STATE OF SOUTH CAROLINA COUNTY OF HAMPTON Jessica S. Cook, *et al.*, Plaintiffs, v. South Carolina Public Service Authority, *et al*. Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-25-00348 **ORDER DENYING SANTEE COOPER'S MOTION TO DISMISS**

Before the Court is Defendants South Carolina Public Service Authority ("Santee Cooper") and its board of directors' ("Director Defendants") Motion to Dismiss Plaintiffs' Fourth Amended Complaint. After careful consideration and as more fully set forth herein, Defendants' Motion to Dismiss is **DENIED**.

Plaintiffs' Complaint[1] alleges the following claims against Santee Cooper and the Director Defendants arising from the failed and abandoned V.C. Summer Nuclear Project (the "Project"):

Claims	Plaintiff(s)	Defendant(s)
Declaratory Judgment	Class	Santee Cooper
Breach of Statutory Duties	Class	Director Defendants
Breach of Fiduciary Duties	Direct Subclass	Director Defendants

[1] Plaintiffs consist of two groups of retail customers: (1) those who purchase electricity directly from Santee Cooper, and (2) those who purchase electricity indirectly from Santee Cooper through one of several electric cooperatives across the State. Plaintiffs seek class certification for all similarly situated customers (the "Class"). The Class is subdivided, for certain purposes, into two subclasses: (1) the "Direct Subclass" and (2) the "Cooperative Subclass."

Breach of Contract / Breach of Implied Contract	Class[2]	Santee Cooper
Constitutional Takings Violation	Class	Santee Cooper
Constitutional Due Process Violation	Direct Subclass	Santee Cooper
Negligence	Class	Santee Cooper and Director Defendants
Unjust Enrichment / Money Had and Received	Class	Santee Cooper and Director Defendants
Constructive Trust	Class	Santee Cooper and Director Defendants
Equity	Class	Santee Cooper and Director Defendants

On July 9, 2018, Defendants moved to dismiss Plaintiffs' Complaint arguing it fails to plead facts sufficient to state a cause of action for which relief may be granted, and the claims are similarly barred by Santee Cooper's enabling legislation[3] (the "Enabling Act"), the filed rate doctrine, the business judgment rule, and sovereign immunity / the South Carolina Tort Claims Act.

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999). A motion to dismiss for failure to state a claim should not be granted if the facts alleged, or those inferences reasonably deducible therefrom, entitle plaintiff to relief under any theory of the case. *Patterson v. Witter*, 418 S.C. 66, 791 S.E.2d 294 (2016). "If the facts and inferences

[2] The Direct Subclass and the Cooperative Subclass have different factual allegations informing their breach of contract claims given their different relationships to Santee Cooper.

[3] S.C. Code Ann. §§ 58-31-10 to -550.

drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004). A judgment on the pleadings is a drastic remedy and therefore the court liberally construes the pleadings to ensure substantial justice is done between the parties. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991).

Affirmative defenses may not ordinarily be asserted in a motion to dismiss under Rule 12(b)(6). *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). "This rule arises out of the notion that consideration of an affirmative defense usually requires reference to factual allegations and matters which are beyond the scope of allegations set forth in the complaint." *Id*. at 123, 628 S.E.2d at 878. "Therefore, because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as summary judgment or directed verdict or at trial." *Id*. (citing 5 Wright and Miller, *Federal Practice and Procedure Civil 3d*, § 1277 (2004)).

ANALYSIS

Defendants assert the Complaint fails to state facts sufficient to constitute a cause of action for declaratory judgment, breach of statutory duties, breach of fiduciary duties, breach of contract/implied contract, unconstitutional taking, violation of due process, negligence, unjust enrichment / money had and received, or equity. Reviewing each claim in turn and construing each allegation in the light most favorable to the Plaintiffs, I find they have sufficiently pled their claims to survive a 12(b)(6) challenge for the reasons discussed.

Plaintiffs' declaratory judgment claim, which asserts the increased rates associated with the Project are unlawful, sufficiently alleges a justiciable controversy for the purposes of the

Declaratory Judgment Act. S.C. Code Ann. § 15-53-30 ("A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.").

Plaintiffs' breach of statutory duties claim against the Director Defendants clearly states a legal claim authorized under section 58-31-57: "Wholesale and retail customers of the Public Service Authority and electric cooperatives that are indirect customers of the Public Service Authority may bring suit against Public Service Authority directors asserting a breach of any duty arising under sections 58-31-55 and 58-31-56." Plaintiffs allege the Director Defendants breached the duties articulated in 58-31-55 by not proceeding in good faith or with ordinary care by acting contrary to the best interests of Santee Cooper, which damaged Plaintiffs in the form of the unlawful charges for the Project. I disagree section 58-31-55(B)'s "safe harbor" language insulates the Director Defendants from this suit. At this stage of the litigation, it is unclear whether or to what extent the Director Defendants relied on anything in good faith so as to allow them to invoke this affirmative defense.

I similarly find Plaintiffs' breach of common law fiduciary duties claim against the Director Defendants is well pled and supported by the language of the Enabling Act. The Enabling Act expressly states that directors are "subject to liability under the same theories of liability as for a breach of duty by a corporate director pursuant to Title 33 and South Carolina common law." S.C. Code Ann. § 58-31-57. Plaintiffs and Santee Cooper's customers are the owners and direct beneficiaries of Santee Cooper. S.C. Code Ann. § 58-31-110 (clarifying Santee Cooper is "a corporation, completely owned by and to be operated for the benefit of the people of this State"). I therefore find the Director Defendants and Santee Cooper's customers enjoy the same relationship as exists between a corporation's directors and its shareholders. Section 33-8-300 and

the common law of South Carolina have recognized directors owe fiduciary duties to shareholders. *Clearwater Tr. v. Bunting*, 367 S.C. 340, 350, 626 S.E.2d 334, 339 (2006) (holding the common law fiduciary duty owed to shareholders by directors has been codified by section 33-8-300). Plaintiffs' have alleged a fiduciary relationship, the Director Defendants' breaches of fiduciary duties, and resulting damages, and I therefore decline to dismiss this claim.

Plaintiffs have also sufficiently pled breach of contract against Santee Cooper. I find the Complaint adequately alleges the existence of a contract related to the customer charges for the Project. Specifically, Plaintiffs allege that Santee Cooper's charges for the cost of electric service included the charges for the Project, which Santee Cooper unilaterally inserted with the promise of providing the completed Project in return. However, Santee Cooper breached the contract by failing to provide the promised benefit, or any benefit of any kind, in exchange for the charges for the Project. The cooperative customers make essentially the same allegations as third-party beneficiaries of the contract between Santee Cooper and Defendant Central Electric Cooperative, Inc. The charges for the Project flowed down to the cooperative customers from Santee Cooper through Central Electric, and the customers' payments flowed up to Santee Cooper. The alleged promised benefit was the same, and it was not delivered. Additionally, Plaintiffs allege Santee Cooper breached the implied covenant of good faith and fair dealing by engaging in the mismanagement, active concealment of material facts, and other wrongful conduct.

I also find Plaintiffs have sufficiently pled an unconstitutional takings claim by alleging that Santee Cooper, a governmental entity, took their property without either (1) providing a public use because of the Project's abandonment, or (2) providing just compensation. Although Defendants claim "ratepayers do not possess a property interest in any monies paid to Santee Cooper to fulfill their obligation incurred for electrical service", I find this assertion mistakes the

claim. Plaintiffs contend there was a taking because the money Santee Cooper charged them for the Project was *not* related to their obligations for electrical service. Therefore, they do not claim a right to a certain rate, but instead claim a property interest in their own money. *See* Mississippi Power Co. v. Mississippi Pub. Serv. Comm'n, 168 So. 3d 905, 913 (Miss. 2015) ("While this Court understands that the ratepayers have no property interest in a *certain rate,* the ratepayers may not be subject to proceedings in which he or she may be deprived of a protected property interest without adequate protection in place to certify the fundamental fairness of the action taken by the government (in this case, the Public Service Commission)." (internal quotation omitted)). Although a customer may not have a protectable interest in merely paying a lower utility rate, the property right here acknowledged is nothing so speculative. It is the interest consumers have in their own money that was taken without a corresponding benefit. I decline to conclude that Plaintiffs' money is not their property as the suggestion is contrary to logic as well as state law. *See* S.C. Code Ann. § 14-1-30 ("The words 'personal property,' as used in this Title [14, Courts], include money, goods, chattels, things in action and evidences of debt."). For this reason I disagree with Defendants' suggestion that Plaintiffs' claim is based on a general obligation to pay. Plaintiffs do not contest the payment of money they owed in exchange for their use of electricity. Plaintiffs allege damages based on the amount they have been charged by Defendants specifically for the project. No service was received in relation to the money Plaintiffs paid for the Project, and the suggestion that a government agency may demand any sum from the citizenry under the guise of utility rates is rejected.

Similarly, I find Plaintiffs have sufficiently pled violations of their procedural and substantive due process rights. Article I, Section 3 of the South Carolina Constitution provides: "[t]he privileges and immunities of citizens of this State . . . shall not be abridged, nor shall any

person be deprived of . . . property without due process of law . . ..." Article I, Section 22 provides: "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights *except on due notice and an opportunity to be heard* . . .." (emphasis added). Plaintiffs allege the Enabling Act's sixty-day notice provision and the absence of any avenue of meaningful review denied Plaintiffs of their rights to procedural due process under the facts of this case. Under the procedure provided, Plaintiffs allege Defendants were allowed to continually increase rates with no mechanism for customers to challenge the increases or even fully apprise themselves of why the increases were deemed necessary. I find Plaintiffs' allegations that they received insufficient notice and were denied a meaningful opportunity to be heard, which constituted a deprivation of due process, must survive this motion to dismiss.

In addition to the procedural due process claim, Plaintiffs allege they have been arbitrarily deprived of their property without justification. In light of these allegations of mismanagement and misconduct, and given the lack of procedural safeguards and oversight in the Enabling Act, Plaintiffs have sufficiently alleged their deprivation of property is neither narrowly tailored nor rationally related to the purpose of Santee Cooper, which is to act for the benefit of the people. *See* S.C. Code Ann. § 58-31-110 (clarifying Santee Cooper is "a corporation, completely owned by and to be operated for the benefit of the people of this State"). I find this adequately states a claim that their substantive due process rights have been infringed.

I find Plaintiffs' have adequately alleged negligence both against Santee Cooper and the Director Defendants. The issue of duty in the context of a negligence action is an issue of law to be determined by the court. *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996). However, the question of whether a duty arises depends on the existence of particular facts. *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3, 5 (1997). Where there are factual issues regarding whether the

defendant owes a particular duty based on its status, the existence of a duty becomes a mixed question of law and fact to be resolved by the fact-finder. *Doe ex rel. Doe v. Wal-Mart Stores*, *Inc*., 393 S.C. 240, 246-47, 711 S.E.2d 908, 911-12 (2011). The Complaint alleges each element of negligence, and I find Defendants' challenge to the existence of a duty to their customers requires inquiry into the facts and dismissal would be inappropriate.

Plaintiffs also allege breach of an implied contract and unjust enrichment / money had and received. I find the elements have been adequately pled. The elements to recover for unjust enrichment based on *quantum meruit*, quasi-contract, or implied by law contract, which are equivalent terms for equitable relief, are: "(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000). Plaintiffs point to the hundreds of millions of dollars paid for no benefit in return and Santee Cooper and the Director Defendants' mismanagement and misconduct. If true, equity would demand relief and only the development of facts would permit a proper inquiry.

Similarly, I find Plaintiffs have alleged facts sufficient to declare a constructive trust against Santee Cooper. A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title. *Wolfe v. Wolfe*, 215 S.C. 530, 56 S.E.2d. 343 (1949). A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty that gives rise to an obligation in equity to make restitution. *Searson v. Webb*, 208 S.C. 453, 38 S.E. 2d. 654 (1946). Plaintiffs allege four specific funding sources for which a constructive trust should attach given the circumstances of this case: the entire Toshiba settlement, all profits received by Defendants, all funds received

from the sale of the reactors and parts thereof, and unlawful charges for the Project. Plaintiffs financed the Project yet have received no benefit and contend this inequity was a result of fraud, bad faith, abuse of confidence, or the violation of a fiduciary duty. I find the claim adequately pled.

Plaintiff's final claim, that of general equity, should survive dismissal. Equity is reserved for situations when there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "[W]here a substantive right exists, an equitable remedy may be fashioned to give effect to that right." *Regions Bank v. Wingard Props., Inc*., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011). "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr*., 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (2009). This case involves one of the largest economic catastrophes in South Carolina history. Plaintiffs have been substantially damaged due to no fault of their own. Against this backdrop and at this early stage, Plaintiffs' allegations are sufficient to ground their equity claim for the purposes of the instant motion to dismiss.

In addition to the individual challenges to each claim, Defendants allege the claims are barred by the ratemaking provisions of the Enabling Act, the filed rate doctrine, the business judgment rule, or sovereign immunity / the Tort Claims Act. Initially, I find inquiry into these defenses requires factual development and therefore dismissal on these grounds is inappropriate at this stage of the litigation.

Relying on sections 58-31-30(A)(13) and -360, Defendants argue Plaintiffs' case must be dismissed because Santee Cooper is statutorily required to pass on the costs of the failed Project

to its customers in the form of rates. However, this assertion oversimplifies the Complaint. In reviewing the Complaint, I find it raises claims sounding in tort, contract, equity, and constitutional violations emanating from acts or omissions related to the construction of the failed Project. Plaintiffs do not question Santee Cooper's general ratemaking powers or how it resolves its debts; they demand inquiry into the actions that created the debts Defendants now claim they are powerless but to impose on their customers. After a careful reading of the Enabling Act, I conclude it prescribes more than the ratemaking process Santee Cooper highlights.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Thus, the Court "will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). "A statute should not be construed by concentrating on an isolated phrase." *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Id.* Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000).

Examining the Enabling Act as a whole, I find Santee Cooper and the Director Defendants are bound by more provisions than the ratemaking statutes they conclude absolve all claims against them. Specifically, section 58-31-200, which authorizes Santee Cooper's involvement in the Project, grants Santee Cooper "the power to plan, finance, . . . and maintain joint ownership interest in such plants . . . *necessary or incidental* to the generation and transmission of electric power

generated at the plant, and to make such plans and enter into such contracts . . . as are *necessary or convenient* for the planning, financing, . . . construction [and] ownership . . . of the plant . . .." Plaintiffs' lawsuit contends Santee Cooper engaged in unauthorized acts that were not necessary, incidental, or convenient to its involvement in the Project. Further, far from precluding litigation, the statute envisions litigation by providing: "[Santee Cooper] shall be severally liable, in proportion to its joint ownership interest . . . for the acts, omissions, or obligations performed, omitted, or incurred by the operator or other owners of the plant while acting as the designated agent of [Santee Cooper] for purposes of constructing, operating, or maintaining the plant . . .." *Id.* Plaintiffs' claims arise, in part, from the "acts, omissions, or obligations performed, omitted, or incurred" by those acting as agents for Santee Cooper and questions Santee Cooper's failure to confine its spending to what was "necessary."

Even under its more general powers to construct and build, I find Santee Cooper's undertakings and omissions are not unassailable, but must comport with the express provisions of that grant of power. Section 58-31-30(A)(7) grants Santee Cooper the power "to build . . . power houses . . . necessary, *useful or customarily used* and employed in the . . . generation . . . of . . . electric power, . . . including . . . *generally all things used or useful* in the manufacture, distribution, purchase, and sale of power . . .." (emphasis added). Plaintiffs claim that because of Defendants' alleged misconduct and mismanagement, the charges for the Project were not for the "use of facilities" or any "commodities" because the failed Project has been abandoned and will never produce electricity.

Similarly, the Legislature expressly provides that Director Defendants may be sued for breaches of duty. S.C. Code Ann. § 58-31-57 ("Wholesale and retail customers of the Public Service Authority and electric cooperatives that are indirect customers of the Public Service Authority may bring suit against Public Service Authority directors asserting a breach of any duty arising under

Sections 58-31-55 and 58-31-56."). Notably, section 58-31-55(A)(3)(a) requires rates set by the Director Defendants to be "just and reasonable." Accordingly, Director Defendants owe statutorily prescribed duties to Plaintiffs to set "just and reasonable" rates and incur only those debts that are "necessary" to further the Project. Defendants' assertion that their ratemaking power is absolute and will insulate any of their bad acts cannot be reconciled with the other mandates of the Enabling Act.

I reject Defendants' contention that the Enabling Act's framework favors bondholders over the citizenry as that notion cannot be squared with the intent expressed in section 58-31-110, which explains Santee Cooper is "a corporation, completely owned by and to be operated for the benefit of the people of this State." That a government agency needs more reminding that it serves the people is a conclusion I cannot accept. This is not to say the Court is ignorant to the provisions addressed to the rights of bondholders. However, I disagree Defendants' misconduct is obscured by its debts; it is instead magnified. Section 58-31-70 states, Santee Cooper "shall not be authorized to do anything which will impair the security of the holders of the notes, bonds or other evidences of indebtedness of [Santee Cooper] or violate any agreement with them or for their benefit." The thrust of the Complaint is that Defendants' malfeasance resulted in billions of dollars of unnecessary debt. Defendants' actions are what may have "impaire[ed] the security" of any debtholders, not the filing of this lawsuit.

I similarly find the filed rate doctrine does not preclude any of Plaintiffs' claims. In *Edge v. State Farm Mutual Automobile Insurance Co.*, 366 S.C. 511, 623 S.E.2d 387 (2005), the Supreme Court of South Carolina formally adopted the filed rate doctrine: "The filed rate doctrine stands for the proposition that because an administrative agency is vested with the authority to determine what rate is just and reasonable, courts should not adjudicate what a reasonable rate might be in a collateral lawsuit." *Id.* at 519, 623 S.E.2d at 392. As discussed above, Plaintiffs are

not directly challenging rates, but address whether charges collected by Santee Cooper, for which Plaintiffs received no benefit, should be recouped by the customers based on principles of law and equity. As such, Plaintiffs' claims fall squarely within the observation of the New Jersey Superior Court in *Richardson v. Standard Guaranty Insurance, Co.*, 853 A.2d 955, 967 (N.J. Super. Ct. App. Div. 2004), where the court found "[t]he filed rate doctrine does not preclude a consumer from suing for damages by having been deprived of benefits which were promised, and were consistent with the filed rate, but were not delivered." *See also Randleman v. Fid. Nat'l Title Ins. Co.*, 465 F. Supp. 2d 812, 823 (N.D. Ohio 2006) (the filed rate doctrine was inapplicable because plaintiffs were not challenging the reasonableness of the filed rate, but were instead attempting to enforce a contract that incorporated a filed rate). Plaintiffs do not contend the rates are not reasonable. They claim the charges for the failed Project are illegal and inequitable. More fundamentally, there simply is no filed rate. Unlike its regulated counterparts, Defendants set the rates without the oversight of a disinterested regulatory body. Coupled with the lack of adjudicatory inquiry available under the Enabling Act, allowing the filed rate doctrine to act as an absolute bar to review by this Court would deny Plaintiffs fair access to the courts and I decline at this stage to allow this doctrine to insulate Defendants from their alleged misconduct.

I further find the mere invocation of the business judgment rule fails to bar any of Plaintiffs' claims, which are predicated on Defendants acting outside their authority and with corrupt motive. These allegations are not in the nature of decisions that may be insulated by the business judgment rule. *See Dockside Ass'n v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) ("[T]he business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct."). For now, the

allegations in the Complaint are accepted as true. Factual development is required to determine whether Defendants are entitled to this defense, and dismissal at this stage would be inappropriate.

Finally, I find none of the South Carolina Tort Claims Act ("TCA") exclusions cited by Defendants support dismissal of Plaintiffs' tort claims.[4] The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the TCA is upon the governmental entity asserting it as an affirmative defense. *Sabb v. S.C. State Univ.,* 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002)*; Strange v. S.C. Dep't of Highways & Pub. Transp.,* 314 S.C. 427, 445 S.E.2d 439 (1994). A finding of immunity under the TCA on either of these grounds "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." *Wooten ex rel. Wooten v. S.C. Dep't of Transp*., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). The two exclusions Defendants rely on provide::

> The governmental entity is not liable for a loss resulting from:
>
> . . .
>
> (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
>
> (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

Plaintiffs do not contend their injuries emanate from Defendants' compliance with the law, nor are they simply second guessing discretionary acts. The Complaint alleges, among other things, bad faith, unconscionable conduct, and *ultra vires* conduct. These allegations, accepted as true and

[4] The Tort Claims Act does not bar claims sounding in contract, equity, or constitutional infringement. Defendants' challenge on this ground is therefore limited to the negligence and breach of fiduciary duty claims.

viewed in a light most favorable to Plaintiffs, preclude dismissal of Plaintiffs' tort claims. Whether facts emerge to allow Defendants to prove otherwise will be discovered as the case progresses.

Given the foregoing, Santee Cooper and the Director Defendants' motion to dismiss is **DENIED**.

IT IS SO ORDERED this ____ of _____, 2018.

_____
The Honorable John C. Hayes, III
Assigned Circuit Court Judge

Hampton Common Pleas

Case Caption: Jessica S Cook VS Santee Cooper , defendant, et al

Case Number: 2017CP2500348

Type: Order/Dismissal

So Ordered

s/John C. Hayes III 2049