

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )  
 )  
 Gersh Zavodnik and Tatiana Zavodnik, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Kristi F. Curtis, Her Circuit (Circuit Court )  
 3 of Common Pleas), James C. Campbell )  
 (Clerk of the Court), Anthony (Tony )  
 Morales (aka Tony Morales, aka Richard )  
 Anthony Morales aka Anthony Richard )  
 Morales aka Tony Morales), G. Murrell )  
 Smith (aka G. Murrell Smith, Jr.), Smith )  
 Robinson Holler DuBose and Morgan, )  
 LLC (aka Smith Robinson Law Firm, aka )  
 Smith Robinson LLC, aka Smith Robinson )  
 Law), Frederick N. Hanna (aka Fred )  
 Hanna), and Jennifer Lisandrelli, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2022-CP-43-01552

**ORDER GRANTING DEFENDANT  
 MORALES' MOTION TO DISMISS  
 AND SANCTIONING PLAINTIFFS**

**RECEIVED**  
 APR 20 2023  
 SC Court of Appeals

The matters before the Court on Defendant Tony Morales' (hereinafter, "Morales" or "Defendant") Notice of Motion and Motion to Dismiss, which contained a request for sanctions, and Motion for a More Definite Statement filed February 6, 2023. A duly noticed hearing was held remotely via Web-Ex on February 21, 2023. Present at the hearing were counsel for Morales, G. Murrell Smith and Frederick N. Hanna, and pro se Plaintiff Gersh Zavodnik.<sup>1</sup> The Court has carefully considered the motions, the arguments of the parties offered during the hearing, and the relevant law. The Court hereby **GRANTS** Morales' Motion to Dismiss with prejudice and sanctions Plaintiffs Gersh Zavodnik and Tatiana Zavodnik (collectively, "Plaintiffs") in the

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<sup>1</sup> Plaintiff Gersh indicated that he had several "witnesses" with him attending the hearing remotely. However, because Plaintiff Gersh indicated he did know how to turn on his camera and no one other than Plaintiff Gersh spoke, it is unclear who else attended.

manner described below. In light of this ruling, it is unnecessary for the Court to rule on Morales' Motion for a More Definite Statement.

### **BACKGROUND**

Plaintiffs are residents of Indiana. Amended Compl. at ¶¶ 1, 2. Morales is a resident of California.<sup>2</sup> Plaintiffs first sued Morales in this Court in 2020 in the separate action *Zavodnik v. Morales*, C/A 2020-CP-43-01819 (“the Underlying Case”). Amended Compl. at ¶ 11. In the Underlying Case, Plaintiffs alleged Morales made disparaging comments about artwork Plaintiff Gersh was attempting to sell on Facebook.

Plaintiffs did not serve Morales with process in the Underlying Case until October 2022. Shortly thereafter, Morales retained attorneys G. Murrell Smith and Frederick N. Hanna, of Smith Robinson Holler Dubose and Morgan, LLC (collectively, “the Smith Robinson Defendants”) as his counsel in the Underlying Case. *See id.* at ¶ 270. On October 17, 2022, Morales filed a Motion to Dismiss the Underlying Case. *Id.* at ¶ 271.

Plaintiffs filed their Complaint in this case on September 29, 2022, asserting claims against Judge Curtis and Clerk of Court James Campbell. On January 26, 2023, after Morales moved to dismiss the Underlying Case, Plaintiffs amended their complaint in this case to assert claims against Morales and the Smith Robinson Defendants.

Plaintiffs' claims against Morales in this case appear to stem from the motion to dismiss he filed in the Underlying Case. Although it is difficult to decipher, it appears that Plaintiffs'

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<sup>2</sup> In support of his Motion to Dismiss, Morales submitted an affidavit explaining that he is a resident of California and has no contacts with South Carolina. Because Morales contends the Court lacks personal jurisdiction over him, it is proper for the Court to consider this affidavit in ruling on the Motion to Dismiss. *See Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008) (explaining the court may look to “affidavits or other evidence” to determine whether it has jurisdiction).

allegations against Morales in this case are as follows: Morales is vicariously liable for misrepresentations his attorneys—the Smith Robinson Defendants—allegedly made in drafting Morales’ motion to dismiss in the Underlying Case. *See, e.g.*, Amended Compl. at ¶ 265.

Plaintiffs’ Amended Complaint asserts the following causes of action against Morales and the Smith Robinson Defendants: “Respondeat Superior & Vicarious Liability, Fraud on Court & Fraud on Us, Fraud & Fraudulent Concealment, Abuse of Process, Violations of Title 15 (Frivolous Civil Procedure Sanctions Act) & Civil Conspiracy.” Plaintiffs seek an award of over \$2,600,000,000.00 against Morales and the Smith Robinson Defendants. On February 6, 2023, Morales filed the instant Motion, requesting the Court to dismiss Plaintiffs’ Amended Complaint and sanction Plaintiffs.

## ANALYSIS

### **I. Morales’ Motion to Dismiss**

In his Motion to Dismiss, Morales asks the Court to dismiss Plaintiffs’ Amended Complaint because (1) the Court lacks personal jurisdiction and (2) Plaintiffs have failed to state a valid claim for relief. The Court agrees.

#### **A. Personal Jurisdiction**

“When challenged, the plaintiff has the burden of showing jurisdiction is properly asserted[.]” *Brown v. Inv. Mgmt. & Rsch., Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996). “When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

As the Court noted above, this is not the first action Plaintiffs have brought against Morales

in this Court. In the Underlying Case, Morales moved to dismiss Plaintiffs' complaint on the grounds that he is a California resident and has no contacts with South Carolina whatsoever. Morales submitted an affidavit demonstrating his lack of contacts with South Carolina. The Court granted Morales' motion to dismiss in the underlying case on the basis that the Court lacked personal jurisdiction. *See Zavodnik v. Morales*, C/A 2020-CP-43-01819, Order Granting Defendant's Motion to Dismiss. The same reasoning applies in this case, and the Court's Order in the Underlying Case is incorporated into this ruling by reference and attached hereto.

Additionally, the Court notes that Plaintiffs' Amended Complaint in this case acknowledges that Morales is a resident of California. Amended Compl. at ¶ 6 ("Anthony (Tony) Morales . . . an individual, who is a resident of the State of California . . ."). The Court rules that this allegation, paired with Plaintiffs' failure to allege any basis for asserting specific jurisdiction over Morales, requires dismissal. Indeed, Morales' contacts with South Carolina are expressly limited to his efforts to dismiss Plaintiffs' lawsuits against him.

#### **B. Failure to State a Valid Claim for Relief**

Dismissal is also warranted because Plaintiffs' Amended Complaint fails to state a valid claim for relief against Morales. *See Baird v. Charleston Cty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) ("Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action."). Plaintiffs assert the following causes of action against Morales and the Smith Robinson Defendants: "Respondeat Superior & Vicarious Liability, Fraud on Court & Fraud on Us, Fraud & Fraudulent Concealment, Abuse of Process, Violations of Title 15 (Frivolous Civil Procedure Sanctions Act) & Civil Conspiracy."

It appears Plaintiffs' theory is that Morales is vicariously liable for acts allegedly committed by the Smith Robinson Defendants in the Underlying Case. *See, e.g.*, Amended Compl.

at ¶ 265. This argument fails because the Court has determined Plaintiffs' Amended Complaint fails to state a valid claim for relief against the Smith Robinson Defendants. *See Zavodnik v. Curtis, et al.*, C/A 2022-CP-43-01552, Order Granting Smith Robinson Defendants' Motion to Dismiss. Because Plaintiffs only assert a theory of vicarious liability against Morales, Plaintiffs' failure to state a claim against the Smith Robinson Defendants necessarily precludes any recovery against Morales. *See Trask v. Beaufort Cnty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) ("Beaufort County cannot be vicariously liable for Copeland's conduct because Copeland is not liable."). The Court's Order granting the Smith Robinson Defendants' motion to dismiss is incorporated into this ruling by reference and attached hereto.

IT IS THEREFORE ORDERED that Morales' Motion to Dismiss is GRANTED and Plaintiffs' Amended Complaint is dismissed with prejudice. It is therefore unnecessary for the Court to rule on Morales' Motion for a More Definite Statement.

## II. Sanctions

Plaintiffs Gersh and Tatiana Zavodnik are citizens of Indiana. Indiana's courts have recognized that Plaintiffs are "frequent filers" and abusive litigants. In *Zavodnik v. Harper*, the Indiana Supreme Court stated: "Plaintiff Gersh Zavodnik is a prolific, abusive litigant." 17 N.E.3d 259, 262 (Ind. 2014). The Court explained Plaintiff Gersh's presence in the dockets of various Indiana courts as follows:

A search of [Plaintiff Gersh's] name brings up 123 cases in Marion County and other counties on the Odyssey case management system (which is not yet in place in all Indiana counties). All but three of those cases were filed since January 2008. Mr. Zavodnik is also a party in thirty-four cases before the Court of Appeals and this Court, including twenty-three special judge requests.

*Id.* Describing Plaintiff Gersh's litigation tactics, the Court stated, "Mr. Zavodnik's abusive litigation practices in this case and others have included unrelenting attempts to replace the judges

presiding over his cases for alleged delays in rulings pursuant to T.R. 53.1 and for alleged bias, prejudice, or misconduct by the judge.” *Id.* at 269.

Other courts have provided similar accounts of Plaintiffs’ vexatious litigation practices. In *Zavodnik v. Richards*, the Court of Appeals of Indiana stated that Plaintiff Gersh “does not deny” that he “attempts to make his living by filing lawsuits.” 984 N.E.2d 699, 701 n.2 (Ind. Ct. App. 2013). Both Plaintiffs Gersh and Tatiana have also been reprimanded by the United States District Court for the Southern District of Indiana. *See Zavodnik v. Felix*, No. 1:18-cv-00870-SEB-MJD, 2018 WL 11274384, at \*2 (S.D. Ind. Mar. 26, 2018) (dismissing a lawsuit Plaintiffs filed “not only for not being a short and plain statement of a claim, but as legally and factually frivolous and for failure to state a claim upon which relief may be granted”).

Unfortunately, Plaintiffs are now bringing similar actions before this Court. In the Underlying Case, Plaintiffs sued Morales asserting numerous causes of action arising out of alleged Facebook comments. After initiating the Underlying Case, Plaintiffs’ abusive conduct continued. For example, on June 11, 2021, Plaintiffs filed a motion to disqualify Judge Curtis from hearing the Underlying Case. In their 70-page motion to disqualify, the Zavodniks argued as to Judge Curtis, “You are not a judge to us, you are an attorney for Defendant and soon enough you will become a Defendant yourself.” Plaintiffs identified no facts or actions as the grounds for disqualification. In a separate order, the Court dismissed the Underlying Case.

In this case, Plaintiffs have simply sued every individual who had any involvement in the Underlying Case: Judge Curtis, Clerk Campbell, Morales, and the Smith Robinson Defendants. To put it simply, Plaintiffs brought this action to harass the individuals they had contact with in the Underlying Case. In separate orders, the Court granted all other defendants’ motions to dismiss this action.

To combat this abusive conduct, Morales requested the Court to sanction Plaintiffs in his Motion to Dismiss. Morales also joined in a joint motion for sanctions filed by all defendants. Pursuant to Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10, *et seq.* (“FCPSA”), Morales asks the Court to impose nonmonetary sanctions against Plaintiffs to prevent future frivolous filings. After careful review, this Court finds that such remedies are within the inherent authority of the Court and are appropriate under these circumstances.

The 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 attorney would believe:

- (a) that under the facts, his claim or defense was clearly not 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 merely to 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 merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(C)(1). In determining whether an attorney or pro se litigant has violated the FCPSA, section 15-36-10(E) sets forth the following factors the court should consider:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

Similarly, Rule 11, SCRCF allows the court to impose sanctions in similar circumstances. *See Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003) (stating the standard for sanctions is the same under Rule 11 and the FCPSA). Rule 11 requires every pleading, motion, or other paper to be signed by at least one attorney of record who is admitted to practice law in South Carolina or the unrepresented party. Rule 11(a), SCRCF. “The . . . signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.” *Id.* If a pleading, motion, or other paper is signed in violation of Rule 11:

[T]he court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

*Id.*

The decision of whether to award sanctions under Rule 11 or the FCPSA is treated as one in equity. *Pee Dee Health Care, P.A. v. Est. of Thompson*, 418 S.C. 557, 563, 795 S.E.2d 40, 43 (Ct. App. 2016). Under both Rule 11 and the FCPSA, the court has wide discretion when ordering sanctions. *See* Rule 11(a), SCRCF (empowering the court to impose “an appropriate sanction”); S.C. Code Ann. § 15-36-10(G) (stating sanctions may include reasonable costs and attorneys’ fees; a reasonable fine to the court; or “a directive of a nonmonetary nature, including injunctive relief,

designed to deter a future frivolous action or an action in bad faith). Additionally, both laws allow the court to award sanctions regardless of whether the case has been tried to verdict. *See* Rule 11(a), SCRCP; *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 153, 758 S.E.2d 483, 491 (2014).

This Court acknowledges that Plaintiffs are acting *pro se*, as self-represented litigants; however, lack of familiarity of knowledge with legal proceedings is not an acceptable excuse to commit this sort of abuse, and the court will hold a *pro se*, self-represented litigant or party to the same standard as an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). The applicable laws specifically provide that *pro se* litigants are subject to sanctions. S.C. Code Ann. § 15-36-10(C)(1); Rule 11(a), SCRCP.

South Carolina courts have acted on the FCPSA and Rule 11 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 the *pro se* litigant engaged in tactics to delay proceedings, including appeals of interlocutory matters. *Holmes v. Haynsworth, Sinkler & Boyd, P.A.* 408 S.C. 620, 760 S.E.2d 399 (2014) (holding sanctions are proper against *pro se* appellant for frivolous and dilatory litigation tactics, and that Rule 11 sanctions were also appropriate given the conduct at issue).

This Court finds that Plaintiffs have violated both Rule 11 and the FCPSA. The lawsuits under case numbers 2020-CP-43-01819 and 2022-CP-43-01552 are examples of Plaintiffs' ongoing abuse of South Carolina's legal system. In addition to this Court's findings that Plaintiffs have violated the FCPSA and Rule 11, this Court notes the case of *Zavodnik v. Harper*, 17 N.E.3d 259, wherein Plaintiff Gersh Zavodnik has been deemed a "prolific, abusive litigant" who "filed numerous motions and other filings that are defective, repetitive, and lacking merit." This case, having been cited above is incorporated into this ruling by reference and is attached hereto. This

Court notes the Indiana case because it reveals as evidence of the abusive nature of Plaintiffs' filings and conduct in Indiana, which is similar to the conduct of these same Plaintiffs in South Carolina.

Additionally, the Court notes that Plaintiffs have been on notice that their conduct could subject them to sanctions since the onset of their filings in this Court. On May 12, 2021, the Court issued an Order in the Underlying Case denying Plaintiffs' motion for an extension of time. *Zavodnik v. Morales*, C/A 2020-CP-43-01819, May 12, 2021 Order. In that Order, the Court explicitly stated: "All future filings with the court must comply with Rules 8 and 11, SCRCF. **Any filing that runs afoul of these rules may give rise to sanctions, pursuant to Rule 11, SCRCF.**" Order at 3 (emphasis added).

Despite this explicit warning, Plaintiffs' abusive conduct continues today. The Court finds that Defendants' requested relief of a sanction designed to deter future frivolous filings is appropriate. Both Rule 11 and the FCPSA are intended to deter future litigation abuse. Unfortunately, Plaintiffs' conduct before this Court—and their repeated threats to sue the Judges presiding over their cases—demonstrates that Plaintiffs will continue to bring frivolous litigation. The Court does not impose this sanction without substantial reflection. However, a less severe sanction would not adequately deter Plaintiffs from filing more frivolous lawsuits in the future. Accordingly, the Court imposes the following sanctions against Plaintiffs.

IT IS THEREFORE ORDERED that based on the pleadings and arguments of counsel, the Court finds by a preponderance of the evidence that Plaintiffs' motions and filing are frivolous and unduly burdensome. For all of the foregoing reasons, this Court finds that sanctions are appropriate pursuant to both Rule 11 and the FCPSA. The Court hereby grants Defendant's request for sanctions and imposes a pre-filing injunction directing the Sumter County Clerk of Court to

reject any filings from Plaintiffs unless they are signed by an attorney licensed in South Carolina certifying that the filing complies with Rule 11, and, further, where Plaintiffs request a hearing, even with representation by counsel as indicated and required above, Plaintiffs shall and must appear in the South Carolina courts in person.

IT IS SO ORDERED.

*[Electronic Signature to Follow]*

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Honorable George McFaddin, Jr.



Sumter Common Pleas

**Case Caption:** Gersh Zavodnik , plaintiff, et al VS Kristi F Curtis , defendant, et al  
**Case Number:** 2022CP4301552  
**Type:** Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759