

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-10-02694

The Eaglewood Retreat Homeowners
Association, Inc.,

PLAINTIFF,

vs.

Jason Patno,

DEFENDANT.

ORDER GRANTING
MOTION TO DISMISS

RECEIVED

Nov 28 2022

SC Court of Appeals

This matter came before me at a hearing held on August 25, 2022, on the Plaintiff (“the HOA”)’s motion for a preliminary injunction and Defendant Jason Patno (“Mr. Patno”)’s motion to dismiss the above-captioned action. Because the HOA’s amended complaint fails to allege cognizable damages or irreparable harm, the court grants the motion to dismiss. This order accordingly moots the HOA’s motion for a preliminary injunction.

“In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff.” Benedict Coll. v. Natl. Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012). Where the factual allegations of a complaint do not entitle a plaintiff to relief on any theory of the case, a 12(b)(6) motion is properly granted. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). In deciding a 12(b)(6) motion, a court deems all of the complaint’s well pleaded *factual* allegations as true for the purposes of deciding the motion; however, conclusions of law and other summary, conclusory allegations stated in the complaint are not deemed admitted for the motion’s purposes. See Fields v. The Melrose Ltd.

Partnership, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993); Carolina Winds Owners Ass'n. v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988).

This is a suit brought by a homeowners' association seeking damages and injunctive relief. The amended complaint alleges that Mr. Patno has violated the applicable restrictive covenants by operating a business from his home and by parking commercial trucks on the street by his house in the subdivision with which the HOA is associated. The HOA pleads for a money judgment for breach of contract and for a temporary and a permanent injunction.

To recover for breach of contract, a claimant must prove (1) that there was a binding contract entered into by the parties, (2) that the other party breached the contract, and (3) that the plaintiff has suffered damage as a proximate result of the breach. See Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962).

The elements a plaintiff must prove in order to receive an injunction are (1) that the plaintiff will suffer immediate, irreparable harm without the injunction; (2) that the plaintiff's basis for an injunction is grounded in legal authority (e.g., a statute, restrictive covenants); and (3) that the plaintiff has no adequate remedy at law." Compton v. S.C. Dept. of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Here, because the amended complaint alleges no damages that the law recognizes for the damages claim asserted and because the amended complaint alleges no facts that could constitute irreparable harm to the HOA, Mr. Patno's motion to dismiss is properly granted.

The amended complaint does not allege that the HOA owns a lot or house in the subdivision. It is inferable that the HOA's members own property in the subdivision, but none of its members are plaintiffs in this case.

The HOA pleads as damages that it “has and will continue to suffer actual, consequential and/or special damages in the form of monitoring Patno’s acts and omissions to obtain and ensure compliance, attorneys’ fees and costs, and other allowable charges owed by Patno for the prosecution of this matter and/or enforcement of the Governing Documents, and for the damage to reputation to and property devaluation of the Association, Eaglewood Retreat and its individual properties.” (¶ 22.) The amended complaint alleges that the HOA “and its members/owners will suffer irreparable harm to the Subdivision, other real property in Eaglewood Retreat, common areas, and the interests, property value, reputation and character of the Association, its members/owners/residents and the Eaglewood Retreat community as a whole from the foregoing breaches by Patno of the Governing Documents, and will continue to suffer such irreparable harm if an injunction is denied.” (¶ 30.)

The HOA is a homeowners’ association, not the owner of a house or lot in the subdivision. If the HOA owns any property in the subdivision, the complaint does not allege that, but the only reasonable inference would be that any such property, if it exists, would be a pool, tennis courts, or perhaps the streets. In any event, the HOA has not alleged that the value of any property *the HOA owns* has been affected, is being affected, or is in danger of being affected by anything that Mr. Patno is alleged to have done. The court must draw “*reasonable inferences*” from what is pled in the amended complaint in the HOA’s favor, and what is pled is not susceptible of a reasonable inference that any of *the HOA’s* property has been devalued or otherwise damaged or is being threatened with damage. Benedict Coll., 400 S.C. at 544 (emphasis added).

The HOA does not plead any damages or likelihood of harm that the law would recognize as flowing from the situation described in the amended complaint. The HOA pleads as damages that it “has and will continue to suffer actual, consequential and/or special damages in the form of

monitoring Patno's acts and omissions to obtain and ensure compliance, attorneys' fees and costs, and other allowable charges owed by Patno for the prosecution of this matter and/or enforcement of the Governing Documents, and for the damage to reputation to and property devaluation of the Association, Eaglewood Retreat and its individual properties." (§ 22.) These are not damages the law recognizes as recoverable by the HOA for breach of contract. The HOA references the covenants in the complaint, making them proper for the court's reference on a motion to dismiss. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). The covenants do not require the HOA to do any monitoring of Mr. Patno's behavior and do not require the HOA to take any action to ensure compliance with the covenants. In Section 1, Article X, the covenants provide that "[t]he Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of the [Governing Documents] of the Association." The HOA has the choice to exercise this right, not the obligation to do so.

Additionally, it is well established that "actual damages are distinct from attorneys' fees." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 693 S.E.2d 27, 32 (Ct. App. 2010). A litigant cannot bootstrap his way into damages by contending that his attorneys' fees for prosecuting his own claim are his damages. SIB Dev. & Consulting, Inc. v. Save Mart Supermarkets, 271 F.Supp.3d 832, 834 (D. S.C. 2017). Further, the attorney's fees and costs the HOA incurs in this suit are caused by its decision to pursue this suit, not by anything Mr. Patno did. The HOA did not have to bring suit against him. Nothing mandated that the HOA do so.

The HOA contends it has suffered damage to its reputation, but reputational damage is the subject of a suit for defamation, not for breach of contract. See Timmons v. News & Press, Inc., 232 S.C. 639, 103 S.E.2d 277, 281 (1958); Smith v. Bradstreet, 63 S.C. 525, 41 S.E. 763 (1902).

Further, nothing in the amended complaint is susceptible of a reading that Mr. Patno's activities have caused or could cause reputational damage to the HOA.

The HOA's conclusory declarations that it has suffered damages or is facing irreparable harm do not save its amended complaint. Summary statements that invoke the existence of a legal status are not factual allegations and are insufficient as a matter of pleading. See Rotec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004).

Much of the amended complaint's allegations of damages and irreparable harm are recitations that the HOA's members or its associate subdivision as a whole has been damaged or will suffer harm. This is insufficient as a matter of law. "A corporation is not a natural person and maintains a separate and distinct identity apart from its shareholders." Mangum v. Maryland Cas. Co., 330 S.C. 573, 576, 500 S.E.2d 125 (Ct. App. 1998). The HOA is not its members but is a separate entity from them. Id. The HOA cannot sue on behalf of its members, cannot sue for damages to its members, and cannot sue for an injunction to prevent harm to its members. Id. If the members have damages (or are about to suffer irreparable harm) and have a viable liability or injunction theory, the members can sue.

"Standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Powell ex rel. Kelley v. Bank of America, 665 S.E.2d 237, 241 (Ct. App. 2008) (quoting Black's Law Dictionary 1413 (7th ed. 1999)). Standing goes to the question of a party's right to bring a proceeding. Baird v. Charleston Cnty., 333 S.C. 519, 530 & 530 n. 7, 511 S.E.2d 69 (1999). It is fundamental that only a party with standing may maintain an action. See id.

Standing "consists of the following three elements" as noted by the South Carolina Supreme Court:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and

particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (internal quotation and quotation-related punctuation marks omitted). “The first element requires *the plaintiff* to suffer an injury in fact, or a particularized harm.” Id. (emphasis added).

The HOA cannot pursue a claim for harm to someone else, including harm to its members. Id. It only has standing to pursue a remedy in a lawsuit for *its* injuries. Id.

The HOA is a homeowners’ association, not the owner of a house or lot in the subdivision. If the HOA owns any property in the subdivision, that is not pled, but any such property would be a pool, tennis courts, perhaps the streets – not something that has a value that could be affected by anything that Mr. Patno is alleged to have done.

And, as discussed above, the HOA cannot recover for damages suffered by someone else. The HOA’s allegation that its damages include damage to “Eaglewood Retreat and its individual properties” are contrary to law. Sea Pines Assn., 345 S.C. at 601; Mangum, 330 S.C. at 576.

The HOA expressly lumps in its members as part of its claim of a threat of irreparable harm, alleging that the HOA “and its members/owners will suffer irreparable harm to the Subdivision, other real property in Eaglewood Retreat, common areas, and the interests, property value, reputation and character of the Association, its members/owners/residents and the Eaglewood Retreat community as a whole from the foregoing breaches by Patno of the Governing Documents, and will continue to suffer such irreparable harm if an injunction is denied.” (¶ 30.)

The HOA is not permitted to seek an injunction to prevent harm to “its members/owners[,]” “to the Subdivision,” or to “other real property in Eaglewood Retreat[.]” Sea Pines Assn., 345 S.C. at 601; Mangum, 330 S.C. at 576. It has no standing to seek an injunction to stop harm to “the interests, property value, reputation and character of [the HOA’s] members/owners/residents and the Eaglewood Retreat community as a whole[.]” Sea Pines Assn., 345 S.C. at 601; Mangum, 330 S.C. at 576. The members of the HOA would have to bring their own cases – and nothing would stop them from doing so.

In 2019, our Supreme Court clarified that the standard for deciding a motion to dismiss under Rule 12(b)(6), SCRPC, requires that “the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.” Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). The HOA is now on its second pleading in this case and has failed to plead any facts supportive of the existence of damages or the threat of irreparable harm. More importantly for this analysis, the situation the HOA pleads in this case is not one from which damage or harm to the HOA could arise.

Accordingly, it is therefore hereby ORDERED that the Plaintiff’s amended complaint is dismissed with prejudice and the Plaintiff’s motion for a preliminary injunction is denied as moot.

And IT IS SO ORDERED.

The Honorable Diane S. Goodstein
Circuit Judge



Charleston Common Pleas

Case Caption: Eaglewood Retreat Homeowners Association Inc The VS Jason R Patno
Case Number: 2022CP1002694
Type: Order/Dismissal

The motion is hereby Denied!

s/Diane S. Goodstein