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COUNTRYMAN
LAW FIRM

RECEIVED
AUG 22 2022
SC Court of Appeals

August 1, 2022

Via Certified Mail, Return Receipt Requested, Restricted Delivery
Alan Nix; inmate # 0001600756
Sheriff Al Cannon Detention Center
3841 Leeds Ave.
N. Charleston, SC 29405

Via US Mail
Ethan Nix
211 Posey Hill Rd.
Liberty, SC 29671

Via US Mail
Ethan Nix
1784 Walhalla Highway
Pickens, SC 29671

Re: Nix v. Churchill Park, *et al.*; C/A 2020-CP-40-05255

Alan and Ethan:

I enclose a filed copy of Judge Newman's formal Order granting certain Defendants' Motion to Dismiss this case with prejudice.

Sincerely,

Andrew W. Countryman

AWC
Enclosure

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) IN THE COURT OF COMMON) PLEAS) FIFTH JUDICIAL CIRCUIT
Norma J. Nix and the Estate of Norma J Nix, Plaintiff(s), v.	) CASE NO.: 2020-CP-40-05255
Churchill Park, Churchill Park Homeowners' Association, Inc., Park West Master Association, Inc., Landtech of Charleston, LLC, Landtech Incorporated of South Carolina, Park West Development, Inc, McCabe, Trotter & Beverly, Chucklehoover, LLC, Richard Riccoboni, Gold Crown Management, LLC, Cedar Management Group, LLC; Law Offices of Todd Musheff, Officers and Directors of All Named Entities, Defendants.	) **ORDER GRANTING MOTION TO DISMISS OF DEFENDANTS MCCABE, TROTTER & BEVERLY AND LAW OFFICES OF TODD MUSHEFF**

RECEIVED
AUG 22 2022
SC Court of Appeals

This matter came before me on the July 22, 2021, Motion to Dismiss of Defendants McCabe, Trotter & Beverly (improperly identified) and the Law Offices of Todd Musheff (improperly identified), as well as their "officers and directors" ("these Defendants"). These Defendants' Motion requests a dismissal with prejudice of this action, as well as sanctions/a gatekeeper order precluding this Court from accepting further *pro se* filings from Plaintiffs (and Alan G. Nix). A hearing took place via WebEx on February 10, 2022. Andrew W. Countryman, Esq. attended as counsel for these Defendants, and Stephanie T. Kellahan attended as counsel for the Defendant identified as Churchill Park. Despite having legal and actual notice of the hearing, no one attended for Plaintiffs.

The cover sheet submitted with the Summons and Complaint, and the caption in the Summons list Norma J. Nix (who is deceased), Alan G. Nix and the Estate of Norma J. Nix

as Plaintiffs, while the caption of the Complaint lists only Norma J. Nix and the Estate of Norma J. Nix as Plaintiffs. Alan Nix signed the cover sheet to the Summons to the Complaint. He also signed the Summons as "Plaintiff/Attorney for Plaintiff." Alan Nix also signed the Complaint individually and as "Co-PR for the Estate of Norma Nix." Ethan Nix also signed the Complaint as "Co-PR for the Estate of Norma Nix." Counsel for these Defendants properly notified Alan Nix and Ethan Nix of this hearing on January 31, 2022. *See* Notice of Hearing (filed Jan. 31, 2022). Further, Plaintiffs filed a Motion to Continue this hearing on February 7, 2022, which acknowledges the hearing set for February 10, 2022.

After considering these Defendants' Motion, reviewing the pleadings (including the Complaint) and hearing from counsel for these Defendants and Churchill Park, the court issues the following Order:

FINDINGS OF FACT

Alan Nix and Norma Nix owned a home in the Churchill Park neighborhood in the Park West development located at 1401 Densmore Circle, Mt. Pleasant, South Carolina. Ms. Nix passed away on August 20, 2016. Compl., para. 1 (Nov. 9, 2020). Ethan Nix was initially appointed as the PR of the Estate of Norma J. Nix. Alan Nix has since been appointed a Co-PR.

The home is in the Churchill Park subdivision of the Park West Development in Mt. Pleasant. In 2013, the Nixes became delinquent in their homeowners' association payments to Churchill Park and Park West Master Association, Inc. they ultimately paid the balance due to Park West but failed to cure the delinquency owed to Churchill Park. It hired MTB to represent it in the pursuit of recovery of the amounts owed. In 2014, MTB initiated a

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foreclosure action on behalf of Churchill Park in Charleston County (C/A 2014-CP-10-4031[1]). Todd Musheff, a lawyer, worked for MTB during part of the underlying case and has since left to start his own practice, the Law Offices of Todd M. Musheff, LLC.

Alan Nix, proceeding largely *pro se*, fought the foreclosure vigorously. A trial took place before Master-In-Equity Mikell Scarborough, which resulted in an Order awarding Churchill Park over $22,000. Nix appealed the foreclosure Order but failed to perfect the appeal.

The case was ultimately remitted to the trial court on January 21, 2020. After a hearing on supplemental damages, the court entered judgment in the amount of $123,296.89, and the property was sold at foreclosure sale on October 6, 2020.

Alan Nix filed two *pro se* lawsuits against these Defendants in 2018 in the Charleston County Court of Common Pleas, C/A 2018-CP-10-2302 and 2018-CP-10-2356. These cases included claims under the Fair Debt Collections Practices Act, 15 U.S.C. § 1692. Both cases were removed to federal court, where Judge Gergel Dismissed them and issued Orders of Judgment against Mr. Nix.[2] Both of these cases complained of alleged problems and improprieties with the foreclosure action.

In 2019, Mr. Nix filed another *pro se* lawsuit in Charleston County naming MTB, Churchill Park and a host of other Defendants, C/A 2019-CP-10-0067. This Complaint listed various causes of action and complained of "ongoing pattern of mismanagement" of the

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[1]The foreclosure was originally filed in case 2014-CP-10-05407. The court dismissed the case pursuant to SCRCP 40(j) and assigned C/A no. 2017-CP-10-4031 upon being restored to the active docket.
[2]*See* 2:18-cv-01352-RMG-BM and 2:18-cv-01360-RMG-BM.

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foreclosure matter. Judge Deidra Jefferson dismissed that case via an Order filed October 17, 2019. Nix appealed, and the Court of Appeals dismissed the appeal on May 14, 2021. *See* Appellate Case no.: 2019-001951.

Alan Nix also filed another *pro se* lawsuit in Charleston County against Churchill Park and others (not these Defendants) in 2018, C/A 2018-CP-10-03315. On September 27, 2019, Judge Maite Murphy entered an Order in that case sanctioning Nix for his frivolous court filings and directing the Charleston County Clerk of Court to refuse to accept further filings from Nix not signed by a licensed lawyer. Ex. 1 to Motion to Dismiss (Jul. 22, 2021).

Finally, Alan Nix, on his own behalf, on behalf of his deceased wife, and as the purported co-executor of his wife's Estate, along with Ethan Nix as Co-PR of the Estate of Norma Nix, filed this action in Richland County on November 9, 2020. The lawsuit alleges wrongdoing with respect to the foreclosure case and purports to allege a single cause of action for violation of the Unfair Trade Practices Act, S.C. Code § 39-5-20 ("UTPA"). The Complaint itself is seven pages long and includes over 300 pages of exhibits.

The "factual allegations" section of the Complaint references a November 8, 2017, email from MTB to Judge Scarborough and the parties the foreclosure matter. The email contained a proposed Order that Judge Scarborough signed, and which the court filed, on November 9, 2017. The Complaint alleges it was improper to include certain language in that Order. The single cause of action in the Complaint, listed as "Unfair Trade Practices Act," states only:

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30: On information and belief, Judge Scarborough knew or should have known that it was improper to sign Exhibit A given his knowledge of Real Estate Law and the fact that the original of Exhibit X had not been filed with the Charleston County ROD>

To date, Plaintiffs have not served or made efforts to serve these Defendants. These Defendants found the Complaint online and retained counsel who filed the subject Motion to Dismiss on July 22, 2021. Counsel for these Defendants served Plaintiffs with the Motion to Dismiss. *See* Certificate of Service filed with the Motion and Proof of Service filed Feb. 10, 2022. Plaintiffs have not filed any response to the Motion to Dismiss, nor have they moved to amend the Complaint to address any alleged deficiencies.

STANDARD OF REVIEW

SCRCP 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. *See also* Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling *solely* upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); *see also* Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id.

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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. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The appellate court may sustain the dismissal when the facts alleged in the complaint do not support relief under any theory of law. Flateau v. Harrelson, *supra.* A decision on a Rule 12(b)(6) motion is confined to the four corners of the complaint. Daisy Outdoor Advertising Co., Inc. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996).

CONCLUSIONS OF LAW

1. **Statute of Limitations**

SCRCP 3(a) provides that a civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the applicable statute of limitations; or (2) if not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing.

The Complaint alleges a single cause of action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* ("UTPA"). UTPA claims are subject to a three-year statute of limitations. S.C. Code § 15-5-150 ("No action may be brought under this article more than three years after the discovery of the unlawful conduct which is the subject of the suit."); *see also* Lauren Proctor & Trans-Union Nat. Title Ins. Co. v. Whitmark & Whitmark, Inc. (SC 2015).

The discovery rule applies to UTPA cases and provides: "the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." State ex rel.

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Wilson v. Ortho-McNeil-Janssen Pharm., Inc., 414 S.C. 33, 777 S.E.2d 176 (S.C. 2015). The "exercise of reasonable diligence" means that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333 (1981). The fact that the injured party may not comprehend the full extent of the damage is immaterial. Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App.1985); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1995).

The Complaint arises out of activity that took place on November 8, 2017, in the foreclosure matter. Pursuant to the discovery rule, the statute of limitations expired November 8, 2020. Plaintiffs filed the Complaint on November 9, 2020. Further, one hundred twenty days (120) from the filing date expired on March 9, 2021. Plaintiffs did not serve these Defendants with the Summons and Complaint by then, nor have the Plaintiffs made any effort to serve these Defendants to date. The Complaint is therefore subject to dismissal for failure to comply with the statute of limitations.

2. **Service**

SCRCP 5 governs service and filing of pleadings and other papers. Rule 5(d) provides that proof of service shall be filed within ten (10) days after service of the summons and complaint. Further, "[U]pon failure to serve the summons and complaint, the action may be dismissed by the court on the court' sown initiative or upon application of any party." Id. Plaintiffs have not served or attempted to serve these Defendants with the Summons and

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Complaint, which they filed on November 9, 2020 (over fourteen months ago). The Complaint is therefore subject to dismissal under SCRCP 12(b)(5).

3. **Failure State a Claim Rule 12(b)(6)**

A defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. SCRCP 12(b)(6); *see also* Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. 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. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

The Complaint alleges a single cause of action for violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* ("UTPA"). Section 39-5-140(a) of the UTPA provides that a person who suffers any ascertainable loss of property, real or personal, because of the use or employment by another person of an unfair or deceptive

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method, act or practice declared unlawful by § 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. An unfair trade practice something offensive to public policy or which is immoral, unethical or oppressive." deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399 (Ct. App. 2000).

The UTPA specifically precludes bringing such a claim in a representative capacity. S.C. Code § 39-5-20. Thus, the Complaint is subject to dismissal for failure to state a claim under the UTPA because Alan Nix and Ethan Nix (non-lawyers) filed the claim on as representatives of of Norma Nix and the Estate of Norma Nix.

The Complaint also fails to state facts sufficient to state a claim for violation of the UTPA against these Defendants. The elements of a claim for violation of the UTPA are: (1) violation of the Act; (b) proximate cause; and (c) damages. Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995). It is essential that the act or practice complained of have an impact on the public interest. Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). A complaint need not use the "magic language" adverse impact on the public interest; it is sufficient to allege the conduct is capable of repetition. Sadighi v. Daghighfekr, 36 F. Supp. 2d 279 (D.S.C. 2003); *see also* Estate of Carr v. Circle S. Enters., 379 S.C. 31, 644 S.E.2d 83 (Ct. App. 2008).

The Complaint appears to take issue with language in an Order in the foreclosure matter. Plaintiffs allege it was improper to include the phrase, "[W]here as, by execution of this agreement" because the agreement referenced was not filed with the Register of Deeds. The Agreement at issue is apparently Exhibit X to the Complaint, an Assignment of

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Foreclosure Rights whereby the Park West Master Association, Inc. assigned rights to foreclose to Churchill Park, Mr. Nix' HOA. His former[3] home is in the Churchill Park subdivision of the Park West development in Mount Pleasant. It appears Alan Nix attempted to fight the foreclosure of the home on the grounds that Churchill Park, the named Plaintiff, was not the actual party in interest. Master-In-Equity Mikell Scarborough disagreed and issued the Order attached as Exhibit A to the Complaint.

Paragraph 18 of the Complaint says "[I]t is indisputable that a document dealing with such rights to real estate must be filed with and published by the County's Register of Deed's Office for it to be valid and enforceable." The Complaint cites no authority for this proposition, and again, Judge Scarborough disagreed and ruled as such. Regardless, such a statement serves as no basis for a UTPA claim, much less one against these Defendants.

Further, the Complaint's single cause of action contains only one statement, "[O]n information and belief, Judge Scarborough knew or should have known that it was improper to sign Exhibit A [the Final Order in the Foreclosure Case] given his knowledge of Real Estate Law [sic] and the fact that the original of Exhibit X [the Assignment of Foreclosure Rights] had not been filed with the Charleston County ROD." Compl., para. 30. This statement does not set forth facts sufficient to make a claim under the UTPA, much less one against these Defendants. The Complaint fails to set forth any allegation of fact supporting a claim that these Defendants engaged in any unfair method of competition or unfair or deceptive act in the conduct of any trade or commerce. The Complaint also fails to state how

[3]It has been sold in foreclosure to an innocent third party.

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any such act caused Plaintiffs to incur damages. Even read in the light most favorable to Plaintiffs, the Complaint fails to state facts sufficient to constitute a cause of action against these Defendants. The Complaint is therefore subject to dismissal under SCRCP 12(b)(6).

4. Failure to Prosecute

"For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him." SCRCP 41(b). The plaintiff has the burden of prosecuting his/her action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with her cause. Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 755 (1983). "In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant." McComas v. Ross, 626 S.E.2d 902, 368 S.C. 59 (Ct. App. 2006) *citing* Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996).

Plaintiffs filed this lawsuit on November 9, 2020. The lawsuit names at least thirteen Defendants, including lawyers, law firms and property management companies (and their "officers and directors"). Since filing the lawsuit, Plaintiffs have taken no action to move the case. Even after service of the subject Motion to Dismiss that raised service issues and other insufficiencies, Plaintiffs failed to attempt to serve the lawsuit or take any efforts to address the issues raised in these Defendants' Motion to Dismiss. Plaintiffs also chose not to attend the hearing for the Motion to Dismiss despite having proper (and actual) notice of it.

This matter has been pending since November 2020, and Plaintiffs have failed to prosecute the case in any manner at all. This shows a blatant disregard for the rights of these

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Defendants and the court system. Therefore, the claim is subject to dismissal for failure to prosecute under SCRCP 41(b).

5. **Improper Party**

A deceased person is not a proper party to a lawsuit. *See* SCRCP 25. Under Rule 25, an action may be dismissed as to a deceased party if substitution is not made within a reasonable time. Norma Nix passed away on August 20, 2016. Compl., para. 1. Thus she is not a proper party to any lawsuit. The Complaint is therefore subject to dismissal as to Norma J. Nix.

6. **Res Judicata**

The doctrine of 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 these parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). Res judicata prevents a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Commn of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); *accord.* Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). Res judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies. Res judicata ends litigation, promotes judicial economy and avoids the harassment of re-litigation of the same issues. James F. Flanagan, South Carolina Civil Procedure 642 (2nd ed. 1996).

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In short, res judicata stands for the principle that there should be an end of litigation, and no one should be twice sued for the same cause of action. First Nat. Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v. Smith; 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). To establish res judicata, a defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).

This is at least the fourth lawsuit Alan Nix has filed against MTB arising out of and taking issue with the foreclosure matter. While couched in somewhat different terms, Plaintiffs' complaints in this lawsuit mirror those made in those prior suits, all of which were dismissed with prejudice. Nix v. Churchill Park, et al.; C/A 2019-CP-10-0067 named numerous Defendants, including MTB and its "individual directors, officers, agents, attorneys, accountants, independent contractors, investors, successors, predecessors, parents, subsidiaries, sisters and affiliated entities, partners and members or all named entities." While the Law Offices of Todd Musheff was not named in that lawsuit, Mr. Musheff worked for MTB at all times pertinent to the foreclosure matter, which is the subject of this and the Charleston case (0067). Further, while that Complaint was devoid of any actual

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factual allegations, it raised a cause of action for violation of the UTPA, which is the sole cause of action identified in the subject Complaint.

Nix also filed two other cases in the Charleston County Court of Common Pleas in 2018 naming MTB and Todd Musheff's law firm as Defendants (C/A 2018-CP-10-2356 and 2018-CP-10-2302). Those cases also arise out of and relate to the underlying foreclosure matter and allege wrongdoing by MTB, its lawyers, and others in the prosecution of it. These cases allege causes of action for violation of the Fair Debt Collections Practices Act, but the subject matter related to issues with the foreclosure case. These cases were removed to federal court, where Judge Gergel granted summary judgment in favor of the Defendants and awarded costs against Nix in favor of the Defendants (C/A 2:18-1360-RMG and 2:18-1352-RMG).

Thus, the instant case is at least Alan Nix' fourth attempt to sue MTB and its lawyers (including Todd Musheff) over the foreclosure matter. The three prior matters were all adjudicated in favor of the defendants (including MTB and its lawyers). This lawsuit is thus subject to dismissal pursuant to res judicata.

7. **Unauthorized Practice of Law**

S.C. Code § 40-5-310 governs the unauthorized practice of law. It says no person may practice law or solicit the legal cause of another person or entity in South Carolina unless he/she is enrolled as a member of the South Carolina Bar. Representing the estate of a deceased person in a legal action constitutes the practice of law in South Carolina, which requires a licensed attorney to engage in such representation. Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705 (2005).

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For reasons discussed above, Norma J. Nix is deceased and not a proper party to any lawsuit. The Estate of Norma J. Nix is a Plaintiff in this matter. Alan Nix and Ethan Nix purport to represent the Estate of Norma J. Nix in this case as co-personal representatives of the Estate. However, neither is a licensed South Carolina lawyer. Thus, Alan Nix and Ethan Nix are engaged in the unauthorized practice of law to the extent they purport to represent the Estate of Norma Nix. The Complaint is subject to dismissal as a result.

8. Sanctions/Gatekeeper Order

The South Carolina Frivolous Proceedings Act, S.C. Code § 15-36-10, *et seq.* ("FCPSA") allows for imposition of sanctions for the initiation and prosecution of civil claims without merit where the court finds, by a preponderance of the evidence, that a reasonable lawyer in the same circumstances would believe:

(a) that under the facts, his claim or defense was not clearly warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) his procurement, initiation, continuation or defense of the civil suit was intended to merely harass or injure the other party; or

(c) the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim of defense upon with the proceedings are based. S S.C. Code § 15-36-10(C)(1)(a)-(c).

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In determining if a *pro se* litigant has violated the provisions of the FCPSA, § 15-36-100(E) sets forth the following factors the court should consider:

(a) The number of parties;

(b) The complexity of the claims and defenses;

(c) The length of time available to the lawyer, party, or *pro se* litigant to investigate and conduct discovery for alleged violations for the provisions of subsection (A)(4);

(d) Information disclosed or undisclosed to the lawyer, party, or *pro se* litigant through discovery and adequate investigation;

(e) Previous violations of this section;

(f) The response, if any, of the lawyer, party or *pro se* litigant to the allegation that he violated the provisions of this section; and

(g) Other factors the court considers just, equitable or appropriate under the circumstances.

The decision as to whether to award sanctions under the FCPSA is treated as one in equity. Pee Dee Health Care, PA v. the Estate of Thompson, 418 S.C. 557, 563, 795 S.E.2d 40, 43 (Ct. App. 2016). The court has wide discretion when ordering sanctions, to include: (1) reasonable costs and attorney's fees; (2) a reasonable fine to the court; (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action brought in bad faith. S.C. Code § 15-36-10(G).

The court acknowledges Plaintiffs are *pro se*. However, lack of familiarity with legal proceedings is not an acceptable excuse, and the court will hold a layman to the same

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standard as a lawyer. Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). The applicable law specifically provides that *pro se* plaintiffs are subject to the FCPSA, and "sanctions may be awarded regardless of whether the case has been tried to a verdict so long as the trial court finds by a preponderance of evidence that the party should be sanctioned." Holmes v. East Cooper Comm. Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2012).

Pursuant to § 15-36-10, a *pro se* litigant, participating in a civil action may be sanctioned for filing a frivolous pleading, motion or document as detailed above under S.C. Code § 15-36-10(C)(1)(a)-(c).

South Carolina courts have acted on this statute and awarded sanctions against *pro se* litigants when the case was frivolous in nature; the *pro se* litigant could not substantiate claims with facts; and *pro se* litigants engage in tactics to delay proceedings, including appeals of interlocutory matters. Holmes v. Haynsworth, Sinkler & Boyd, PA, 408 S.C. 620, 760 S.E.2d 399 (2014) (holding sanctions are proper against *pro se* appellant for frivolous and dilatory[4] tactics).

This court finds Alan Nix has violated the FCPSA. Specifically, he has now filed four lawsuits against MTB and its lawyers arising out of and related to the underlying foreclosure matter. At the core of all four lawsuits is Alan Nix' allegations of wrongdoing in the 2017 foreclosure case. The three prior suits have all been dismissed, and all avenues of appeal of those cases have expired. Further Plaintiffs filed this matter in November 2020. They never served or attempted to serve any Defendant with the Complaint, nor did they move to amend

[4]Tending or intended to cause delay; characterized by procrastination. https://www.merriam-webster.com/dictionary/dilatory.

the Complaint or otherwise respond to the Motion to Dismiss. Plaintiffs also chose not to attend the hearing for the Motion to Dismiss.

Alan Nix is clearly displeased that his family home was lost in a foreclosure matter. He is particularly displeased with the law firm and lawyers that represented his homeowners' association in that case. This court finds by a preponderance of the evidence, that Plaintiffs (and Alan Nix in particular) filed this lawsuit without any factual or legal basis, with no intent to pursue it, and for purposes of delay, annoyance and harassment.

Further, Alan Nix' continued filings in this and other cases demonstrate a pattern which shows a clear disdain for the judicial process, all of which continues to waste the court's resources and frivolously subject these Defendants and other litigants to costs and fees to defend the repetitive litigation.

This is a prime example of where sanctions are appropriate. Alan Nix' recalcitrant efforts to continue to litigate issues that have repeatedly been dismissed are frivolous and potentially malicious. This court will not allow Alan Nix to continue to abuse and harass the judicial system and subject these Defendants to the unnecessary burden and expenses of continuing to re-litigate matters related to the foreclosure case.

I therefore GRANT these Defendants' request for sanctions and impose an Injunctive Order preventing the Clerk of Court from hereafter filing any pleadings from Alan Nix, acting *pro se*, regarding matters arising out of or related to the foreclosure case. The Clerk of Court may only accept further pleadings regarding the foreclosure matter when filed by a licensed South Carolina lawyer retained by Alan Nix.

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CONCLUSION

IT IS THEREFORE ORDERED that:

1. The Complaint is dismissed with prejudice as to Defendants identified as McCabe, Trotter & Beverly, the Law Offices of Todd Musheff, and their officers and directors; and

2. The Clerk of Court of Richland County shall refrain from filing any additional complaints and/or other pleadings related to the foreclosure matter[5] filed by Alan Nix, *pro se*, and the Clerk is only to accept such pleadings if submitted by a licensed South Carolina lawyer.

IT IS SO ORDERED.

[5] C/A 2014-CP-10-05407/2017-CP-10-4031.

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Richland Common Pleas

Case Caption:	Norma J Nix , plaintiff, et al vs Churchill Park Homeowners Association Inc , defendant, et al
Case Number:	2020CP4005255
Type:	Order/Dismissal

So Ordered

Jocelyn Newman

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