

Defendants argue that Plaintiffs' Complaint "fails to state a cause of action upon which relief can be granted," and that "Plaintiffs have failed to name necessary parties to the action, and the matter cannot be justly adjudicated in their absence." Defs. Motion to Dismiss at 1. Both arguments fail as a matter of law and fact.

Plaintiffs have sufficiently pleaded facts to support the claims in the Verified Amended Complaint and have sued the proper parties, Defendants Robert Cody Harper and Walter Robert Harper, Jr. and Theresa Aigner, who are responsible for obstructing access to the Big House Cemetery (the "Cemetery") via Everest Road and Lane (hereinafter collectively, "Everest") on St. Helena Island in violation of Plaintiffs' rights under South Carolina law. The Court should deny Defendants' Motion to Dismiss.

BRIEF FACTS AND PROCEDURAL HISTORY¹

On April 30, 2025, Plaintiffs initiated this action by filing a 54-page complaint containing detailed factual allegations in support of their claims against Defendants under South Carolina cemetery and property law for obstructing Plaintiffs' access to a community cemetery on St. Helena Island. *See* Compl. On July 9, 2025, Plaintiffs filed a Verified Amended Complaint, along with a Motion for a Temporary Restraining Order ("TRO") seeking injunctive relief to allow access to the Big House Cemetery. *See* Ver. Am. Compl.; Mot. for TRO.

Defendants filed their Motion to Dismiss on July 18, 2025, seeking to dismiss this action under Rule 12(b)(6), SCRCP, for failure to state a claim and Rule 12(b)(7), SCRCP, for failure to join necessary parties. Defs. Mot. to Dismiss. On September 19, 2025, Plaintiffs filed a supplement

¹ For additional facts relevant to resolving Defendants' Motion to Dismiss, please see the detailed Factual Background in Plaintiffs' Memorandum of Law in Support of the Motion for a TRO, which summarizes allegations from Plaintiffs' Verified Amended Complaint. *See* Pls.' Mem. of Law in Support of Mot. for TRO at 4-8; *see also* Pls.' Mot. for TRO at 2-5.

to the TRO Motion, to apprise the Court of the irreparable harm Plaintiffs continue to suffer daily, due to Defendants' obstructions of the Cemetery and to re-urge their request for injunctive relief. Supp. to Motion for TRO. As of this date, Defendants have not responded to Plaintiffs' Motion for TRO or Supplement to the same. The Court has set a hearing date of December 16 on the Motion for a TRO. *See* Beaufort Cty. 14th Jud. Cir. Ct. Rosters, Common Pleas Motions Hearings, Dec. 16, 2025.

Over a year ago, Defendants first obstructed access to the Big House Cemetery, a historic community cemetery with critical importance to the local Gullah Geechee community, by erecting gates along Everest in violation of South Carolina law. *Ver. Am. Compl.* at 3–4, 26–29. In doing so, Defendants have illegally cut off access to the Cemetery for Plaintiffs and numerous other community members who have used this path for decades to bury and celebrate their loved ones interred at the Cemetery. *Id.* at 4, 30–46. Due to Defendants' obstructions, Everest no longer can be traveled by vehicle, foreclosing the possibility of any funerals, interments, community cleanup days held by Plaintiffs or other community members, or the ability for Plaintiffs and other community members — especially those who are elderly or have mobility issues — to visit, mourn, and honor deceased loved ones, as well as to care for and maintain the Cemetery. *Id.*

STANDARD OF REVIEW

Legal Standard for Rule 12(b)(6), SCRCF

In reviewing a Motion to Dismiss, under Rule 12(b)(6), SCRCF, the court is required to view the allegations in the complaint in the light most favorable to the plaintiff. *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176 (2014). The court must consider all well-pled allegations in the complaint as true. *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441 (2013). “If the facts

alleged and inferences reasonably deducible therefrom, 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.” *Doe v. Marion*, 373 S.C. 390, 395 (2007). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, [if] the complaint states any valid claim for relief.” *Id.* The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id.*

Legal Standard for Rule 12(b)(7), SCRCF

A motion under Rule 12(b)(7), SCRCF, is proper where a necessary party should be joined for a just adjudication of the issues. *Bancohio Nat'l Bank v. Neville*, 310 S.C. 323, 326 (1993). Rule 12(b)(7), SCRCF, 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, SCRCF. *Id.*

Rule 19 states that such a person must be joined:

(a) Persons to Be Joined if Feasible.

. . . 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 or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.*

...

(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, SCRCF (emphases added).

ARGUMENT

I. The Court should deny Defendants' Motion to Dismiss under 12(b)(6), SCRPC, because Plaintiffs have pleaded sufficient facts to support their claims for relief.

Defendants offer no analysis regarding the alleged insufficiency of Plaintiffs' pleading; rather, all they say is that Plaintiffs failed to state a claim because Plaintiffs have "direct platted and judicially protected access to the Cemetery parcel which they claim to own and control."

Defs. Motion to Dismiss at 3. This argument fails for two reasons:

First, Defendants fail to explain how Plaintiffs' purported access to the Cemetery via another parcel of land affects Plaintiffs' claims for relief in this case; indeed, Defendants do not even mention the two causes of action Plaintiffs allege in their Verified Amended Complaint. *Compare* Defs. Motion to Dismiss at 3, *with* Ver. Am. Compl. at 47–53. Plaintiffs have detailed how Defendants have deprived and continue to deprive each Plaintiff from accessing Everest, preventing them from visiting, utilizing, burying in, and maintaining the Big House Cemetery and have pleaded facts sufficient to meet each element of their causes of action. Ver. Am. Compl. at 3–4, 26–46.

Specifically, Plaintiffs have sufficiently pleaded their first cause of action under South Carolina cemetery law — the long recognized and protected rights of descendants of the deceased and the broader local community to visit, care for, bury in, and maintain cemeteries, graves, or other burial grounds for cemetery purposes. *See* Ver. Am. Compl. at 47–50 (alleging the right to ingress and egress from Big House cemetery was violated when Defendants placed gates with restricted access on Everest, shutting off Plaintiffs' ability to bury in, visit, and memorialize deceased loved ones); *see also Huxfield Cemetery Ass'n v. Elliott*, 388 S.C. 565, 570 (2010); *Kelly v. Tiner*, 91 S.C. 41 (1912); *cf. Frost v. Columbia Clay Co.*, 130 S.C. 72 (1924) (recognizing the

rights of plaintiffs to access cemetery, to possess land where deceased are buried, and to care for graves on cemetery for as long as cemetery continues to be used).

Plaintiffs also sufficiently pleaded their second cause of action under South Carolina law, to use and enjoy the Easement on Everest to access the Big House Cemetery. *See* Ver. Am. Compl. at 50–53 (alleging dedicated and public acceptance of the Easement on Everest that has been open, notorious, continuous, and uninterrupted contrary to Defendants’ and other property owners’ rights along Everest for at least 20 years). Plaintiffs have shown the existence of a documented and known prescriptive easement (among other types of easements) along Everest for access to the Cemetery, that has continued with each conveyance of the properties along Everest, in an open, notorious, and uninterrupted way. *Id.* (alleging the existence of a necessary Easement on Everest that was dedicated via public acceptance that has been open, notorious, continuous, and uninterrupted contrary to other’s rights along Everest for at least 20 years); *see also Huxfield*, 388 S.C. at 594–595; *Poole v. Edwards*, 197 S.C. 280 (1941); *Haselden v. Schein*, 167 S.C. 534 (1932); *Judy v. Kennedy*, 398 S.C. 471, 477–478 (S.C.Ct. App. 2012); *Davis v. Epting*, 317 S.C. 315, 318–319 (S.C.Ct. App. 1994). Defendants have offered no arguments to rebut these well-pled causes of action.

Furthermore, contrary to Defendants’ assertions, Plaintiffs’ purported legal ownership of, or access to, an alternative plat of land is wholly irrelevant to the legal viability of Plaintiffs’ claims, as South Carolina courts do not tie cemetery access or easement rights to property ownership. Indeed, “the public, and specifically the heirs and descendants of the people buried on the property, have substantive rights in [the] Cemetery,” irrespective of legal ownership under traditional property doctrines. *See Huxfield*, 388 S.C. at 571–572; *Tupper v. Dorchester Cty.*, 326 S.C. 318, 325 (1997). While only Plaintiff Sheila Middleton legally owns the land on which the

Cemetery sits, the rights of all eleven Plaintiffs—including Ms. Shanoma Watson, Ms. Julia Scott, and Pastor Leroy Haynes—stem from their relationship to relatives and other loved ones who are buried in the Cemetery and their open, notorious, and continuous use of Everest to access the Cemetery for decades. Ver. Am. Compl. at 31–37. Their causes of action also stem from the inability of Plaintiffs like Ms. Julia Scott who, due to age and health, can only access the Cemetery, via Everest, by vehicle, not by foot, and who, due to the gates Defendants have placed on Everest to block access to the Cemetery, have been completely deprived of access to the Big House Cemetery. Ver. Am. Compl. at 33–34. Ownership of land has nothing to do with their claims.

Second, Defendants’ 12(b)(6) argument fails because it is based on an entirely new fact, beyond the pleadings, that Defendants attempt to introduce at this pleading stage. But the court must consider, *only*, the four corners of the Complaint at this stage in ruling on the 12(b)(6) motion: “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe*, 373 S.C. at 395 (citing *Spence v. Spence*, 368 S.C. 106, 116 (2006)). Defendants’ one reference alleging that all Plaintiffs have “direct platted and judicially protected access to the Cemetery” is outside the boundaries of the Complaint; it is procedurally improper to consider; and thus, is not sufficient to prevail on a Motion to Dismiss under Rule 12(b)(6). Defs’ Motion to Dismiss at 2.

For these reasons, Plaintiffs, with “every doubt resolved in [their] behalf,” have sufficiently pleaded the allegations in the Verified Amended Complaint, and make out two distinct and legally plausible causes of action against Defendants. *See Doe*, 373 S.C. at 395.

II. The Court should deny Defendants’ Motion to Dismiss under Rule 12(b)(7), SCRPC because Plaintiffs have sued the Necessary Parties: Defendants who are solely responsible for obstructing Everest and access to the Cemetery.

Defendants offer no legally sufficient reasoning for their claim that joinder of Jesse Perry Sr., Kathleen Young, Bryan Antionette, the Cheryl Manson Trust, and Kevin Watson, to this action is necessary. *See* Defs. Motion to Dismiss at 2. Indeed, Defendants make no reference to the test to determine a necessary party or for joinder under Rule 12(b)(7) or Rule 19, SCRPC pursuant to *Robbins*. Defendants simply say that the route to the Cemetery, along Everest, passes along the real property of these individuals. *See id.* Defendants claim Plaintiffs must therefore include all other property owners along Everest under Rule 12(b)(7) and Rule 19, SCRPC. *Id.* This argument fails because, as detailed below, Plaintiffs allege that only Defendants Harper, Harper, and Aigner—and not all owners along Everest—have blocked the easement. *See* Ver. Am. Compl. at 3–4, 26–29.

The South Carolina Supreme Court has interpreted Rule 19, SCRPC, to require that a party be a “necessary party” to be joined in an action pursuant to the rule. *Ex Parte Gov’t Emps. Ins. Co. v. Goethe*, 373 S.C. 132, 136 (2007). A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined. *Id.* A mere “allegation of wrongdoing is not a prerequisite to joinder under Rule 19(a)(1).” *Botchie v. O’Dowd*, 299 S.C. 329, 333(1989). Rather, the joinder party must pass the following test:

One may be joined as a party in an action, if, (1) in his absence, complete relief cannot be accorded among those already parties or (2) he claims an interest in the subject of the action in his absence and is so situated that disposition of the action in his absence (i) may impair his ability to protect that interest or (ii) may subject those already parties to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of his claimed interest.

Rule 19, SCRPC; *see also Robbins v. First Fed. Sav. Bank*, 294 S.C. 219, 223 (S.C. Ct. App. 1987).

Further, in the Court's consideration of whether the issue of an absent party affects the interests of the absent party or those already parties to the action, it must "view the problems pragmatically because an absent party's interests can rarely be legally bound by principles of *res judicata* in proceedings to which he was not a party." *Id.*

In 1967, the South Carolina Supreme Court addressed a question regarding the addition of adjoining property owners to a dispute over the obstruction of a roadway, via a locked gate, used for ingress and egress, to which the plaintiff claimed an easement. *Marshall v. Winter*, 250 S.C. 308, 313 (1967). The court upheld the lower court's decision to deny a motion to add additional parties to the suit, reasoning that "[o]nly the defendant is charged with wrongfully depriving plaintiff of such right. Under these circumstances, adjoining property owners are not necessary parties." *Id.* (citing *Huggin v. Gaffney Dev. Co.*, 229 S.C. 340 (1956)). The court went on to say "that a complete determination of the issues can be had without bringing in the additional parties named." *Id.* at 314 (citing *Phillips v. Clifton Mfg. Co.*, 204 S.C. 496 (1944)). "Therefore, those sought to be brought in are not necessary parties." *Id.* For joinder to be appropriate, the court held, those additional parties must be deemed necessary parties.

Thus, similar to the Court's observation in *Marshall*, here only the existing Defendants have deprived Plaintiffs of their rights by this obstruction of Everest and no additional property owners need be joined. *See id.* at 313; *see also Huxfield*, 388 S.C. at 570 (named defendant had interfered with plaintiffs' exercise of right to use burial ground); *Scruggs v. Beason*, 246 Ala. 405, 408 (1945) (named defendant had blocked access to route leading to cemetery); *cf. Poole v. Edwards*, 197 S.C. 280 (1941) (named defendant had obstructed access to the road leading to plaintiff's property).

Accordingly, complete relief can be accorded to the parties already in the action. Plaintiffs' two causes of action, *see* Ver. Am. Compl. at 47–53, make clear that this action is about the obstruction of Everest. Thus, the Court can determine the rights of Plaintiffs, as well as the duties of Defendants Harper, Harper, and Aigner, without the inclusion of the other property owners, as the removal of Defendants' gates that obstruct Everest would fully resolve Plaintiffs' claims. *See Robbins*, 294 S.C. at 363. These Defendants are the only necessary defendants according to Rule 12(b)(7) and Rule 19, SCRPC.

CONCLUSION

For reasons detailed above, the Court should deny Defendants' Motion to Dismiss. Plaintiffs have met the pleading requirement to survive dismissal under 12(b)(6) and have included the appropriate defendants under 12(b)(7), as the other landowners are not necessary parties.

In the alternative, as to Defendants' 12(b)(7) arguments, if the Court is compelled to bring the additional property owners along Everest into the case, leave should be granted to allow Plaintiffs to amend to add additional parties.

Respectfully submitted,

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