders ROA pp 354-379).

Judge Cooper granted and filed an Order to Dismiss according SCRCP Rule 12(b) on or about April 20 or 23, 2018. Appellant never received a signed copy of the Order from the Clerk or Judge's Office. (ROA pp 1-23)

The matter was dismissed upon Order of Judge Cooper on or about February 12, 2018. (ROA pp 1-12). Appellant's SCRCP/FRCP Rule 59 Motion to Reconsider was denied on or about May 16, 2018. (ROA pp 23 and ROA 92-121).

Neither of the RESPONDENTS filed a response to the Motion to Reconsider.

After repeated requests Appellant never received a signed copy of the Order dismissing her Complaint or of Denial of the Motion to Reconsider via traditional method from the Judge or the Clerk's Office. On or about May 18, 2018 she did get an email regarding the Motion to Reconsider.

Appellant filed a timely Notice of Appeal on or about June 17, 2018. (ROA pp 329, ROA 319 and ROA 324)[2]

STATEMENT OF THE CASE AND FACTS

The Appellant's life was completely and totally destroyed after an automobile accident involving the named Respondents and their efforts to escape liability for the proven negligent actions of their insured; despite an Order of liability signed by Judge Hood and admission of liability by the Respondent insured and the Respondents themselves (ROA pp 326).

Respondents Rick Skurko, Tracy Peer, Sherwood Tidwell Plumbing Service, Beatrice T. Tidwell and Eugene Matthews, et. al., were fully aware and apprised of the Appellant's employment with the SC Department of Motor Vehicles and South Carolina State Government. They knowingly, purposefully, wrongfully and maliciously interfered with the Appellant's employment, livelihood and or ability to make a living, they deliberately destroyed the Appellant's relationship with her employer with malice and intent in complete disregard of her mental and physical health.

[2] Appellant requested Order of the Transcript and it was received on September 8, 2018

Appellant had been employed for 10.8 years, her future retirement and pension was tied into her employment. She had just obtained tenure allowing increased leave which she had looked forward to for the last two years of her employment. (At the time of termination there were several promotion opportunities that were lost to her).

Appellant had status and standing and could only be dismissed for cause which the defendants' deliberately and intentionally and carelessly provided. Their actions lead to false accusations against the Plaintiff otherwise impugning her credibility and effectiveness as a data entry operator and has prevented any other future employment with SC State Government.

The Respondents actions resulted in their deliberate working together with Matthews who elicited the help of a new employee Heather Martin, Employee Relations Manager, who had been employment less than three months, to maliciously interfere with Appellant's employment that employee who was neither the Appellant's supervisor or manager deliberately contacted an attorney soliciting information that resulted in appellant's termination those attorneys were Lori Shortt, Attorney with Cofield Law Firm on March 7th, 2017. Even after the Appellant was terminated, Matthews and Martin showed up in the court to further harass the Appellant (Appellant was terminated April 3, 2017; the hearing they showed up for was in July 2017). (Matthews also showed up at vocational rehabilitation after Appellant informed the court of her admission). Martin made the call to Shortt to ask her if the plaintiff had been in the court on a day she had asked for FMLA time off; Plaintiff had informed her supervisor and manager of her leave[3], told them the matter with Shortt (related to a bill) had been settled; Short took the opportunity to malign the Appellant to Martin who reported the fraudulent information to the

[3] Martin was neither the Appellant's supervisor or manager and Matthews actions went well beyond his scope as attorney for SCDMV because the matter he because involved in after appellants termination had nothing to do with SCDMV or SC State government. It was related to an automobile accident that occurred on September 18, 2018 Appellant was not using a state vehicles and she was not on the clock. They targeted the Appellant.

employer (emails available). This conversation which apparently took place on March 7, 2017, lead to the Appellant being terminated on April 3, 2017, for gross misconduct

Such conduct amounts to knowing, tortious and malicious interference with the Plaintiff's employment relationship with SCDMV and has lead to her inability to work for SC State Government in the future, loss of unemployment benefits and lost reputation not to mention she will never find an equal position with her now recorded/documented physical and mental health issues and the fact she is an older black female living in the South.

Not because the Appellant did anything wrong in fact she was the one who was wronged on September 18, 2018 and yet she had paid the price physically and mentally for being a VICTIM.

As a direct and proximate result of the tortious interference with the Appellant's, the repeated refusal to settle when each were fully aware of their liability and admission of liability Appellant has sustained a loss of employment earnings, and earning capacity all of which will extend far into the future given her age. As a direct result of the accident both physically and mentally Appellant is currently on permanent disability.

Nationwide thru their attorney repeatedly contacted the Appellant's employer. They subpoenaed the Appellant's employment records up to three times and even after she had been terminated. They subpoenaed Martin to testify and maintained an ongoing relationship with Matthews to such an extent that resulted in the Appellant mental health deterioration and amounts to stalking with malicious intent to harm. The Appellant called Nationwide after her termination and the result was police being sent to her home and calling of EMS with the report that she was suicidal. The Appellant suffered repeated mental abuse, embarrassment in a neighborhood that she had resided in since 1994.

The Appellant was an innocent victim to each of these individual and companies and she did not deserve the ridicule she suffered and continues to suffer as a result of the actions of the Respondents.

Appellant had not brought causes action against the LLC or Beatrice Tidwell. The company and Beatrice Tidwell had a duty that the breached as their employee was found fully liable and negligent. Appellant had a cause of action against both based solely their own negligence in allowing an unqualified driver to operate a commercial vehicle knowing full well he was impaired and the fact that he admitted not knowing how to operate the brakes of the companies vehicle.

ARGUMENTS

1. STANDARD OF REVIEW IN GRANTING A MOTION TO DISMISS

"Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on failure to state facts sufficient to constitute a cause of actions." *Spence v Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefore entitle the plaintiff to relief under any theory." Id. Furthermore, the complaint should not be dismissed merely because the court doubts the Appellant will prevail in the action. *Id See Toussaint v Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Rather, "[t]he question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams v Condon*, 347 S.C. 227, 233, 553 S.E. 496, 499-500 (Ct. App. 2001); citing, *Toussaint v Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v Poore*, 337 S.C. 359, 523 S.E. 2d 182 (Ct. app. 1999). "If the facts allege and inferences reasonably deducible thereform, viewed in the light most favorable to the

plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Baird v Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

Moreover, novel issues should not be decided on a rule 12(b)(6), SCRCP motion. As a general rule, important questions of novel impression should not be decided on a Rule 12(b)(6), SCRCP, motion to dismiss." Appellant allege that claims adjuster in tort actions and their role is a novel question and further review of the tort of civil conspiracy and the question of whether presented below should be review by the courts in order to clarify the tort and its role.

Last, even if the Court determines the pleadings are deficient, Appellants should ordinarily be given leave to amend. *Dockside Ass'n, Inc. v Detyens, Simmons & Carlisle*, 297 S.C. 91, 91, 94, 374 S.E. 2d 907, 909 (Ct. App. 1988) ("where complaint is dismissed under rule 12 (b)(6), plaintiff should be granted leave to file an amended complaint") (citing *Foman v Davis*, 371 U.S. 178, 83 S. Ct. 277, 9 L.Ed.2d 222 (1962). See also, *Foman v Davis*, 371 U.S. 178, 83 s. Ct 227, 9 L. Ed. 2d 222 (1962) ("Leave to amend complaint should be freely given in absence of any apparent or declared reasons such as undue delay, bad faith or dilatory motive on part of movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to opposing party by virtue of allowance of amendment, and futility of amendment.")

II. SOUTH CAROLINA COLLATERAL ESTOPPEL AND RES JUDICATA

Under the doctrine of collateral estoppel, the judgment in the prior suit would preclude relitigation *of issues actually litigated* and necessary to the outcome of the first action. 1B J. Moore, Federal Practice § 0.405[1], pp. 622-624 (2d ed. 1974). "Collateral estoppel/ issue preclusion prohibits the relitigation of issues that have been adjudicated in a prior action."

> Four elements must be proven by the Defendants in order to invoke collateral estoppel: (1) the issue at stake must be **identical** to the one involved in the prior litigation; (2) the issue must have been **actually litigated** in the prior suit; (3) the

determination of the issue in the prior litigation must have been a **critical and necessary part of the judgment in that action.**

The Respondents in this case had not met that burden the motion to dismiss should have been denied based on Collateral estoppel and res judicata.

The claims in this actions is for intentional infliction of emotional distress and negligent infliction of emotional distress; negligent entrustment and vicarious liability; civil conspiracy; tortious interference with employment by a third party.[4]

Stone v Road Express, (SC Sup Ct 2006) "Res judicata requires three elements be met: 1) a final, valid judgment on the merits; 2) identity of parties; and 3) the second action must involve matters properly included in the first suit; e.g. *Latimer v. Farmer*, 360 S.C. 375, 602 S.E.2d 32 (2004)."

Further, the doctrine of collateral estoppel does not apply. "Collateral estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003). Respondents' entitlement to benefits following Stone's death was neither actually litigated in the first action, nor was the entitlement issue necessary to the resolution of the amount of benefits dispute.

> 'In *Judy v Judy*, 712 SE, 2d (SC Sup Ct 2011) In order for *res judicata* to operate as a bar to James's lawsuit for waste, the following elements needed to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. See *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992).
>
> Our courts, however, have found that the doctrine of *res judicata* is not an "ironclad" bar to a later lawsuit. *Garris v. Governing Bd. Of the South Carolina Reinsurance Facility,* 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998).

[4] The Appellant also had a right to make a living that is everyone's right in this country and the defendant took that right away from her and then with intent ensured she was also financially destroyed by placing a wedge and maintaining that wedge between her and employer resulting her termination.

Significantly, the *Restatement (Second) of Judgments* has recognized exceptions to the application of this doctrine.[5] *See Restatement (Second) of Judgments* § 26 (1982 & Supp.2011); *id.* (noting in commentary that section 26 "presents a set of exceptional cases in which, after judgment that would otherwise extinguish the claim under the rules of merger or bar..., the Appellant is nevertheless free to maintain a second action on the same claim or part of it.").

Although there is no dispute in our jurisprudence regarding the three elements of *res judicata,* our courts have utilized at least four tests in determining whether a claim should have been raised in a prior suit.[7] Because a determination 172*172 of whether *res judicata* precludes a subsequent suit cannot be reduced to a formulaic process, we decline to adopt or attempt to define a single standard. *See Aliff v. Joy Mfg. Co.,* 914 F.2d 39, 43 (4th Cir.1990) ("There is no simple test to determine what constitutes the same cause of action for res judicata purposes. Each case presents different facts that must be assessed within the conceptual framework of the doctrine.").

Instead, we reiterate and rely on the conceptual framework recognized in *Plum Creek Dev. Co. v. City of Conway,* 334 S.C. 30, 512 S.E.2d 106 (1999), wherein we stated: Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.* at 34, 512 S.E.2d at 109 (citations omitted).

In *Plum Creek,* we also recognized that simply seeking a different remedy in the second lawsuit for the same cause of action does not negate the identical nature of the subjects of the two actions. *Plum Creek Dev. Co.,* 334 S.C. at 35 n. 4, 512 S.E.2d at 109 n. 4. We explained that "[a] claim for damages is a claim for relief rather than an assertion of a different cause of action for purposes of determining the applicability of res judicata." *Id.* at 35, 512 S.E.2d at 109 (quoting 46 Am.Jur.2d *Judgments* § 536 (1994)). Furthermore, we noted that "for purposes of res judicata, `cause of action' is not the form of action in which a claim is asserted but, rather the `cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.'" *Id.* at 36, 512 S.E.2d at 110 (quoting 50 C.J.S. *Judgment* § 749 (1997)).

Because this conceptual framework is fundamentally sound, we take this opportunity to definitively rule that the four tests previously used by our appellate courts should be considered merely as factors rather than rigid, independent tests.[8] We believe this approach effectuates the fundamental purpose of *res judicata,* which is to ensure that "no one should be twice sued for the same cause of action." *First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co.,* 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945).'

> However, res judicata and collateral estoppel "have been subjected to exceptions to their application." *Mr. T,* 378 S.C. at 137, 662 S.E.2d at 418. These "preclusive doctrines are `not to be rigidly or mechanically applied and must[,] on occasion, yield to more fundamental concerns.'" *Id.* at 138, 662 S.E.2d at 419 (quoting *People v. Plevy,* 52 N.Y.2d 58, 436 N.Y.S.2d 224, 417 N.E.2d 518, 521 (1980)). Collateral estoppel or res judicata "may be precluded [when] unfairness or injustice results, or public policy requires it." *Carrigg v. Cannon,* 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct. App. 2001) (citing *State v. Bacote,* 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)).
>
> Res judicata's fundamental purpose is "to ensure that `no one should be twice sued for the same cause of action.'" *Judy v. Judy,* 393 S.C. 160, 173, 712 S.E.2d 408, 414 (2011) (internal citation omitted). Res judicata bars a second suit where there is (1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the first suit. *Judy,* at 412, 712 S.E.2d at 167. The evidence supports the Master's conclusion that res judicata settles the title issue as between the State and appellant. See *Yelsen Land Company, Inc.,* v *State,* (SC Sup Ct 2012).

It is clear in the caption, Appellant is not suing the same Defendant, nor is she suing for the same causes of action; nor have any court ruled on these causes of action or injuries.

Therefore, res judicata nor collateral estoppel is applicable in this matter and the Appellant's claims should not be dismissed. The decision does not apply the correct well established laws of the SC Supreme Court, SC Court of Appeals, sister courts and the US Supreme Court to do so deprived this Appellant of equal justice, injustice and show prejudice and bias towards this pro se.

III. SISTER COURTS - COLLATERAL ESTOPPELL AND RES JUDICATA

Res Judicata does not prevent the Appellant from bringing claims of intentional infliction of emotional distress, negligent infliction of emotional distress, negligent entrustment and vicariously liability claims against Sherwood Tidwell Plumbing Service and Beatrice Tidwell.

Foreman v. Foreman, 144 N.C. App. 582, 587, 550 S.E.2d 792, 796, *disc. review denied,* 354 N.C. 68, 553 S.E.2d 38 (2001); *see also State ex. rel. Tucker v. Frinzi,* 344 N.C. 411, 413-14, 474 S.E.2d 127, 128 (1996) ("For *res judicata* to apply, a party must show that the previous

suit resulted in a final judgment on the merits [and] *that the* ***same cause of action is involved*** [.]" (emphasis added)).

Collateral estoppel is a companion doctrine of *res judicata* and serves to promote judicial efficiency and to protect litigants from having to relitigate issues that were previously decided. *Bockweg,* 333 N.C. at 491, 428 S.E.2d at 161. For purposes of collateral estoppel, "the prior judgment serves as a bar *only as to issues actually litigated* and determined in the original action." *City of Asheville v. State,* 192 N.C.App. 1, 17, 665 S.E.2d 103, 117 (2008) (quotation marks omitted) (emphasis in original), *disc. review denied,* 363 N.C. 123, 672 S.E.2d 685 (2009).

"Under the doctrine of res judicata or `claim preclusion,' a final judgment on the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies." *Whitacre P'ship v. Biosignia, Inc.,* 358 N.C. 1, 15, 591 S.E.2d 870, 880 (2004) (citations omitted).

"Res judicata, or claim preclusion, prevents relitigation of the same *cause of action in a second suit* between the same parties or parties in privity with them." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 [123 Cal.Rptr.2d 432, 51 P.3d 297]) The doctrine applies when (1) the issues decided in the prior adjudication are identical with those presented in the later action; (2) there was a final judgment on the *merits in the prior action*; and (3) the party against whom the plea is raised *was a party* or was in privity with a party to the prior adjudication. (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1427 [6 Cal.Rptr.3d 122]) The party asserting issue preclusion bears the burden of establishing these requirements. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [272 Cal.Rptr. 767, 795 P.2d 1223])

The defendants' Orders and conclusions, echoed by the court or apply the standard necessary afford a pro se litigant, it does not accept factual allegation a being true which a court must do in determining whether to grant a Motion to Dismiss.

The Defendants also cannot show they were a party to the previous action; they cannot show privity, they cannot show the same causes of action was fully adjudicated on the merits in the previous actions, and they certainly cannot show they were brought before in the previous actions.

See Aliff v. Joy Mfg. Co., 914 F.2d 39, 43 (4th Cir.1990) ("There is no simple test to determine what constitutes the same cause of action for res judicata purposes. Each case presents different facts that must be assessed within the conceptual framework of the doctrine.").

"Instead, we reiterate and *rely on the conceptual framework recognized in Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999),* wherein we stated: Res judicata bars subsequent actions by the *same parties* when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, [a] litigant is barred from raising any issues *which were adjudicated in the former suit and any issues which might have been raised in the former suit. Id.* at 34, 512 S.E.2d at 109 (citations omitted)."

"We believe this approach effectuates the fundamental purpose of *res judicata,* which is to ensure that "*no one should be twice sued for the same cause of action.*" *First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co.,* 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945).

This Dismissal based on collateral estoppel and res judicata should be reversed.

IV. STANDARD OF REVIEW ON A RULE 59(e) Motion

A Court may grant a motion to alter or amend a final judgment under Fed.R.Civ.P. 59(e) if the movant points to evidence in the record which clearly establishes manifest error of law or fact, or to prevent manifest injustice. Raise all issues you want preserved in the initial post trial motion. If the judge rules on all issues, do not file a Rule 59(e) motion. 2. If the judge does not rule on all issues raised in the initial motion, you must file a Rule 59(e) motion.

1. Appellant's Motion to Amend her Compliant under SCRCP Rule 15(a) to *add two defendants*, clarify claims *and add additional* cause of action for all Defendants

2. Appellant's Cause of Actions of Tortious Interference in Employment and Contract For all Defendants

3. Appellant's Motion to add two new Defendants named in the Amended Complaint

4. Appellant's cause of Action of Negligent Infliction of Emotional Distress for all Defendants

5. Appellant's cause of Action for Intentional Infliction of Emotional Distress For all Defendants

6. Appellant's cause of Action for Negligent Entrustment Respondent – Sherwood Tidwell Plumbing Service, LLC and Beatrice Tidwell for all Defendants

7. Appellant's cause of Action for Civil Conspiracy with Special Damages. For all Defendants

The lower court also erred when it took as gospel the fraudulent caption supplied by the Respondents that resulted in the dismissal based on res judicata and collateral estoppel it was clear the Respondents with deliberate intent mislead the court in order to obtain a dismissal based on Res judicata and collateral estoppel.

V. STANDARD OF REVIEW PRO SE LITIGANTS

This pro se has been repeatedly denied access to the courts, she have repeatedly been held to a *greater standard so high that superman cannot not fly over and such a high standard not*

provided for under Rule 8.[5] *Such a high standard* that is condemned by the United States Supreme Court; *such a high standard* that the defendants have decided that she must be denied all constitutional rights and access to the courts for merely seeking justice under Rule 11 and the judges are freely willing to grant or sign these Orders or make implication that the Appellant have been making a habit of filing frivolous and unjustifiable complaints that could be sanctionable. A day will come when a judge will simply sign away a pro se's constitutional rights at the hand of a defense attorney who had decided he or she has no rights to the courts, if what has been happening with this pro se is any indication.

See *Elmore v McCammon*, 640 F. Supp. 905 (1986) "the right to file a lawsuit pro se Appellant is one of the most important rights under the constitution and laws." "Pro se Appellant pleadings are to be considered without regard to technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers *Jenkins v McKeithen*, 395 U.S. 411, 421 (1959); *Picking v Pennsylvania R. Co.*, 151 Fed 2nd 240; See also *Pucket v Cox, 456 2nd 233*;

"Pleadings are intended to serve as a means of arriving at far and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." "There can be no sanctions or penalty imposed upon one because of his exercise of Constitutional Rights." See *Sherar v Cullen*, 481 F. 2d 946 (1973)

SCRE Rule 801, See *Handy v. PPG Indus.*, 154 N.C.App. 311, 571 S.E.2d 853 (2002) (emphasizing the importance of neutrality and impartiality of any tribunal in maintaining the

[5] For example, being denied submission of medical records and bills being presented before as jury under Rule 803(6)(8) et.al., were business records *are not* considered hearsay and are allowed before a jury especially when they are from a custodian of record when considering a case for damages and in not allowing the jury access to those records left jury to *speculate* as to damages which is also against the rules of court. *See Stevens v Allen*, 520 SE. 2d (SC Ct App 1999);*State v Forte*, 629 SE 2d 137 (NC Sup Ct 2006)

integrity of our judicial and quasi-judicial processes). See *Wade v Carolina Brush Mfg. Co.*, 652 SE 2d 713 (NC Ct App 2007);

House Healers Restoration, Inc. v Ball, 437 SE 2d 383 (NC Ct Apps 1993) "abuse of discretion to deny leave to amend "without any justifying reason appearing for the denial." *Gladstein v. South Square Assoc.,* 39 N.C. App. 171, 178, 249 S.E.2d 827, 831 (1978), *disc. rev. denied,* 296 N.C. 736, 254 S.E.2d 178 (1979); *Coffey v. Coffey,* 94 N.C.App. 717, 722, 381 S.E.2d 467, 471 (1989), *disc. rev. improvidently allowed,* 326 N.C. 586, 391 S.E.2d 40 (1990); *Coble Cranes & Equip. Co. v. B & W Utilities, Inc.,* Ill N.C. App. 910, 913, 433 S.E.2d 464, 465 (1993). A "justifying reason" must be either declared by the trial court or apparent from the record. *Banner v. Banner,* 86 N.C.App. 397, 400, 358 S.E.2d 110, 111 (1987), *overruled on other grounds by Stachlowski v. Stach,* 328 N.C. 276, 401 S.E.2d 638 (1991). In this case, there is no declared reason for denying the motion to amend the answer. Thus, the question is whether there are any justifying reasons apparent from the record. "Justifying reasons" approved by our courts include "undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice and futility of the amendment." *Coffey,* 94 N.C.App. at 722, 381 S.E.2d at 471.

While it's understandable that the Appellant has to follow the procedures rules and requirements as to filings, court dates, etc., it is another matter when her complaints are not even looked at by the Judges assigned instead the Judges allow defense attorneys to be judge and jury because they do not want to be bothered with a pro se regarding of the merits of her claims and injury/damages imposed on her by defendants who can afford or obtain attorneys. This is a fundamental unfair act that does not ensure substantial justice. This court must deny the Defendants motion to dismiss because the Appellant has done all that is required at this stage of the proceedings.

ARGUMENTS II

VI. Plaintiff Had Properly Pled a Valid Claim for Intentional Infliction of Emotional Distress under Tort Law and she had properly pled a claim for Negligent Infliction of Emotional Distress against the Defendants

A properly plead claim under IIED and NEID in tort law must allege

Respondent argues that Appellant failed to make factual allegations from which the level of severity needed for a claim of IIED could be inferred. Respondent claims Appellant merely faces everyday work-place stress and has not been subjected to emotional distress. On the other hand, Appellant argues that defendant knew about her condition, intended to inflict emotional distress, and then did cause her to have severe emotional distress far beyond the accident.

In South Carolina an Appellnt alleging an IIED claim must show that (1) the defendant's conduct was extreme and outrageous, (2) that the defendant intended to inflict severe emotional distress *or knew that there was at least a high probability that his conduct would inflict severe emotional distress*, and (3) that the defendant's conduct did cause severe emotional distress. See *Ford v Hudson*, 276 S.C. 157, 276 S.E.2d 776

This matter is not about a car accident but the tortious acts of the Respondents that resulted in permanent damage to the Appellant after the car accident. Appellant has alleged that the Respondents' actions went beyond the bounds of decency and considered intolerable in a civilized community. See *Honaker v. Smith*, 256 F.3d 477, 490 (7th Cir. 2001). Each particular case for IIED will be judged by an objective standard to determine whether the alleged conduct was extreme and outrageous.

The question for the court should have been whether or not the Appellant has met the threshold to allow her claims to move forward it is not the duty of the court to weigh the

evidence or decide that the Appellant cannot win under any circumstances but whether or not she has alleged enough facts to move forward in this matter.

The Respondents are asked the lower court to weigh the evidence and look at matters that are well beyond the four corners of the Appellant's complaint and that is not the appropriate process and because the Appellant is a pro se litigant the court must be doubly careful to ensure substantial justice in this matter.

As the Respondents are well aware in order for this court to grant a motion to dismiss or judgment on the pleadings the court *must have find the Appellant cannot prove her cause under any set of facts and that is simply was not true in this case.*

The court turning over the duties of a judge to the Respondents was also a violating of ethics because the lower court placed the faith of this matter in the hands of the Respondents Attorneys which made the issue unbalanced, biased and prejudicial

VII. Did Appellant Properly Pled Her Claim for Common Law Civil Conspiracy with Special Damages

It is this courts determination that the plaintiff has in fact alleged a civil conspiracy claim adequately under South Carolina Law.

Pursuant to well establish laws the tort of civil conspiracy has three elements: 1) a combination of two or more persons, 2) who conspire for the purpose of injuring the plaintiff, and 3) causing special damages.

The Defendants argue that Plaintiff does not allege special damages as required by the law. The plaintiff has pled special damages clearly in the Amended complaint dated July 16, 2017 and in the Amended Complaint dated December 5, 2017 she alleged special damages with greater specificity. Special damages are described as out of pocket expenses that can be calculated such as lost pension with a dollar amount, lost retirement with a dollar amount, loans

to pay mortgage with a dollar amount, lost monies for payment of student loans, late charges on credit cards, and mortgage payments, out of pocket legal cost, immediate medical costs, etc.

The plaintiff properly alleges claim for civil conspiracy, including special damages (see Amended complaint page 11 and the December complaint page 10-11). (ROA pp 24-38)

She alleges that each individual defendant was acting as one conspired, combined, schemed and planned to orchestrate an agenda with the help of a sitting Judge to cause her demise and financial devastation. These damages are special in that they are different from other damages, including out of pocket legal costs which would not have come about without an unlawful civil conspiracy between the individual defendants named.

What's more the emotional damages alleged are distinct and unique. Plaintiff asks for awards of mental and emotional damages specifically caused by the conspiracy in addition to the emotional damages she suffered as a result of the other causes of action.

The plaintiff if she should recovery would not be in risk of double recovery.

A recent decision by the South Carolina Supreme Court decision makes it apparent that there should not be such a requirement of proof of special damages at the pleading stage. See *Allegro, Inc. v Synergetic, Inc., et.al.* Op. No. 27662 (S.C. S. Ct. filed August 24, 2016). The court went on to say that the change due to that case's age and procedural posture, it is clear that there is no such pleading requirement.

The defendants seek to dismiss Plaintiff's claims for negligent entrustment, intentional and negligent infliction of emotional distress, tortious interference with employment which would render her civil conspiracy claims moot.[6] Double recovery would not attach.

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[6] The third element of civil conspiracy, special damages, must be satisfied to prevent a double recovery, Kuznik v Bess Ferry Assocs., 342 S.C. 570, 610, 538 610 538 S.e.2d 15, 31 (Ct Appt 2000). See also Anthony v Ward, 336, fed. Appx. 311, 318 (4th Cir. 2009) (unpublished opinion) (interpreting South Carolina civil conspiracy law and recognizing: the case law makes clear that the concern is with the plaintiff receiving a double recovery").

VIII. Did Appellant Properly Pled a Claim for Tortious Interference with Employment and contractual Relationship

In a "tortious interference" claim, the plaintiff alleges that her contract with another was damaged by a third party (the defendant) who acted in an improper manner to interfere with the contractual relationship. The plaintiff has provided factual information enough to allow this matter to move for and allowing the addition of this claim will not prejudice the defendants.

Isn't it well established law that a person have to suffer and injuries and damages in order to sue someone? The plaintiff brought the only cause she could bring at the time it was not forseeable by her the level the defendants would go to cause her further harm, distress and mental anguish leading to financial devastation, emotional distress, etc.,

According to South Carolina Supreme Court in *16 Jade St., LLC v. R. Design Const. Co., LLC.*, 398 S.C. 338, 728 S.E.2d 448 (2012), reh'g granted (May 4, 2012), opinion withdrawn and superseded on reh'g sub nom. 405 S.C. 384, 747 S.E.2d 770 (2013) the South Carolina Supreme court found "that the Limited Liability Company Act (the "Act") *does not shield an LLC member from liability for his own torts, but rather protects only non-tortfeasor members from vicarious liability.*"

As is clear in the caption the plaintiff sued the LLC and Beatrice T. Tidwell not Sherwood Tidwell as an individual she sued him not as related to a breach of a contract case but or as an insured under Nationwide but under the tort laws of the State of South Carolina laws which makes him liability under the LLC and as the plaintiff can sue anyone who has caused her harm thru a tort Beatrice Tidwell can be named as a litigant because each is *personally liable to the plaintiff.*

As this maybe a novel questions it is not subject to dismissal under SCRCP Rule 12.

There is also the issue of the claims adjusters responsibility which could also be a novel question for this state and to the public to determine if they be held tortuously liable if an individual is harmed without reason or cause when they make themselves part of the process such as the named defendants holding out hope and dispensing delay.

XI. Appellant Should Have Been Be Allowed To Amended Complaint Under Rule 15(A)

Rule 15(a), SCRCP, provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and *leave shall be freely given* when justice so requires and does not prejudice any other party." Rule 15(a), SCRCP. "The prejudice Rule 15 envisions is a *lack of notice that the new issue is going to be tried*, and *a lack of opportunity to refute it.*" *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). (ROA 64-83 and ROA 84-91)

It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998).

Rule 15(a), SCRCP, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. See *Parker*, 362 S.C. at 286, 607 S.E.2d at 716, particular when dealing with pro se litigants.

[T]he general rule is that leave to amend a complaint under Federal Rule of Civil Procedure 15(a) should be freely given, *see Foman v. Davis*, 371 U.S. 178, 182 (1962), unless "the amendment would be prejudicial to the opposing party, there has been bad faith on the part

of the moving party, or the amendment would have been futile," *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (internal quotation marks omitted)."

See *Steinburg v. Chesterfield County Planning Com'n*, 527 F.3d 377, 390 (4th Cir. 2008). "It is this Circuit's policy to liberally allow amendment in keeping with the spirit of [Fed. R. Civ. P.] 15(a)." *Galustian v. Peter*, 591 F.3d 724, 729 (4th Cir. 2010) (*citing Coral v. Gonse*, 330 F.2d 997, 998 (4th Cir. 1964)). "*Motions to amend are typically granted in the absence of an improper motive, such as undue delay, bad faith, or repeated failure to cure a deficiency by amendments previously allowed.*" *Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 447 (4th Cir. 2004) (*citing Ward Elec. Serv., Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987)). This presumption is especially strong where the Appellant "had not yet amended as of right and the defendant had not filed a responsive pleading." *Galustian*, 591 F.3d at 730 (holding that denial of motion to amend complaint constituted an abuse of discretion).

The proposed amended complaint before the court does not prejudice the Defendants. "Appellant[] simply seek[s] to add specificity to [its] allegations in a situation where defendants are aware of the circumstances giving rise to the action." *Matrix Capital Management Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 195 (4th Cir. 2009) (*citing Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir.1999) (noting that merely adding specificity to allegations generally does not cause prejudice to the opposing party); *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980) ("Because defendant was from the outset made fully aware of the events giving rise to the action, an allowance of the amendment could not in any way prejudice the preparation of defendant's case.")) (additional citation omitted). The legal claims presented in the proposed First Amended Complaint are virtually identical to those presented in the original Complaint and thus do not prejudice the Defendants.

The proposed amendment is hardly futile. The proposed First Amended Complaint merely pleads facts that cure the facial deficiencies in Appellant's original complaint.

In light of the settled Supreme Court and Fourth Circuit precedent liberally applying the dictate of Fed. R. Civ. P. 15(a)(2) that "[t]he court should freely give leave when justice so requires."

Appellant respectfully requests that this court reverse its order Dismissing Request to Amend complaint and allow discovery at which time after the defendants can move for summary judgment or directed verdict if in fact this Appellant cannot prove her claims against each defendant and *allow her freely* to amended as there is no prejudice to the defendants in doing so.

X Appellant Should Have Been Allowed To Amend The Complaint To Add A Claim For Tortious Inference With Employment Relationship[7] And Add Two Additional Defendants

Whether or not the defendants were liable under tortious interference with Appellant's employment is as Appellant understands a *question for a jury* as it is one a novel question not heard in the courts of South Carolina the holding a claims adjuster individually liable for failing to settle with a Appellant they admitted liable for but refused to settle the claim even though they were presented with the medical records and bills resulting from the accident even encouraging the Appellant to continue treatment until she was 100 percent or as good as she would get given the injuries suffered. They repeatedly contacted the Appellant employer about a matter that was not related to the employer is also a question that should have been put before a jury. There is a multitude of evidence that the defendants repeatedly contacted the Appellant's employer up and

[7] *Webb Builders, LLC v. Jones,* January 24, 2002 (unpublished), The Court held that this tort does not require a showing of of force, or threat, or intimidation, and also that it does not require independently tortious conduct

until she was terminated for cause due to an "anonymous call" on March 7, 2017 that was the "cause" used by the employer to terminate the Appellant. Even after termination.

Gecy v South Carolina Bank & Trust (SC Ct App. 2018) - "To establish a cause of action for tortious interference with contractual relations, a Appellant must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.,* 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." *Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC,* 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012) (quoting *Threlkeld v. Christoph,* 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984)).

Appellant in her complaint alleged that the defendants named was aware of existing employment 10.8 years with the State of South Carolina/SCDMV (Department); had knowledge of the relationship; that they intentionally procured the breach of the relationship with help of third parties without justification resulting in damages.

The elements to bring the claim of tortious interference in employment relationship are 1) knowledge of the contract employment which defendants had because they contacted the employer frequently and twice to subpoena the Appellant's employments records once in 2016 and then in 2017, worked with the attorney for the Department (Matthews), after her termination, they maintained a relationship with the attorney for the employer, Eugene Matthews, who was in the courtroom on the day of the trial – a spur of the moment trial along with the employer's Employees Relations Manager Heather Martin after the Appellant had been terminated. There is documented evidence of emails, subpoenas and testimony of Heather Martin who testified she knew nothing of the Appellant as she had just been employed in January 16, 2017, yet she was

present in the courtroom acting outside the scope of her employment along with Matthews abusing power bestowed upon them by the State of South Carolina to harm the Appellant physically, mentally and financially.

Each claimed they were present representing SCDMV and the State of South Carolina in a matter that did not involve the Department or the State of South Carolina the action was calculated just to harm the Appellant physically, mentally and financially.

Appellant claims for tortious interference with employment contract should not have been dismissed and allowed to proceed to discovery/trial as it is a question for a jury and enough facts were alleged that should have been taken as true. The court went against well established law when it relied on the Orders and conclusions by the Defendants in granting a Motion to Dismiss.

See, e.g., Camp v. Spring Mortg. Co., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 192-93, 336 S.E.2d 472, 473 (1985). Consequently, damages for tortious interference of contract "are not measured by contract rules." *Collins Music Co., Inc. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) (quoting *Ross v. Holton*, 640 S.W.2d 166 (Mo. Ct. App. 1982)).

The Appellant alleged in her Amended Complaint that her employment for 10 years was damaged by a third party (the defendants) who acted in an improper manner to interfere with the relationship "doubt as to whether an employee was acting within the scope of his employment, the court held, then the issue should be resolved by the jury, not decided by the judge prior to trial. *Williams v. Autozone Stores, Inc.*, (Dist. Court, ED Virginia 2009); Todd v. SC Farm Bureau Mutual Ins. Co., 336 SE 2d 472 – (SC: Supreme Court 1985).

Allowing the Appellant to amend her Complaint to add a claim of Tortious Interference with her employment would not have been futile because the Appellant complied with Rule 8 and the defendants would have faced no prejudice in allow the claim Rule 15.

A jury could have determined by the actions of Matthews (Martin was acting outside the scope of her employment as the Appellant was no longer with the Department); that with the evidence submitted that he had a personal vendetta against the Appellant and he deliberately interfered with her employment as a third party eliciting the help of Martin and he did so with legal malice to harm the Appellant. In a documented letter Martin stated that she outside the normal operating procedure of the State and Department deliberately contacted the "opposing" attorney involving the auto accident to ask about the Appellant's use of FMLA, she did not contact the Appellant's supervisor or Manger (who had never spoken to the Appellant about abuse of FMLA since she had been approved yearly since 2009) and in doing procured the "just cause" that resulted in Appellant's termination April 3, 2017. She followed up that abuse of the Appellant by showing up for the July trial were no witnesses were expected along with Matthews before Judge Newman who had a relationship with Matthews and the Department and failed to discuss.

Whether or not the defendants' actions precipitated provided the cause to terminated Appellant interest in her employment is a question of fact to be resolved by the jury. *See* (5th Ed. 1984). Matthews outside court documents has referred to the Appellant "as being divorced from reality" a fact that he made to the SC Human Affairs Commission investigator. This is a fact that can be proven by FOIA, discovery and direct testimony – this establishes a name, date, when, where and how.

The court was required to accept the factual allegations of the Appellant as true not the conclusions made by the defendants in the "Orders" used by the Judge to dismiss this action and denying the amending of this action. See *Kinard v. Crosby,* 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). See *Crandall Corp. v. Navistar Int'l Transp. Corp.,* 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990).

There is no question the Appellant had more than a slight chance of succeeding in this claim which would not allow a dismissal and the court should have denied the motion to dismiss. Not only was the Appellant prejudice by this ruling. Allowing learned attorneys to do the research and the job of the judge in this matter against a pro se litigant was unjust, prejudicial and against the constitution and express goals of the judiciary to ensure a fair and just hearing on merits instead the court allowed the exact opposite of the court's well established intent. Especially an officer of the Court who lied on record during the Motion hearing and tracked the Appellant down at vocational rehab after it was disclosed to the court; factually allegations that must be taken as true allowing proving thru discovery.

XI. Civil Conspiracy Is A *Novel Question* Of Law That *Cannot* Be Dismissed Under A SCRCP 12(6) Motion Pursuant To This Courts Own Higher Court Purusant To A Recent Ruling In - *Allegro, Inc, v Scully*, 418 S.C.24, 791, S.E.2D 140 (2016)

Appellant did not fail to *allege special damages* and she did so clearly in the complaint separate and distinct from the other causes of action. She also alleged all elements and factual allegations required to prevent dismissal of the civil conspiracy claims.

The issue of double jeopardy is the focus of a Civil Conspiracy claim. *See Johnson v Roberts*, (SC Ct App 2018).

"Our supreme court has cautioned that issue preservation "is not a `gotcha' game aimed at embarrassing attorneys or harming litigants." *Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

The appeals court is free to decide this question of law with no particular deference to the lower court. See *S.C. Const. art.* V, §§ 5 and 9; S.C.Code Ann. §§ 14-3-320 and -330 (1976 & Supp.1998); S.C.Code Ann. § 14-8-200 (Supp.1998) (granting Supreme Court and Court of Appeals the jurisdiction to correct errors of law in both law and equity actions). See *Allegro, Inc. v Scully*, 418, SC 2d 791, S.E.2d 140 (2016); a need to revisit this cause of action and to abolish "Todd and its progeny."

Defendants argue that Appellant does not allege special damages as required by the law and her claims just repeats what has been alleged in the previous cause of actions that is simply not so. Assuming, *in arguendo*, that there is a "special damages" pleading requirement, the Original and Amended Complaint is properly pled and the Defendants' Motion to Dismiss should be denied.

First and foremost, the Amended Complaint properly alleges a claim for civil conspiracy, including special damages. Appellant alleges that the individual defendants, combined, schemed and planned to orchestrate an agenda to blacklist and remove the Appellant from her position with the Department leading to her financial ruin because she brought legal action against the defendants.

Appellant further alleges" that the damages sustained were special damages and different from other damages, to include legal costs, and other damages which could not have been caused without an unlawful civil conspiracy between the individual Defendants named herein, their positions with the Department, their authority over the Appellant, which each individually

possessed as officers of the court, power entrusted by the State of South Carolina and the Department and they elicited the help of other third parties outside this realm to harm and ruin the Appellant mentally and financially.

Secondly, Appellant alleges damages for *retaliation* which is distinct and unique. Appellant is seeking award of damages for mental and emotional damages specifically caused by the conspiracy. Appellant is no longer employable the defendants used their superior knowledge and status to misapply the law and fraudulently used the court to retaliate against the Appellant because she sought the courts to obtain justice.

See *Allegro, Inc. v Synergetic, Inc. et al.*, Op. No. 27662 (S.C. S. Ct., 2016). Although the *Allegro* court found that particular case an improper vehicle for change due to that case's age and procedural posture, it is clear that there is no such pleading requirement. *Id.*

> **In *Allegro* Justice Beatty:** "..... I agree with the dissent's position advocating for this Court to overrule *Todd* and its progeny."
>
> **In *Allegro* Chief Justice Pleicones: A. Civil Conspiracy** – "I would take this opportunity to clarify the law of civil conspiracy. The definition of civil conspiracy is "the conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another." *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). A civil conspiracy is not actionable unless overt acts proximately damage the Appellant. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981) *appeal after remand* 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984) *quashed in part on other grounds* 287 S.C. 190, 336 S.E.2d 472 (1985).
>
> After review, I agree with respondent that the *Todd* Court misread and misapplied § 33, which merely states a prohibition on double recovery, not a rule of pleading or proof: Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, Appellant cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.' 15A C.J.S. *Conspiracy* § 33."

This would also make this a *Novel* question according the SC Supreme Court ruling in *Allegro, Inc. v Synergetic, Inc. et al.*, Op. No. 27662 (S. Ct., 2016) that makes this matter not subject to the motion to dismiss.

The third element of civil conspiracy, special damages, must be satisfied to prevent a double recovery. *Kuznick v Bess Ferry Asssoc.*, 342 S.C. 570, 610, 538 S.E.2d 15, 31 (Ct. App. 2000) "It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the Appellant; (3) causing Appellant special damage. See *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct.App.1986). See also *Anthony v Ward*, 336 Fed. Appx. 311, 318 (4th Cir. 2009) (unpublished opinion attached) (interpreting South Carolina civil conspiracy law and recognizing: *"The case law makes clear that the concern is with the Appellant receiving a double recovery*".)

See *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct.App.1998) (quoting *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct.App.1987)).

Allegro, Inc. v Scully, 418 S.C. 24, 37, 791 S.E. 2d 140, 147 (2016), reh'g denied (Oct 26, 2016). Instead, Chief Justice Pleicones states that "special damages were created to prevent double recovery by a Appellant, but were not meant to be a strict pleading burden forced upon Appellants. *Id.* At fn. 3. This is also the understanding in the 4th Circuit Court unpublished decision; *Anthony v Ward and Sheppard*, No. 07-1932 (US Court of Appeals 2009).

XII. Intentional Infliction Of Emotional Distress *And* Negligent Infliction Of Emotional Distress A Novel Question As To Direct Victim

First and far most the Appellant does not bring this cause of action based on the previous action. The defendants named are Nationwide Insurance, Titan Indemnity, Eugene Matthews[8]

[8] Matthews is not named in this action as an attorney for the State of South Carolina or for SC Department of Motor Vehicles, nor as lawyer but based on the Tort laws that makes each of us individually response for our own torts.

in his individual capacity, Beatrice T. Tidwell, Sherwood Plumbing Service, LLC, Rick Skuro in his individual and official capacity and Tracy Peer in her individual and official capacity.

Appellant alleges a claim of negligent infliction of emotional distress against the defendants as direct victim of the actions of the defendants named not as a result of the car accident in 2015 and it wrong to dismiss based on a matter that is not before the court or within the four corners of the amended complaint rightfully filed pursuant to 15(a) and the amended complaint filed December 4, 2017.[9]

In previous action the Defendant was found to have owned a duty to the Appellant; that he breached that duty, he was found guilty of causation, but for and proximate cause of the *physical injuries* suffered by the Appellant.

Was it foreseeable that calling the police in Lexington County stating that he Appellant was suicidal would cause her emotional distress intentional or negligently, yes it was. Nationwide had other options available to them yet they chose to embarrass and humiliate the Appellant with such a call and the subsequent arrival of EMS. Will this make an ordinary person exclaim "outrageous"? It should especially if they are not suicidal which the Appellant wasn't. (Police and EMS Report).

Will standing outside the courthouse as bullies with the express intent to cause her additional emotional distress after learning that the Appellant suffered from anxiety, panic attacks, stress and PTSD make an ordinary person exclaim outrageous? It should, especially when Matthews and the Defendants knew that the Appellant was a vocational rehabilitation client, had her medical records from the last ten years of her life, including her mental health records.

[9] The initial complaint is replaced by the Amended Complaint and the Appellant does not refer to that complaint making it completely replaced by the amended complaint

Will a defendant with malice tell a third party in authority that you are "divorced from reality" make a person exclaim outrageous? It should when it is made to the employer by the attorney and is a matter of public record not stated in a court setting make to SCHAC Investigator.[10] And then telling the court he was there as an attorney for vocational rehab a fact that was untrue and can be proven, after deliberately looking for the Appellant make an ordinary person shut "outrageous" for actions of an officer of the court, it should.

Will repeatedly working with the Appellant admitting liability, encouraging her to seek medical attention until she was 100 percent or close to it and when getting her medical bills and offering her less repeatedly, sending her to different claims adjusters making her believe that settle was imminent – each agents was supposed to be over the first agent negligent and intentional infliction of emotional distress? And when the Appellant believes she will be dealt with fairly finally is given the same settlement offer make a jury shut "outrageous" it should.

The defendants named in this action according Torts and personal injury laws state that each of us are responsible for our own torts/wrongs inflicted on another, just as Tidwell in the previous action was held responsible. The fact that the Appellant brought a claim against Tidwell does not prevent her bring these actions against the named defendants above for their torts committed against her. The defendants are just as responsible for the injuries and damages THEY inflicted on this Appellant just as Tidwell was held accountable for his actions. The laws does not limited the Appellant right to seek justice to Tidwell alone, the named defendants in this actions caused her harm mentally, physically and mentally and she had everyone right to seek justice for those wrongs inflicted against her be they intentional or negligent. SC Code 15-3-530-535 at. al.,

[10] If the statement was made maliciously -- i.e., if the Appellant can show that it was not made with a reasonable purpose or with reasonable cause, or that the speaker made the statement knowing it was false, or with a reckless disregard for the truth -- it will not be protected by a qualified privilege

A claim for negligent infliction of emotional distress the Appellant suffered injuries from the actions of Tidwell. However, her complaint is not against Tidwell but against his Company, Sherwood Plumbing Service, LLC and Beatrice T. Tidwell for intentional and negligent infliction of emotional distress, negligent entrustment and vicarious liability. Tidwell was found to have be liable for the automobile accident and he was held to have been the "but for" cause of the Appellant's injuries, direct and proximate cause of those injuries. The Appellant claims in this action alleges that Beatrice Tidwell was in a position to know that Tidwell was operating a dangerous instrument for their livelihood for Sherwood Plumbing Services without knowing how to operate the brakes as he testified to and that she was in a position to know that he was operating that vehicle without being able to see without corrective lenses and she did nothing to prevent his operation of that dangerous instrument that caused the damages suffered by the Appellant to this day.

Fact, Tidwell testified to his inability to see, getting prescription glasses after this accident because he was unable to see the traffic in all lanes had come to a complete stop, his failure to know how to operate the brakes of his commercial vehicle used in his business on the roads of South Carolina for Sherwood Plumbing Service, LLC. This testimony alone shows that his actions were intentional and a negligent infliction of emotional distress deliberately inflicted upon the Appellant.[11] These actions *were outrageous* and any one could see that fact and rule in the Appellant's favor as whether the actions were intentional or negligent infliction of emotional distress which can be proven because the Appellant continues to suffer to this day.

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[11] Which goes well beyond the "accident" that occurred on September 15, 2015/

IN CONCLUSION

For the foregoing reasons, this Court should reverse the lower court's grant of dismissal in favor of Appellant, or, in the alternative, remand this matter to the lower court for consideration of Appellant's complaint and motions under the proper standard of review in the interest of justice.

Respectfully submitted by,

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January 31, 2019
Lexington, South Carolina

PS: Appellant ask this court to forgive any typos and grammar mistakes

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr.
Circuit Court Judge

Appellate Case No.: 2018-001134

Glenda R Couram ..... Appellant,

v.

Nationwide Mutual Insurance Company, Titan Indemnity Company, Eugene Matthews in his individual capacity, Sherwood Plumbing Service, LLC, dba, Beatrice T. Tidwell, Rick Skurko in his official and individual capacity and Tracey Peer in her official and individual capacity
..... Respondents

CERTIFICATE OF COUNSEL

I certify that to the best of my knowledge this Final Brief of Appellant is in substantial compliance with Rule 211(b) and Rule 267, SCACR.

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January 25, 2019
Lexington, South Carolina