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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2022-001155

Norma J. Nix and the Estate of Norma J.

Nix..... Appellants,

v.

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..... Respondents.

**RETURN TO APPELLANTS' MOTION TO RESTORE OF  
RESPONDENTS MCCABE, TROTTER & BEVERLY AND LAW OFFICES OF TODD  
MUSHEFF**

Respondents McCabe, Trotter & Beverly and Law Offices of Todd Musheff ("these Respondents") submit this Return in Opposition to Appellants' Motion to Restore this Appeal (filed Nov. 7, 2022). These Respondents show the Court the following:

This is an Appeal of an Order Judge Jocelyn Newman entered granting these Respondents' Motion to Dismiss. Judge Newman entered the Order on July 21, 2022. Neither Alan Nix nor Ethan Nix is a licensed South Carolina lawyer. However, they filed the underlying action naming a host of

Defendants, including these Respondents. Alan Nix purported to file the lawsuit individually and as Co-PR of the Estate of Norma J. Nix (along with Ethan Nix).<sup>1</sup> Judge Newman dismissed the lawsuit after a hearing on February 10, 2022, which neither Ethan Nix nor Alan Nix chose to attend despite having proper notice of it.

This matter arises out of the foreclosure of Alan Nix' home in Mount Pleasant<sup>2</sup> by, which McCabe, Trotter & Beverly, PC ("MTB") successfully brought on behalf of Nix' homeowners' association. Alan Nix has filed numerous *pro se* actions against MTB and others relating to this issue, all of which have been dismissed. In addition to the instance case, those actions include:

Nix v. McCabe, Trotter & Beverly, PC, et al.; 2018-CP-10-02356, removed to federal court as 2:18-cv-01360-RMG;

Nix v. McCabe, Trotter & Beverly, P.C., et al.; 2018-CP-10-02302, removed to federal court as 2:18-cv-01352-RMG;

Nix v. Churchill Park, et al.; 2018-CP-10-03315; and

Nix v. McCabe, Trotter & Beverly, P.C., et al.; 2:21-cv-03756-RMG.

The instant case is another which Alan Nix filed *pro se* to harass and abuse MTB and others. Judge Newman recognized this and included in the subject granting these Respondents' Motion to Dismiss a directive precluding the Clerk of Court of Richland County from accepting further *pro se* filings from Alan Nix.

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<sup>1</sup> The cover sheet submitted with the Summons and Complaint and the caption on the Summons listed Norma J. Nix (who is deceased), Alan G. Nix, and the Estate of Norma J. Nix as Plaintiffs, while the caption of the Complaint listed only Norma J. Nix and the Estate of Norma J. Nix as Plaintiffs. Alan Nix signed the cover sheet to the Summons and Complaint. He also signed the Summons as "Plaintiff/Attorney for Plaintiff." He also signed the complaint individually and as Co-PR for the Estate of Norma Nix. Ethan Nix also signed the Complaint as Co-PR of the Estate of Norma Nix.

<sup>2</sup> 1401 Densmore Circle, Mt. Pleasant, SC 29466.

At the time Judge Newman issued the subject Order, Alan Nix was incarcerated at the Al Cannon County Detention Center (Charleston County) on charges of threatening a public official (State v. Nix; 2021-GS-10-02599; pending). Counsel for these Respondents served the Order on Appellants, including Alan Nix, via letter dated August 1, 2022. Ex. 1. Counsel served Alan Nix via certified mail, return receipt requested, and restricted delivery by sending the letter to him at the Al Cannon Detention Center. According to the Motion, Nix received the Order on August 3, 2022,

This Court received and filed Nix' Notice of Appeal on August 17, 2022. This Court then *sua sponte* sent a letter to Nix on August 23, 2022. The letter said this Court would not accept filings on this Appeal because as a non-lawyer, Nix is unable to represent Norma J. Nix or the Estate of Norma J. Nix – an effective dismissal of the Appeal. Nix filed the subject Motion to Restore on November 7, 2022. The Proof of Service submitted with the Motion is dated November 2, 2022. However, both this Court and the undersigned received it on November 7, 2022.

Pursuant to Rule 240(e), SCACR, a party opposing a motion shall have ten days from the date of service to file a return. The undersigned therefore has until November 17, 2022 (ten days from the date of receipt of the Motion) to submit a return. To the extent the Court considers the service date to be November 2, 2022 (the date of mailing), the undersigned requests an extension to allow the filing of this Return.

These Respondents oppose the reinstatement or restoration of this Appeal. The basis of Appellants' Motion is difficult to ascertain. The initial paragraph of the Argument section of the Motion states Alan Nix is a "co-plaintiff" to the Estate of Norma J. Nix in the underlying case. However, the Caption to the Complaint does not list Alan Nix as an individual Plaintiff.

Further, S.C. Code § 40-5-310 says no person may practice law or solicit the legal cause of another person or entity in South Carolina unless he or 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 lawyer to engage in such representation). Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705 (2005). Moreover, a deceased person is not a proper party to a lawsuit. SCRCP 25. Thus, this Court properly refused to accept this Appeal because Alan Nix is not a licensed lawyer, and the only Plaintiffs named in the Complaint caption are Norma J. Nix (a deceased party) and the Estate of Norma J. Nix.

The first paragraph of the Argument section of Motion then states the Clerk of Court for the South Carolina Court of Appeals “may have been originally confused about this situation due to misrepresentations by Mr. [Robert] Wood and Mr. Countryman [the undersigned].” However, the Motion does not identify any such misrepresentations. And in fact, neither lawyer for these Respondents has submitted anything to this Court regarding this Appeal prior to this Return.

The Motion then states that, “given Alan Nix’s [sic] clarifying August letter in response” to the Clerk’s letter dismissing the Appeal, “it is difficult to imagine Ms. Abbott-Kitchings was not sufficiently on notice of this dispute prior to the end of August 2022.” The undersigned is unaware of any such letter, nor is one on file with the Court of Appeals (according to the C-Track filing system):



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Filed Date	Event Information	Doc
11/07/2022	Motion - Reinstate	
10/28/2022	Correspondence - Incoming (Order)	
08/23/2022	Dispositional Decision - Withdrawn or Ended	
08/22/2022	Correspondence - Incoming (Order from Respondent)	
08/17/2022	Notice of Appeal (Civil) - Initial	

Regardless, this has nothing to do with anything pertinent to the subject Motion.

The Motion then argues that the issue of whether Alan Nix is a Plaintiff in the underlying case should be “fully resolved” by “the plaintiffs or the Richland County Clerk of Court” before this Court dismisses the Appeal. However, the time to address this issue (which Alan Nix created by submitting improper and confusing filings in the underlying case) was at or prior to the hearing for the Motion to Dismiss in the trial court. Again, despite having proper notice of the Motion to Dismiss and hearing for the Motion in the underlying case, Nix failed to respond to the Motion to Dismiss or attend the hearing.

The Motion to Restore provides no legal basis to reinstate the Appeal. To the contrary, this the Motion is yet another rambling and incoherent submission by Alan Nix designed to harass and abuse these Respondents and their lawyers. The Court properly dismissed the Appeal.

Further, Nix has not owned the home located at 1401 Densmore Circle in Mount Pleasant for some time. However, he continues to use it as his address for service in filings submitted to this and other courts (as well as counsel for the various parties). He has provided no forwarding address and appears to be hiding his location.

Rule 267, SCACR provides that all documents filed with this Court must include the name, address, and phone number of the person submitting the document. Continuing to use this address in Court filings violates Rule 267 and can only be an attempt to mislead the Court and parties to this case. This too is a basis to dismiss the subject Appeal.

This Appeal is also subject to dismissal under Rule 269, SCACR, which provides for dismissal of appeals taken frivolously or for the purpose of delay. The Rule provides for sanctions against an

offending party to discourage similar conduct in the future. The Court should apply this Rule here and issue whatever sanctions it deems appropriate.

Therefore, these Respondents respectfully request this Court deny the Motion to Restore and issue sanctions against Appellant(s) as the court deems just and proper.

Respectfully submitted by:

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C O U N T R Y M A N  
L A W F I R M

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  
70202450000156899235

**Via US Mail**

Ethan Nix  
1784 Walhalla Highway  
Pickens, SC 29671

**Via US Mail**

Ethan Nix  
211 Posey Hill Rd.  
Liberty, 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



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

foreclosure action on behalf of Churchill Park in Charleston County (C/A 2014-CP-10-4031<sup>1</sup>). 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.<sup>2</sup> 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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<sup>1</sup>The foreclosure was originally filed in case 2014-CP-10-05407. The court dismissed the case pursuant to SCRCF 40(j) and assigned C/A no. 2017-CP-10-4031 upon being restored to the active docket.

<sup>2</sup>See 2:18-cv-01352-RMG-BM and 2:18-cv-01360-RMG-BM.

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:

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, 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, 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.

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

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

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

Foreclosure Rights whereby the Park West Master Association, Inc. assigned rights to foreclose to Churchill Park, Mr. Nix' HOA. His former<sup>3</sup> 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

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<sup>3</sup>It has been sold in foreclosure to an innocent third party.

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

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 (2<sup>nd</sup> ed. 1996).

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

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).

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 which the proceedings are based. S.S.C. Code § 15-36-10(C)(1)(a)-(c).

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

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<sup>4</sup> 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

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<sup>4</sup>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.

**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<sup>5</sup> 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.**

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<sup>5</sup>C/A 2014-CP-10-05407/2017-CP-10-4031.





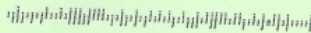
Richland Common Pleas

**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

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY															
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Addressee  <input checked="" type="checkbox"/> Addressee</p>															
<p>1. Article Addressed to:</p> <p>Alan Nix, inmate #  001600956  Al Cannon Detention Center  3841 Leeds Ave.  A. Charleston, SC 29405</p>  <p>9590 9402 2771 6351 0950 57</p>	<p>B. Received by (Printed Name)  Paul Gordon</p>	<p>C. Date of Delivery  8-2-2022</p>														
<p>2. Article Number (Transfer from service label)  J20 2450 0001 5689 9235</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>															
<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail®</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)</td> </tr> </table>			<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail®	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail	<input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®															
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<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™															
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 <p>9590 9402 2771 6351 0950 57</p>	<p>First-Class Mail  Postage &amp; Fees Paid  USPS  Permit No. G-10</p>
<p>United States Postal Service</p>	<p>* Sender: Please print your name, address, and ZIP+4® in this box*</p> <p>Countryman Law Firm  210 Wingo Way, Ste. 400  Mt. Pleasant, SC 29464</p>
	

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2022-001155

Norma J. Nix and the Estate of Norma J.  
Nix..... Appellants,

v.

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..... Respondents.

PROOF OF SERVICE

I certify I have served the foregoing pleading on all parties/their counsel in this case by depositing a copy in the United States Mail and/or Email, addressed as follows:

Alan G. Nix  
1401 Densmore Circle  
Mt. Pleasant, SC 29466  
[alan.g.nix@gmail.com](mailto:alan.g.nix@gmail.com)  
[agnix1@hotmail.com](mailto:agnix1@hotmail.com)  
**Pro Se Appellant(s)**  
**Via Email and US Mail**

Ethan Nix  
1784 Walhalla Highway  
Pickens, SC 29671  
**Appellant/Co-PR of the Estate of Norma  
Nix, pro se**  
**Via US Mail (no email address provided)**

November 15, 2022

[signature to follow]

/s/ Andrew W. Countryman

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Mt. Pleasant, SC 29464

[awc@countrymanlawfirm.com](mailto:awc@countrymanlawfirm.com)

**Counsel for Respondents McCabe,  
Trotter & Beverly and Law Office of  
Todd Musheff**