



allegations, Magistrate Judge Kevin McDonald ruled that Plaintiff's medical and mental health treatment records were proportional to the needs of the case. *See* Doc. Entry No. 124, Civ. Action No. 7:18-cv-02957-JD-KFM.<sup>2</sup>

Defendants Holcombe Bomar, P.A., and attorneys William B. "Kip" Darwin, Jr. and Todd R. Flippin, represent the SMC Defendants in the still-pending District Court case. It is solely the Defendants' alleged conduct regarding these treatment records in the underlying District Court lawsuit that forms the basis for the Plaintiff's Complaint in the case at bar.

On November 24, 2021, Plaintiff filed this lawsuit alleging that Defendants are liable to Plaintiff for invasion of privacy, intentional infliction of emotional distress, and abuse of process based on Defendants' conduct in representing their clients in Dr. Lashley's still pending federal employment discrimination lawsuit. Specifically, Plaintiff alleges in this case that Defendants inappropriately obtained and disclosed Plaintiff's medical records.

### **Legal Standard**

On a Motion to Dismiss under Rule 12(b)(6), "a trial judge may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting Rule 12(b)(6), South Carolina Rules of Civil Procedure). "The trial court must dispose of a motion for failure to state a cause of action based

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questioned." *Whaley v. South Carolina Federal Credit Union*, No. 2012-CP-18-00539, 2012 WL 10861805, at \*1 (S.C.Com.Pl. Sep. 17, 2012) (taking judicial notice of federal filings in a receivership proceeding).

<sup>2</sup> According to the federal court's docket report, on December 8, 2020, Magistrate Judge Kevin McDonald entered the following order: "By December 31, 2020, the medical professionals and healthcare facilities identified in Addendum A are ordered to provide the defendants' counsel with the plaintiff's complete treatment record from January 1, 2014, through the date of this order. Records shall be provided, at the defendants' expense, to the defendants' counsel."

solely upon the allegations set forth on the face of the complaint." *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *Int'l Paper*, 352 S.C. at 413, 574 S.E.2d at 230. Although properly pleaded facts are accepted as true for the analysis of a motion to dismiss, "under our state pleading rules, Rule 8, SCRPC, facts must be pleaded to state a cause of action," and a claim will be dismissed if it fails to allege the elements of a claim. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 363 S.E.2d 691, 294 S.C. 240 (1988).

### Analysis

#### **A. HOLCOMBE BOMAR, P.A., MR. FLIPPIN, AND MR. DARWIN ARE IMMUNE FROM PLAINTIFF'S LAWSUIT**

South Carolina courts have long recognized that an attorney acting in the course and scope of representing a client owes no duties to non-clients and is immune from liability to third parties absent some independent duty owed to the third party. *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006), overruled on other grounds by *Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 571, 861 S.E.2d 774, 779 (2021), *reh'g denied* (Aug. 18, 2021); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995); *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986) ("In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities."); *Argoe v. Three Rivers Behavioral Center & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551, 554-55 (2010) ("Because [Attorney] represented Son and not Appellant in the ... transaction, the only duty of care arising out of that relationship was owed to Son.").

To be sure, mere absence of privity does not provide "absolute immunity to an attorney under any and all circumstances." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602 (recognizing that

immunity does not extend to situations where an attorney “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.”). However, Plaintiff bears the burden of alleging the basis of an independent duty owed to her by her former employer’s attorneys.

Plaintiff has not alleged, and cannot allege, that Holcombe Bomar owed an “independent duty” to her. Accordingly, this exception to attorney immunity does not apply. See *Douglass ex rel. Louthian v. Boyce*, 344 S.C. 5, 9-11, 542 S.E.2d 715, 717-18 (2001) (affirming dismissal of third-party tort claims against counsel on the grounds that the attorney for the personal representative owed no “independent duty” to the statutory beneficiaries). Similarly, there is no claim that Holcombe Bomar’s attorneys acted in their “own personal interest, outside the scope of [their] representation of the client.” *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602; see also *Douglass v. Boyce*, 336 S.C. 318, 10, fn. 5, 519 S.E.2d 802, 817, fn. 5 (Ct. App. 1999) (finding “no allegation the attorneys were acting for their own personal interests, another exception to the immunity rule”).

Dr. Lashley alleges, as she must, that Defendants were “counsel of record” for SMC in the underlying lawsuit. Complaint, at ¶ 10. She repeatedly alleges, Mr. Flippin and Mr. Darwin were “acting in the course and scope of their employment with and in furtherance of the business interests of Defendant Holcombe Bomar.” *Id.*, at ¶¶ 4, 36, 54, 64, & 78. However, Dr. Lashley fails to allege any facts accusing Defendants of acting for some reason other than their representation of the SMC Defendants. This is fatal to her Complaint.

Moreover, allegations that counsel acted in pursuit of personal interests, and not as counsel for clients, would be nonsensical in this context, where each of the claims at issue is based upon actions taken in connection with the underlying lawsuit; in which Holcombe Bomar was not a party. See *Gaar*, 287 S.C. at 529, 339 S.E.2d at 889 (noting that the attorney-defendants acted in

their “capacity as attorneys” and “did not become parties to the [underlying] lawsuit”). It is an even further stretch to shoehorn Plaintiff’s allegations against Holcombe Bomar within the elements of the tort of abuse of process as it is Dr. Lashley who initiated the federal lawsuit giving rise to her complaints.

Plaintiff’s allegations in the Amended Complaint state nothing more than that Holcombe Bomar zealously pursued its clients’ defenses against Dr. Lashley’s federal lawsuit. Plaintiff has not alleged, and cannot allege, that Holcombe Bomar’s attorneys were personally involved in that litigation for reasons other than their representation of the SMC Defendants. Dr. Lashley bases her unfounded claims on the following alleged actions.

- Defendant Flippin issued eleven subpoenas *duces tecum* to Plaintiff’s medical providers. Complaint, at ¶ 11;
- Defendant Flippin notified these providers that Plaintiff had sought protection from the release of her medical records and that they must refrain from responding until the issue was resolved. *Id.*, at ¶ 14;
- [Dr. Lashley’s attorney agreed that] if Defendants’ counsel received any medical records pursuant to subpoena, all counsel would meet to review those records. *Id.*, at ¶ 15;
- [After Judge McDonald entered a text order recognizing that the prior discovery motions were rendered moot based on the agreement of counsel] Defendant Flippin sent a letter to Plaintiff’s medical providers “falsely” stating that the Court had entered an order authorizing the release of Plaintiff’s medical records or stating that Plaintiff no longer opposed the release of her medical records. Mr. Flippin failed to send Dr. Lashley’s attorney copies of those letters. *Id.*, at ¶ 21;

- Defendants “obtained Plaintiff’s medical records purportedly through subpoenas to Carolina Mountain Gastroenterology and FastMed Urgent Care.” *Id.*, at ¶ 23;
- Defendants moved to compel Plaintiff to sign forms authorizing release of the medical records. *Id.*, at ¶ 25;
- Defendants did not follow the agreed upon and court-approved procedure, but instead continued to seek Plaintiff’s medical records directly from the providers, without notice to Plaintiff’s counsel. *Id.*, at ¶ 28;
- Defendants released documents certified as “HIGHLY CONFIDENTIAL—FOR ATTORNEYS’ EYES ONLY” to non-authorized persons outside the terms of the Confidentiality Order. *Id.*, at ¶ 29;
- Defendants SMC’s Human Resources department employee “reviewed approximately 75 pages of Plaintiff’s medical records” *Id.*, at ¶ 30;
- Defendants disclosed a draft of the psychological testing report to individuals other than the claims representative. *Id.*, at ¶ 34;
- Defendants filed a Motion to Allow Psychological Testing and Mental Examination of Plaintiff. *Id.*, at ¶ 32; and,
- Defendant Darwin agreed<sup>3</sup> in an email that the Rule 35 examination report would be shared only with the claims representative, but disclosed the report to other individuals. *Id.*, at ¶ 34.

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<sup>3</sup> Plaintiff cannot prevail on her claim that a draft psychological testing report, which was completed after she volunteered to sit for a Fed. R. Civ. P. 35 examination, was disclosed contrary to the “express agreement” between Plaintiff’s federal court attorney, David Rothstein, and Mr. Darwin because such agreements are unenforceable. Under South Carolina law, agreements among counsel regarding the conduct of litigation “shall not be binding.” SCRCP, Rule 43(k). Accepting as true (for the limited purposes of this motion only) that Mr. Darwin and Mr. Rothstein reached an agreement regarding Plaintiff’s psychological evaluation, such an agreement cannot be

Because these allegations do not implicate any exception to the doctrine of attorney immunity, Plaintiff's tort claims fail as a matter of law, and Plaintiff's Complaint should be dismissed. See *Stiles*, 318 S.C. at 300, 457 S.E.2d at 603 (affirming 12(b)(6) dismissal of claim against counsel where claimant did not allege "in what manner" counsel acted outside of his professional capacity and did not allege that counsel "breached some independent duty" owed to the plaintiff).

Nowhere in her Complaint does Dr. Lashley allege that Holcombe Bomar acted without the SMC Defendants' knowledge or authority, acted outside of the scope of their professional representation of the SMC Defendants, or acted in any way except as counsel for the SMC Defendants. Dr. Lashley's rote recitations of the elements of these causes of action are not enough to subject these attorneys to liability to a non-client for acts undertaken in the course and scope of representing Holcombe Bomar's clients. To find otherwise would allow any adverse party dissatisfied with the results of prior litigation to bring a claim against opposing counsel by simply alleging that the attorney's routine discovery conduct allows recovery through claims in tort.

**B. PLAINTIFF'S INVASION OF PRIVACY CLAIMS CANNOT SURVIVE RULE 12(B)(6) MOTION BECAUSE SHE FAILS TO ALLEGE AN UNLAWFUL INTRUSION OR A TORTIOUS PUBLICATION**

South Carolina courts recognize three distinct causes of action for invasion of privacy. Of these, Plaintiff is pursuing claims for (1) "the publicizing of one's private affairs with which the public has no legitimate concern," and (2) "the wrongful intrusion into one's private activities." *Meetze v. Associated Press*, 230 S.C. 330, 355, 95 S.E.2d 606, 608 (1956). This claim must be applied in the proper context, however, which in this case is as a Plaintiff litigant alleging emotional distress damages in a separate federal court proceeding.

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enforced by this Court. Therefore, to the extent Plaintiff stakes her claims on an email between counsel in the federal lawsuit, she fails to allege facts supporting a valid claim for relief.

As a preliminary matter, Plaintiff's claims to privacy into her medical and mental health records were waived when she filed her federal lawsuit alleging emotional distress damages. Plaintiff made her medical and mental health central issues in that lawsuit and waived any otherwise-applicable recognized privilege. "[A] plaintiff who alleges severe or extreme emotional distress damages as a result of defendant's conduct" waives the privilege against disclosure of psychological records. *Cappetta v. GC Services Ltd. Partnership*, 266 F.R.D. 121, 128 (E.D.Va. 2009).

Moreover, in *Carpenter v. Res-Care Health Services, Inc.*, a federal district court determined that defendants were entitled to the terminated employee's mental treatment records to determine whether the plaintiff had "pre-existing conditions that relate to or affect her claims of emotional distress and to determine the cause of her alleged injuries." C/A No. 3:12-cv-08047, 2013 WL 1750464, at \*2 (S.D.W.Va. Apr. 23, 2013). The *Carpenter* court surveyed opinions that demonstrate Defendants' unquestionable right to discovery into Plaintiff's past medical and mental health treatment records.

*EEOC v. Dolgencorp, LLC*, 2011 WL 1260241 (M.D.N.C. Mar. 31, 2011) (Medical records are subject to discovery when a party claims emotional or mental distress.); *EEOC v. Smith Bros. Truck Garage, Inc.*, 2011 WL 102724, at \*2 (E.D.N.C. Jan. 11, 2011) (Defendant may review plaintiff's medical records to determine whether other contributing factors or events prior to termination caused the alleged emotional distress or anxiety.); *Carr v. Double T Diner*, 2010 WL 3522428, at \*2 (D.Md. Sept. 8, 2010) ("Plaintiff's mental state is at issue for purposes of discovery because her emotional suffering is germane to the calculation of damages she requested in her complaint."); *Jimoh v. Charlotte-Mecklenburg Housing Partnership, Inc.*, 2009 WL 4062881 (W.D.N.C. Nov. 20, 2009) ("Plaintiff has placed her alleged mental state and any factors causing that mental state squarely at issue in this case. Plaintiff's medical, psychological and counseling records are both relevant and discoverable. A party claiming compensatory damages for emotional distress, pain and suffering, and mental anguish puts her mental and physical condition at issue and must produce requested medical records."); *Teaque v. Target Corp.*, 2006 WL 3690642 (W.D.N.C. Dec. 11, 2006); *Coffin v. Bridges*, 72 F.3d 126 (4th Cir.1995) (unpublished, *per curiam* decision).

*Carpenter*, at \*2. Federal courts recognize the relevance, and importance, of discovery into mental health records in cases where plaintiffs – like Lashley – claim injuries beyond “garden-variety” emotional distress. *Id.* Accordingly, Plaintiff could not and does not possess a reasonable expectation of privacy into the healthcare records vital to the prosecution of, and defense against, her claims.

### **1. Wrongful Intrusion**

Plaintiff’s Complaint fails to allege any facts supporting her claim for wrongful intrusion into her private activities. She alleges that Defendants are at fault for the “unauthorized obtaining and disclosure of her medical records.” Complaint, at ¶ 36. Under federal law, subpoenas issued under Rule 45 for discovery of relevant documents are subject to the “standard[s] codified in Rule 26.” *Schaaf v. SmithKline Beecham Corp.*, 233 F.R.D. 451, 453 (E.D.N.C.2005). A subpoena may be used to discover “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed.R.Civ.P. 26(b). “The scope of relevancy under the discovery rules is broad, such that relevancy encompasses any matter that bears or may bear on any issue that is or may be in the case.” *Carr v. Double T Diner*, 272 F.R.D. 431, 433 (D.Md. 2010). Therefore, Dr. Lashley cannot state a claim based on the use of subpoenas in the routine defense of a lawsuit and, as noted herein, the federal court has already come to this conclusion

### **2. Wrongful Publication**

As to her claims for wrongful publicizing of private affairs, “an essential element of recovery is a showing of a public disclosure of private facts.” *Rycroft v. Gaddy*, 281 S.C. 119, 124, 314 S.E.2d 39, 43 (Ct. App. 1984) (internal citations omitted). Notably, Plaintiff alleges that Defendants “publicized matters concerning Plaintiff that were not of legitimate public concern” without alleging any actual disclosure to the public. Complaint, at ¶ 47.

“Communication to a single individual or to a small group of people, absent a breach of contract, trust, or other confidential relationship, will not give rise to liability” under this cause of action. *Id.* It is important to note that Plaintiff did not overtly allege to whom such tortious publication was made. Instead, she merely alleges that the psychological examination was sent “to individuals other than the claim representative.” Complaint, at ¶ 34. This omission is fatal to her claim that Holcombe Bomar publicized her private affairs. Instead, Plaintiff alleges that “a former employee of SMC in the Human Resources department [deposed] that she had reviewed approximately 75 pages of Plaintiff’s medical records.” Complaint, at ¶ 30. This is not a publication.

Even if a publication were plead, Plaintiff must still prove four additional elements. First, that the conduct amounted to an “intrusion,” which may consist of “watching, spying, prying, besetting, overhearing, or other similar conduct.” *Snakenberg v. Hartford Cas. Ins. Co.*, 299 S.C. 164, 171, 383 S.E.2d 2, 6 (Ct. App. 1989). Second, that intrusion was into a concern that a reasonable person “normally expects will be free from exposure to the defendant.” *Id.* Third, the intrusion must be substantial and unreasonable enough as would “cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.” *Id.* Finally, the intrusion must be intentional. *Id.*, 299 S.C. at 172, 383 S.E.2d 2, 6. As shown above, Holcombe Bomar’s routine discovery conduct, as alleged in Plaintiff’s Complaint, cannot satisfy these elements.

**C. PLAINTIFF FAILS TO ALLEGE CONDUCT SO EXTREME AND OUTRAGEOUS TO SUPPORT A CLAIM FOR THE INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

Plaintiff’s claims for the intentional infliction of emotional distress must also be dismissed. A claim for outrage requires Plaintiff establish, among other things, that Defendants’ conduct “was so ‘extreme and outrageous’ so as to exceed ‘all possible bounds of decency’ and must be regarded as ‘atrocious, and utterly intolerable in a civilized community.’” *Hansson v. Scalise Builders of*

S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70–71 (2007) citing *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981)).

Plaintiff’s outrage claims are dismissed as her allegations simply fail to describe the sort of conduct proscribed by South Carolina law. See *Dye v. Gainey*, 320 S.C. 65, 69, 463 S.E.2d 97, 99 (Ct. App. 1995) (affirming dismissal of intentional infliction of emotional distress claims on motion to dismiss). The South Carolina Supreme Court has held the circuit courts undertake a “significant gatekeeping role” in analyzing whether the alleged conduct was sufficiently outrageous and the emotional distress sufficiently severe to survive a motion to dismiss. *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011) (citing *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72). In order to establish a claim for intentional infliction of emotional distress, Dr. Lashley needed to have alleged that the Holcombe Bomar attorneys intentionally or recklessly conducted themselves in a manner that was “extreme and outrageous,” exceeding “all bounds of decency,” “atrocious,” and “utterly intolerable.” See *Ford*, 276 S.C. at 162, 276 S.E.2d at 778 (adopting elements set forth in Restatement (Second) of Torts § 46). Dr. Lashley’s Complaint fails to make any such showing.

**D. PLAINTIFF FAILS TO ALLEGE ANY ULTERIOR PURPOSE NECESSARY TO STATE A CLAIM FOR ABUSE OF PROCESS**

To survive a motion to dismiss her claims for abuse of process, Dr. Lashley must “assert two essential elements: 1) an ‘ulterior purpose,’ and 2) a ‘willful act in the use of the process not proper in the conduct of the proceeding.’” *Food Lion, Inc. v. United Food & Commercial Workers Int’l Union*, 351 S.C. 65, 71, 567 S.E.2d 251, 253 (Ct. App. 2002) (quoting *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997)).

Dr. Lashley has not alleged that Holcombe Bomar acted with some purpose other than the legitimate defense of her claims against the SMC Defendants. “An ulterior purpose exists if the

process is used to gain an objective not legitimate in the use of the process.” *Id.* However, “[a]n allegation of an ulterior purpose or ‘bad motive,’ standing alone, is insufficient to assert a claim for abuse of process.” *Id.* “There is no liability under this tort when the process has been carried to its authorized conclusion, even though with bad intentions.” *Rycroft*, 281 S.C. at 125, 314 S.E.2d at 44 (no ulterior purpose was shown where defendants' use of subpoena to obtain bank records was for the “entirely legitimate purpose” of gathering evidence). Dr. Lashley’s bland allegation that Defendants acted with “ulterior motive to injure, malign, or otherwise harm Plaintiff” is insufficient to survive this motion to dismiss. Complaint, at ¶ 74.

Plaintiff has also failed to allege the “willful act” element, which requires “[s]ome definite act . . . not authorized by the process or aimed at an object not legitimate in the use of the process....” *Food Lion, Inc.*, 351 S.C. at 71, 567 S.E.2d at 253. This “element comprises three components: 1) a ‘willful’ or overt act 2) ‘in the use of the process’ 3) that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Id.* Instead, Lashley’s abuse of process claim simply recites the abuse of process elements, alleging that Holcombe Bomar’s conduct was “predicated upon an ulterior motive to injure, malign, or otherwise harm Plaintiff” and “manifested willful intent to utilize the subpoena and discovery process for reasons not legitimate.” Complaint, at ¶ 71.

The Complaint does not state any specific process employed by Holcombe Bomar was aimed at any illegitimate, collateral objective. To the contrary, the Complaint alleges all efforts by the individual Defendant were undertaken in the course and scope of work for Holcombe Bomar. These allegations are insufficient to properly plead a claim for abuse of process. See *Food Lion*, 351 S.C. at 72, 567 S.E.2d at 254 (“The complaint's fatal flaw, however, is that Food Lion did not state facts sufficient to allege the third component of the ‘willful act’ element--that is, in what

manner the willful acts enumerated are improper . . . In other words, although properly alleging an act involving the process of the court, Food Lion failed to assert how the process was perverted or abused.”). None of Plaintiff’s allegations remotely suggest Holcombe Bomar abused the discovery process, which they were duty bound to their clients to pursue vigorously.

**E. DR. LASHLEY’S CLAIMS SHOULD BE DISMISSED AND HER CLAIMS SHOULD BE RESOLVED IN HER PENDING EMPLOYMENT DISCRIMINATION LAWSUIT**

Because Dr. Lashley’s allegations are duplicative of her claims pending in or resolved by motions before the U.S. District Court, her state court lawsuit should be dismissed under the doctrine of collateral estoppel and/or S.C.R.Civ.P. 12(b)(8). The facts Dr. Lashley alleges in this action are entirely related to discovery in the federal lawsuit styled *Lashley v. Spartanburg Methodist College, et al.*, 7:18–cv–02957. Therefore, the federal court is best suited to evaluate Plaintiff’s claims alleging discovery abuses. In fact, Magistrate Judge McDonald has ruled on numerous discovery motions raising these exact or substantially similar allegations in that action.

The doctrine of collateral estoppel independently bars Plaintiff’s claims against Holcombe Bomar arising out of Dr. Lashley’s federal lawsuit. That doctrine applies where a subsequent action is based upon a different claim than the first, but the court’s judgment in the first action precludes re-litigation of issues “actually and necessarily litigated and determined in the first suit.” *Beall v. Doe*, 281 S.C. 363, 368, 315 S.E.2d 186, 190 n. 1 (Ct. App. 1984). Although the Holcombe Bomar Defendants are not identical to the SMC Defendants, privity is not required for the application of the doctrine of collateral estoppel. *S.C. Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991); *Lowe v. Clayton*, 264 S.C. 75, 212 S.E.2d 584 (1975).

Thus, collateral estoppel prevents Dr. Lashley from re-litigating issues in this subsequent suit which were actually and necessarily litigated and determined in her federal employment

discrimination lawsuit. *Aaron v. Mahl*, 381 S.C. 585, 674 S.E.2d 482 (2009); *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003). Consequently, collateral estoppel clearly bars Plaintiff from claiming in this suit that Holcombe Bomar's discovery conduct, which has already been analyzed by the Magistrate Judge, entitles her to relief not afforded in federal court. As is apparent from the District Court's docket, Plaintiff had a full and fair opportunity to litigate these very issues and is now precluded from making the same arguments anew--she "has already had [her] bites at the apple." *Aaron*, 381 S.C. at 593, 674 S.E.2d at 486.

Similarly, under S.C.R.Civ.P. 12(b)(8), dismissal is appropriate when another action is pending between the same parties for the same claim. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). The court "interprets the rule narrowly such that the claim must be precisely or substantially the same in both proceedings" to support dismissal under Rule 12(b)(8). *Id.*, 390 S.C. at 323, 701 S.E.2d at 45 (citing *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105-06, 674 S.E.2d 524, 531-32 (Ct. App. 2009)). However, given that Dr. Lashley's allegations in this action derive entirely from Holcombe Bomar's conduct in defense of the SMC Defendants in the federal case, her claims meet this 12(b)(8) standard.

### **CONCLUSION**

In the seminal case of *Gaar v. N. Myrtle Beach Realty Co.*, the Court of Appeals described well the public policy supporting attorney immunity:

Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits. An attorney has an ethical obligation zealously to pursue any lawful claim of his client. If he does not properly represent and support his client's position, an attorney is subject to a suit for malpractice. To hold that an attorney who files pleadings in support of his client's position has acted overzealously, and is therefore liable to the other party in damages for malicious prosecution, would create a conflict of interest with the attorney's obligation to properly represent and support his client. Such suits could conceivably prohibit attorneys from pursuing and developing new causes of action, and could hinder development of new legal theories.

287 S.C. at 529–30, 339 S.E.2d at 889–90 (internal citations omitted). It is no shock that Kip Darwin and Todd Flippin’s representation of their clients does not suit Dr. Lashley’s preferences. Nevertheless, they are immune from the claims she alleges here. Her complaints belong in the United States District Court where the trial judge familiar with the entire scope of discovery in that action can appropriately rule on any complaints Dr. Lashley has against these Defendants. In that forum, any allegations of discovery abuse or other alleged misconduct can easily be addressed by the United States District Court and/or Magistrate Judge. In this forum, Plaintiff’s complaint fails to allege any claims for which she may recover under South Carolina law.

IT IS HEREBY ORDERED THAT PLAINTIFF’S COMPLAINT IS DISMISSED WITH PREJUDICE.

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The Honorable R. Keith Kelly

This the \_\_\_\_ day of September 2022.



Spartanburg Common Pleas

**Case Caption:** Summer D Lashley Phd VS Holcombe Bomar, Pa , defendant, et al

**Case Number:** 2021CP4203978

**Type:** Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165