

<p>STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT</p> <p>THE BIG HOUSE CEMETERY COMMITTEE, SHANOMA WATSON, JULIA B. SCOTT, JIMMY POPE, TAMIKA MIDDLETON, SHEILA MIDDLETON, MARY MACK, LEROY HAYNES, SHERIKA CHISOLM, SHERIKE BENNETT, and ARLENE COVINGTON,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>THERESA AIGNER, ROBERT CODY HARPER, and WALTER ROBERT HARPER, JR.,</p> <p style="text-align: center;">Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE No. 2025-CP-07-01126</p> <p style="text-align: center;">NOTICE OF MOTION AND MOTION TO DIMISS PURSUANT TO RULE 12(b)(6) and 12(b)(7) S.C.R.C.P.</p>
--	--

TO: THE PLAINTIFFS NAMED ABOVE

YOU WILL PLEASE TAKE NOTICE that the undersigned, by and on behalf of Defendants, Theresa Aigner, Robert Cody Harper, and Walter Robert Harper, Jr., will move before the Honorable Beaufort County Court of Common Pleas, on the 10th day after service hereof or as soon thereafter as is convenient to Court and Counsel for an Order pursuant to Rules 12(b)(6) and 12(b)(7) of the S.C.R.C.P. dismissing the within action, as to Defendants on the following grounds: (1) The Plaintiffs Complaint fails to state a cause of action upon which relief can be granted; (2) the Plaintiffs have failed to name necessary parties to this action, and the matter cannot be justly adjudicated in their absence, constituting a further basis for dismissal.

FACTUAL ALLEGATIONS

This matter arises from the Plaintiffs' allegations that the named Defendants obstructed access to the Big House Cemetery. The Complaint fails to state a claim upon which relief can be granted because the individual Plaintiffs have direct platted and judicially protected access to the Cemetery parcel which they claim to own and control. (see Paragraph 56 of Amended Complaint).

Further, Plaintiffs have failed to name all necessary and proper parties. The route to the cemetery claimed by the Plaintiffs passes the real property of the following unnamed parties: Jesse Perry Sr., Kathleen Young, Bryan Antionette, the Cheryl Manson Trust, and Kevin Watson. (See Paragraph 84 of the Amended Complaint). These individuals are indispensable to the adjudication of Plaintiffs' claims.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim should be granted if the facts and inferences therefrom would not entitle a plaintiff to "any relief on any theory of the case." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (internal citations omitted).

A motion to dismiss for failure to join a necessary party will require the court to determine whether the person must be joined to protect his interests or that of the existing parties, and whether joinder is necessary for a complete determination of the controversy and complete relief. *Botchie v. O'Dowd*, 299 S.C. 329, 384 S.E.2d 727 (1989); *Robbins v. First Federal Sav. Bank*, 294 S.C. 219, 363 S.E.2d 418, 5 U.C.C. Rep. Serv. 2d 1420 (Ct. App. 1987). Once the defense of Rule 12(b)(7)

(failure to join a party under Rule 19) is asserted, the trial court must determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy. *Banc Ohio Nat. Bank v. Neville*, 310 S.C. 323, 426 S.E.2d 773 (1993).

ARGUMENT

The Complaint fails to state a claim upon which relief can be granted because the individual Plaintiffs have direct platted and judicially protected access to the Cemetery parcel which they claim to own and control. (see Paragraph 56 of Amended Complaint).

Plaintiffs' claims should be dismissed because they have failed to join all property owners whose interests are affected by the subject matter of this action, thereby failing to include a necessary and proper party under Rule 12(b)(7), SCRCP. Additionally, Plaintiffs have not identified the absent party nor provided any explanation for the failure to join such party, as required by Rule 19(c), SCRCP. "A motion under Rule 12(b)(7) is proper where a necessary party under Rule 19 should be joined for a just adjudication of the issues." *Carmichael v. Oden*, No. 2009-UP-030, 2009 WL 9524614, at *5 (S.C. Ct. App. Jan. 14, 2009) (citing *BancOhio Nat'l Bank v. Neville*, 310 S.C. 323, 326, 426 S.E.2d 773, 775 (1993)). "The rule provides an affirmative defense for the failure to join any interested party who is subject to service of process, and who will not deprive the court of jurisdiction over the subject matter under Rule 19, SCRCP." *Id.*

Rule 19, SCRCP provides:

- a. Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) *he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest[.] ...*
- b. Determination by Court Whenever Joinder Not Feasible. If a person described in subdivision

(a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or *should be dismissed*, the absent person being thus regarded as indispensable[.] ...

- c. Pleading Reasons for Nonjoinder. *Any pleading asserting a cause of action for relief shall state the names, if known to the pleader, of any persons described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.*

Rule 19, SCRPC (emphasis added).

Based on the foregoing, Plaintiffs' claim should be dismissed for failure to state a claim and failure to include necessary and proper parties to this action.

ALFORD LAW FIRM, LLC

By: s/Gregory M. Alford
Gregory M. Alford, Esquire
Alford Law Firm, LLC
PO Box 8008
Hilton Head, SC 29928
(843) 842-5500
Attorneys for Defendants

Dated this 18th day of July 2025.
Hilton Head Island, South Carolina.