

RECEIVED

Feb 16 2023

SC Court of Appeals



ELECTRONICALLY FILED - 2023 Jan 03 10:11 AM - SUMTER - COMMON PLEAS - CASE#2022CP4300438

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER ) FOR THE THIRD JUDICIAL CIRCUIT

James E. Fender, ) Civil Action No.: 2022-CP-43-00438
Plaintiff, )

vs.

Larry R. Hoffman and )
Allen Jackson Barnes, )
Defendants. )

ORDER GRANTING DEFENDANT ALLEN JACKSON BARNES' MOTION TO DISMISS THE AMENDED COMPLAINT

This matter came before the Court via WebEx on November 7, 2022, on Defendant Allen Jackson Barnes's Motion to Dismiss the Amended Complaint. Defendant Allen Jackson Barnes ("Barnes") appeared pro se. Haley A. Hubbard appeared on behalf of Plaintiff James E. Fender ("Fender"). Everett J. Mercer appeared on behalf of Defendant Larry R. Hoffman ("Hoffman"). Having reviewed the filings by the parties, hearing the arguments at the hearing, and reviewing the applicable case law, Barnes' Motion to Dismiss is GRANTED for the reasons set forth below.

In 2021, Fender and Hoffman were involved in litigation that ultimately resulted in the parties entering into a Settlement Agreement which resolved that case. This Settlement Agreement contained a confidentiality provision. Barnes was not involved in any way with the Settlement Agreement, nor did he know of the confidentiality provision contained within. However, Barnes eventually learned that the case between Fender and Hoffman had settled, and Barnes informed counsel for the Bank of Greeleyville, William Johnson

(“Johnson”), of this settlement. Johnson then inquired about the details of the settlement with Fender’s then attorney Nekki Shutt. Fender was then required to pay some of the settlement proceeds the Bank of Greeleyville. In 2022, Fender brought the present action against Hoffman and Barnes, alleging Breach of Contract against Hoffman and Civil Conspiracy against Hoffman and Barnes. Fender also made a claim for attorney’s fees against Hoffman.

Barnes argues that Fender has failed to sufficiently plead facts to establish a cause of action against him and moves to dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(6), SCRPC, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). The motion may not be sustained if the facts alleged in the complaint and the inferences that can be drawn therefrom would entitle the plaintiff to any relief under any theory. Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007).

The only cause of action against Barnes is one for Civil Conspiracy. In order to maintain a claim for civil conspiracy, a party must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 781 (2021). Barnes moves to dismiss, in

part, on the grounds that Fender has failed to plead he was damaged. The basis of Barnes' argument is that Fender received all the money he agreed to under the Confidential Settlement Agreement, but was required to pay a legitimate debt to the Bank of Greeleyville, a judgment creditor from prior litigation. Nowhere does Fender plead he did not receive all of the money agreed to under the prior litigation. Rather, Fender only plead that he did not get to maintain the proceeds of the prior litigation as a result of a legitimate debt.

It appears from the pleadings and the argument of the parties that Fender was paid all the money that he was owed under the settlement prior to his payment of his legitimate debt to the Bank of Greeleyville. Fender cannot, therefore, maintain he suffered any damages. As of result of damages being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes for failure to plead he was damaged.

Likewise, Fender has failed to plead that Barnes committed an unlawful act or a lawful act by unlawful means. Barnes reported to counsel for the Bank of Greeleyville that he believed Fender had settled the previous case with Hoffman and he would receive some money. While the Settlement Agreement between Fender and Hoffman was confidential, Barnes was not a party to that Agreement, either directly or as an agent of Hoffman or Fender. Nowhere does Fender plead such facts.

The pleading clearly shows that Barnes did not represent Hoffman or Fender at the time of the Settlement Agreement. Further, there was no prohibition from Barnes disclosing any information, even if he knew of the confidentiality provision. Barnes had

no knowledge of the Settlement Agreement or its terms, including the confidentiality provision, and there was no unlaw act or lawful act by unlawful means. As a result of this being an essential element of Civil Conspiracy, the Amended Complaint must be dismissed against Barnes.

The facts alleged in the Amended Complaint and the inferences that can be drawn therefrom do not entitle Fender to relief. In this instance, the Motion to Dismiss is justified. The Amended Complaint is dismissed against Barnes.

AND IT IS SO ORDERED.

---

R. Ferrell Cothran, Jr.  
Circuit Court Judge

December \_\_\_\_\_, 2022  
Sumter, South Carolina



Sumter Common Pleas

**Case Caption:** James E. Fender VS Larry R Hoffman , defendant, et al  
**Case Number:** 2022CP4300438  
**Type:** Order/Dismissal

So Ordered

s/ R. Ferrell Cothran, Jr., 2144