

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

DORIS SIMMONS, MIKE LUONGO AND  
BARRETT BLACK,

Plaintiffs,

vs.

THE TOWN OF SWANSEA, VIOLA MCDANIEL,  
MARGARET HARVEY AND JOHN E. BROWN,

Defendants,

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

DOCKET NO. 2022-CP-32-02829

ANSWER AND COUNTERCLAIM  
OF  
JOHN E. BROWN

The Defendant, John E. Brown, answers the Complaint of the Plaintiffs and Counterclaims, and would show unto the Court as follows:

**FOR A FIRST DEFENSE:**

1. That each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained is hereby denied, and strict proof demanded thereof.

2. That the Defendant, John E. Brown, answering paragraphs one (1), two (2), three (3), four (4), five (5), and six (6) of the Complaint, admits the allegations contained therein.

3. That the Defendant, John E. Brown, answering paragraph seven (7) of the Complaint, denies the allegations contained therein, and demands strict proof thereof. The Independent Auditors Report dated February 28, 2022, indicates that... "the underlying accounting records related to fixed assets for all funds are understated by at least \$3,309,000.00. This financial reporting is not in accordance with accounting principles generally accepted in the United States of America..."

4. That the Defendant, John E. Brown, answering paragraph eight (8) of the Complaint, admits the allegations contained therein.

5. That the Defendant, John E. Brown, answering paragraph nine (9) of the Complaint,

lacks sufficient information or knowledge to admit or deny the allegations contained therein, and denies the allegations contained therein, and demands strict proof thereof.

6. That the Defendant, John E. Brown, answering paragraph ten (10) of the Complaint, lacks sufficient information or knowledge to admit or deny the allegations contained therein, and therefore, denies same, and demands strict proof thereof.

7. That the Defendant, John E. Brown, answering paragraph eleven (11) of the Complaint, denies the allegations contained therein and demands strict proof thereof. The Defendant would show unto the Court that as the previous audit reports the Defendant, requested that Council Members submit their questions in writing so that they could be answered in writing at the Council Meetings. The Defendant, would further show unto the Court that the Auditors Report was scheduled to have been presented at the April 4, 2022 Council Meeting which was postponed however, due to a lack of a quorum as Council Member Simmons failed to attend.

8. That the Defendant, John E. Brown, answering paragraph twelve (12) denies that the Plaintiffs have not had the opportunity to have their questions answered in regard to the three million (\$3,000,000.00) dollars. Council Members were asked to submit their questions in writing and the Defendant would respond in writing. Council Members, Butler and Williams, presented their questions in writing and Defendant, John E. Brown, responded in writing and presented those questions and his response at the Council meeting on August 15, 2022. Council Member, Simmons, followed this process for the presentation of the previous years' audit report.

9. That the Defendant, John E. Brown, answering paragraph thirteen (13) of the Complaint, denies the allegations contained therein, and demands strict proof thereof, and submits that the audit reports for the fiscal year ended June 30, 2021, reported that fixed assets for all funds are understated by at least \$3,000,000.00, no part of the report indicates that \$3,000,000.00 is missing as alleged by the Plaintiffs.

10. That the Defendant, John E. Brown, answering paragraph fourteen (14) of the Complaint, denies the allegations contained therein, and demands strict proof thereof.

11. That the Defendant, John E. Brown, answering paragraph fifteen (15) of the Complaint, denies the allegations contained therein and restates that the audit report for the fiscal year ended June 30, 2021, indicates that fixed assets for all funds are **understated** by at least \$3,309,000. No part of the report indicates that \$3,000,000 is missing as alleged by the Plaintiffs. Defendant John E. Brown further submits that in previous years, the ending fixed asset balance from the previous year was carried forward as the beginning balance of the succeeding year as required by generally accepted accounting principles. This carry-forward was not performed by the Town accountant for the end of fiscal year 2020 and the beginning of fiscal year 2021 which resulted in the understatement.

12. That the Defendant, John E. Brown, answering paragraph sixteen (16) of the Complaint, denies the allegations contained therein, and demands strict proof thereof, and restates that the audit report for the fiscal year ended June 30, 2021, indicates that fixed assets for all funds are **understated** by at least \$3,309,000. No part of the report indicates that \$3,000,000 is missing as alleged by the Plaintiff.

13. That the Defendant, John E. Brown, answering paragraphs seventeen (17), and eighteen (18) of the Complaint, denies the allegations contained therein and demands strict proof thereof.

14. That the Defendant, John E. Brown, answering paragraph nineteen (19) of the Complaint, denies the allegations contained therein and submits that the contract (engagement letter) indicated that the report would be addressed to the Mayor and Town Council. Defendant, John E. Brown, has presented the report as agreed, which was done in public.

15. That the Defendant, John E. Brown, answering paragraphs twenty (20) and twenty-one (21) of the Complaint, denies the allegations contained therein, and demands strict proof thereof.

16. That the Defendant, John E. Brown, answering paragraph twenty-two (22) of the Complaint, denies the allegations contained therein and submits that no part of the audit report prepared by the Defendant reports a **missing** amount of three million dollars (\$3,000,000.00). Even if the Defendant had reported three million dollars (\$3,000,000.00) missing, the Defendant, as auditor, would not be

responsible to account for the missing funds.

17. That the Defendant, John E. Brown, answering paragraph twenty-three (23) of the Complaint, denies the allegations contained therein and demands strict proof thereof.

**FOR A SECOND DEFENSE**

18. That the claims of the Plaintiffs are barred by the applicable Statute of Limitations.

**FOR A THIRD DEFENSE**

19. That the Plaintiff has failed to state a claim upon which relief may be granted.

**FOR A FOURTH AND AFFIRMATIVE DEFENSE**

20. That the Defendant is informed and believes that he is entitled to recover his attorney's fees and costs pursuant to the South Carolina Frivolous Proceedings Sanctions Act, § 15-36-10 *et. seq.* of the South Carolina Code of Laws of 1976, as amended and Rule 11 of the South Carolina Rules of Civil Procedure.

**FOR AN FIFTH DEFENSE**

21. That the claims of the Plaintiffs are barred by the equitable doctrines of laches, estoppel and unclean hands.

**FOR A SIXTH DEFENSE  
AND BY WAY OF COUNTERCLAIM  
(ABUSE OF PROCESS)**

22. That each and every allegation of paragraphs one (1) through thirty-one (31) is realleged as if repeated verbatim herein.

23. That the Defendant, John E. Brown, is informed and believes that Plaintiffs have filed a frivolous Complaint with the South Carolina Board of Accountancy and have commenced this action with an ulterior purpose, and have committed willful acts in the use of this process not proper in the regular conduct of the proceeding.

24. That on or about June 10, 2020, the Plaintiffs herein filed a Complaint with the South Carolina Board of Accountancy which alleged that Defendant, John E. Brown, "...altered the June 20, 2019

Town of Swansea Audit Report at the request of the mayor, and that you refused to provide copies of the original and revised audit reports, bank statements and other records requested by Members of Town Council...". After investigation, the Board of Accountancy ordered the complaint be dismissed on January 19, 2021.

25. That as a direct and proximate result of Plaintiffs' abuse of process, Defendant, John E. Brown, has suffered actual damages, incurred costs and attorney's fees.

26. That the Defendant, John E. Brown, is informed and believes that he is entitled to judgment against the Plaintiffs for his actual damages, attorneys fees, and costs and such punitive damages as the jury may determine.

**FOR A SEVENTH DEFENSE**  
**AND BY WAY OF SECOND COUNTERCLAIM**  
**(MALICIOUS PROSECUTION)**

27. That each and every allegation of paragraph one (1) through eighteen (18) is realleged as if repeated verbatim herein.

28. That the Defendant, John E. Brown, is informed and believes that the Plaintiffs', instituted the Complainant with the South Carolina Board of Accountancy and instituted these proceedings with malice, and without probable cause.

29. That the Defendant, John E. Brown, as a direct and proximate cause of Plaintiffs' malicious prosecution has suffered actual damages, incurred costs and attorney's fees.

30. That the Defendant, John E. Brown, is informed and believes that he is entitled to a judgment against the Plaintiffs' for his actual damages, attorney's fees and costs, and such punitive damages as the jury may determine.

**FOR AN EIGHTH DEFENSE**  
**AND BY WAY OF THIRD COUNTERCLAIM**  
**(DEFAMATION)**

31. That each and every allegation of paragraph one (1) through twenty-two (22) is realleged as if repeated verbatim herein.

32. That the Defendant, John E. Brown, is informed and believes that Plaintiffs have made defamatory, libelous and slanderous statements concerning the Defendant which were made by Plaintiffs with actual or implied malice, were false, were published to various persons, and which have caused actual damage to the Defendant.

33. That as a direct and proximate result of Plaintiffs defamatory statements, Defendant John E. Brown, has suffered actual damages; incurred attorney's fees and costs.

34. That Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for actual damages, attorney's fees and costs and such punitive damages as the jury may determine.

WHEREFORE, the Defendant, John E. Brown, having fully answered the Complaint, prays that the Complaint be dismissed, that he be awarded actual and punitive damages and his reasonable attorney's fees and costs pursuant to his counterclaims and affirmative defenses, and for such other and further relief as the Court may deem proper.

Columbia, South Carolina

September 15, 2022

*s/Herbert E. Buhl, III*

Herbert E. Buhl, III

2204 Devine Street

Columbia, South Carolina 29205

(803) 799-3767

SC Bar No. 1000

[herb@herbbuhl.com](mailto:herb@herbbuhl.com)

ATTORNEY FOR DEFENDANT BROWN

JURY TRIAL DEMANDED