

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO.: 2022-CP-46-03676
	)	
Nathaniel Shell,	)	
	)	
Plaintiff,	)	<b>ORDER</b>
vs.	)	
	)	
Law Office of Neil T. Phillips, LLC; and Neil	)	
T. Phillips,	)	
	)	
Defendants.	)	
_____	)	

This matter came before the Court on March 9, 2023 on Defendants Neil T. Phillips and Law Office of Neil T. Phillips, LLC’s Motion to Dismiss, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and South Carolina Code Section 15-36-100, filed January 6, 2023, and Plaintiff’s Motion to Extend Time filed on February 9, 2023. Allen Lazenby, counsel for Plaintiff, Doug MacKelcan, counsel for Defendants, and Defendant Neil Phillips all attended the virtual hearing. The Court heard arguments from both sides. For the reasons set forth below, Defendants’ Motion to Dismiss is GRANTED without prejudice, and Plaintiff’s Motion to Extend Time is DENIED.

This is an action for damages alleging Professional Negligence arising out of Defendants’ representation of Plaintiff in a civil lawsuit. Plaintiff filed his Complaint on December 8, 2022 without a supporting expert affidavit, and Defendants responded to the Complaint with a Motion to Dismiss on January 6, 2023. Plaintiff filed a Motion to Extend Time to File the expert affidavit on February 9, 2023, more than 60 days after Plaintiff filed the Complaint.

South Carolina Code § 15-36-100(B) states, “In an action for damages alleging professional negligence against [a licensed attorney]...the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or

omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” A complaint failing to meet this requirement is subject to dismissal for failure to state a claim. S.C. Code §15-36-100(C)(1).

S.C. Code §15-36-100 *et seq.* identifies two exceptions to the contemporaneous filing requirement found in Subsections (B). *See* S.C. Code § 15-36-100(C)(1)(2). Unless one of these two exceptions is met, the expert affidavit must be filed as part of the complaint. The Court finds that Plaintiff has not shown that either exception is applicable here. Accordingly, the Complaint should be dismissed for failure to state a claim pursuant to SC Code Section 15-36-100. Likewise, the Court finds that Plaintiff has not established grounds to justify an extension of time to file an expert affidavit. Plaintiff did not adequately plead entitlement to an extension under the statute, and he did not establish good cause for an extension.

In addition, because Plaintiff’s Breach of Contract cause of action involves an alleged failure to perform professional services based on the same facts and circumstances as the professional negligence cause of action, it is likewise subject to dismissal under South Carolina law. Finally, Plaintiff’s counsel acknowledged at the hearing that Plaintiff has failed to state a cause of action for Negligent Infliction of Emotional Distress, and the Court finds that it should be dismissed for failure to state a claim.

THEREFORE, Plaintiff’s Complaint against Defendants is hereby dismissed **without prejudice.**

IT IS SO ORDERED.

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The Honorable William A. McKinnon  
Sixteenth Judicial Circuit

This \_\_\_\_ day of \_\_\_\_\_, 2023.

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## York Common Pleas

**Case Caption:** Nathaniel Shell VS Neil T Phillips , defendant, et al

**Case Number:** 2022CP4603676

**Type:** Order/Dismissal

So Ordered

/s William A. McKinnon, #2761, Resident Circuit  
Judge and Chief Admin. Judge for CP, 16th Cir.