

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Judge

Appellate Case No. 2023-000615

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J.
Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan,
the Colony Homeowners Association, Inc., and Keep It Green, Inc.

Respondents

v.

Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004
Revocable Trust dated June 18, 2004

Appellant

RESPONDENTS' FINAL BRIEF

/s/ Cynthia Ranck Person
Cynthia Ranck Person, Esquire (SC Bar #105126)

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS APPELLANT GOFF TRUST'S COUNTERCLAIM FOR FAILURE TO SET FORTH FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR DECLARATORY JUDGMENT, CIVIL CONSPIRACY, CONSPIRACY AGAINST RIGHTS, DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, AND INJUNCTIVE RELIEF.

- II. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENTS' MOTION TO STRIKE PORTIONS OF RESPONDENT GOFF TRUST'S AFFIRMATIVE DEFENSES AS IMPROPER AND/OR IRRELEVANT TO ANY ISSUE IN THE CASE.

STATEMENT OF THE CASE

Respondents filed a Summons and Complaint on January 7, 2022, asking for Declaratory Judgment relative to two zoning ordinance amendments changing the zoning of land owned by Appellant Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, hereinafter “Goff Trust.” (R. pp 11-133). Respondents are individuals and an association all of whom own land adjoining the Goff Trust parcel, and a South Carolina nonprofit corporation that advocates for the protection and preservation of land in Georgetown County.

Goff Trust is proceeding *pro se* and has filed numerous motions, appeals and other documents creating a complex procedural chronology. The matters relevant to this appeal are as follows: On January 25, 2022, Goff Trust filed a Motion to Dismiss the Complaint which was denied by Order dated June 3, 2022. Goff Trust subsequently appealed this interlocutory order to the South Carolina Court of Appeals by filing a Notice of Appeal on June 10, 2022. The appeal was ultimately dismissed by the Court of Appeals and remitted back to the Circuit Court on January 7, 2023.

On April 18, 2022, Goff Trust filed an Answer & Counterclaim (R. pp. 135-178) to which Respondents filed a Motion to Dismiss/Strike (R. pp. 179-186), which was granted by Order dated March 24, 2023. (R. pp. 3-10). It is this order that is the subject matter of this appeal.

STANDARD OF REVIEW

A. General

In reviewing a decision on a motion under Rule 12(b)(6), SCRCF, “the appellate court applies the same standard of review as the trial court.” Doe v. Marion, 373 S.C. 390, 397, 645 S.E.2d 245, 247 (2007).

“The circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court,” Hambrick v. GMAC Mortgage Corporation, 370 S.C. 118, 121-122, 634 S.E.2d 5, 7 (Ct. App. 2006). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe, supra at 397, 247. “When a plaintiff states nothing more than legal conclusions, a claim should fail.” Paradis v. Charleston County School District, 424 S.C. 603, 819 S.E.2d 147, 153 (Ct. App. 2018) (citations omitted) (reversed on other grounds). While the courts “recognize the pleadings must be liberally construed, Rule 12(b)(6) requires the plaintiff to allege facts” and not simply legal conclusions. Id. at 153 (citations omitted) (emphasis added).

B. Strict Standard of Review for Constitutional Claims

Goff Trust’s Counterclaim makes claims that pertain to federal constitutional conspiracy. In pleading federal constitutional claims, and particularly constitutional conspiracy claims, a much more strict standard of review is applied. The Fourth Circuit “has rarely, if ever, found that a plaintiff has set forth sufficient facts to establish a [constitutional] conspiracy ... and [a] court must dismiss [the] claim whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts.” Borkowski v. Baltimore County,

Maryland, 492 F.Supp.3d 454, 483 (D. Md. 2020), citing Simmons v. Poe, 47 F.3d 1370, 1377 (4th Cir. 1995) (emphasis added) (citations omitted).

“The Fourth Circuit has made clear that the standard for a [federal constitutional] conspiracy claim requires more than conclusory allegations. Rather, it requires *concrete facts*.” Smith v. Town of South Hill, --- F.Supp.3d ---- (E.D. Va. 2020), 2020 WL 1324216 at 25. (citations omitted) (emphasis added).

Likewise, appellate courts are consistently clear that “[i]n evaluating the complaint, unsupported legal allegations *need not be accepted*. Legal conclusions couched as factual allegations are insufficient, as are conclusory factual allegations devoid of any reference to actual events.” Id. at 468 (citations omitted) (emphasis added).

Citing the United States Supreme Court, the court in Barrett v. Board of Educ. of Johnston County, N.C., 13 F.Supp.3d 502, 508-509 (E.D. NC 2014), explained that

[a] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Similarly, the Court need not accept as true a plaintiff’s unwarranted inferences, unreasonable conclusions, or arguments. The Court is not bound to accept as true a legal conclusion couched as a factual allegation. Accordingly, to survive a Rule 12(b)(6) motion, a complaint must contain facts sufficient to raise a right to relief above the speculative level and to satisfy the Court that the claim is plausible on its face.

Id. at 508-509 (citations omitted).

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR IN DISMISSING APPELLANT GOFF TRUST'S COUNTERCLAIM FOR FAILURE TO SET FORTH FACTS SUFFICIENT TO STATE A CAUSE OF ACTION FOR DECLARATORY JUDGMENT, CIVIL CONSPIRACY, CONSPIRACY AGAINST RIGHTS, DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, AND INJUNCTIVE RELIEF.

Goff Trust's Counterclaim, paragraphs 1-3, 17, 49, 52, 74-105 (R. pp. 151, 153, 160-161, 166-174), purports to raise causes of action for (a) Declaratory Judgment; (b) Civil Conspiracy; (c) Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Section 241; (d) Deprivation of Rights under Color of Law, pursuant to Federal Crimes Code 18 U.S.C. Section 242; and (e) injunctive relief. These paragraphs also contain sporadic references to “disparate treatment” and “color of law,” suggesting Equal Protection or other constitutional claims although these causes of action are not specifically referenced nor are the elements set forth.

A. FEDERAL CRIMES AND OFFENSES

Counts III and IV (paragraphs 96-103) (R. pp. 172-173) of the Counterclaim purport to state causes of action for Conspiracy Against Rights pursuant to Federal Crimes Code, 18 U.S.C. Section 241, and Deprivation of Rights under Color of Law pursuant to Federal Crimes Code, 18 U.S.C. Section 242.

These are federal criminal offenses that have no place in this civil state court Counterclaim. This court has no subject matter jurisdiction over federal criminal offenses. 18 U.S.C.A. Section 3231 gives federal courts exclusive jurisdiction over federal crimes as follows: "The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." Furthermore, Goff Trust lacks standing to prosecute federal criminal offenses in any court.

A federal criminal offense does not constitute a civil cause of action, and accordingly, the court properly dismissed these claims.

B. CONSTITUTIONAL CLAIMS

In the event these references to federal crimes are deemed as an attempt to raise a civil claim for federal conspiracy against rights or deprivation of civil rights under federal law, these claims fail for the following reasons:

1. There is no factual support to demonstrate that Respondents, all of whom are private citizens, were acting under color of law.
2. There is no factual support to establish conspiracy against rights.
3. There is no factual support to establish injury or deprivation of any constitutionally protected right.

1. No Color of Law

Any purported claim for deprivation of a constitutional right or disparate treatment necessarily fails because there is not a single fact to support that any of the Respondents were acting under color of law. All Respondents are private citizens and were not acting in a governmental or quasi-governmental capacity.

The court in Melvin v. Social Sec. Admin., 126 F.Supp.3d 584 (E.D. NC 2015), quoting the United States Supreme Court, noted the well settled principle that, “[t]o state a [constitutional] claim ... a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” Id. at 607 (citations omitted).

“The color of law requirement excludes from its reach merely private conduct, no matter how discriminatory or wrongful.” Thomas v. The Salvation Army Southern Territory, 841 F.3d

632, 637 (C.A. 4th Circuit, 2016) (citations omitted). American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999).

There is no fact alleged in Goff Trust's Counterclaim to support the notion that Respondents were acting under color of law.

2. No Showing of Civil Conspiracy Against Rights

In order to properly plead a claim for Civil Conspiracy Against Constitutional Rights, a plaintiff must show:

(1) a conspiracy of two or more persons, (2) who are motivated by a specific class-based, invidiously discriminatory animus to (3) deprive the plaintiff of the equal enjoyment of rights secured by the law to all, (4) and which results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Thomas, *supra* at 637 (citations omitted).

Furthermore,

a claimant must show an agreement or a 'meeting of the minds' by defendants to violate the claimant's constitutional rights ... and it must be shown that there was a single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences. This is a relatively stringent standard that requires sufficient evidence that the alleged conspirators participated in a joint plan.

Melvin, *supra* at 610 (citations omitted).

A court must dismiss a claim "whenever the purported conspiracy is alleged in a merely conclusory manner, in the absence of concrete supporting facts." Borkowski, *supra* at 483 (citations omitted) (emphasis added). The courts have set a strict standard that is very difficult to achieve. As the Borkowski court noted, the Fourth Circuit has rarely, if ever, found sufficient facts.

By way of example,

the Fourth Circuit has affirmed the lower court's decision to dismiss a plaintiff's conspiracy claim where the plaintiff failed to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made.

Smith, *supra* at 25 (citations omitted). The Smith court, quoting the United States Supreme Court, gave the following important guidance to trial courts. "[A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Smith, *supra* at 26 (citations omitted). In another case, the court similarly noted that, "a bare assertion of conspiracy will not suffice." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

The Smith court described in detail how this process is applied.

The court will dismiss claims when allegations consist almost entirely of formulaic recitation of the elements of a cause of action via naked assertions of wrongdoing containing none of the required factual enhancement . . . to cross the line between possibility and plausibility of entitlement to relief. Such allegations alone cannot suffice to state a . . . conspiracy claim, especially given the weighty burden to properly bring such a claim.

Smith *supra* at 26.

In the present case, the allegations of the Counterclaim that purport to raise a constitutional conspiracy against rights consist entirely of redundant legal conclusions and bald assertions without any relevant factual support. There are no concrete facts to support any of the five elements of conspiracy against rights. Other than the unsupported conclusion that there was a "conspiracy" and a "deprivation" of some unnamed constitutionally protected right, there are no facts alleged to demonstrate the identities of who was involved, what exactly they did, where, when or how they did it, or what constitutionally protected right the conspiracy was directed toward.

3. No Injury or Deprivation of Constitutionally Protected Right

The Goff Trust Counterclaim makes frequent reference to the deprivation of rights and a conspiracy against rights; however, no constitutionally protected right is ever actually identified. Likewise, Goff Trust claims to have been “injured,” but has not alleged any facts in support of a real injury.

It is important to note at the outset that there is no constitutionally protected right to a zoning change. A review of the facts in the light most favorable to Goff Trust reveals that it applied for a rezoning of its property from R-1/2 to R-10 to double residential density. Respondents and other neighboring residents publicly opposed the zoning change as they were lawfully permitted to do. Despite this opposition, Goff Trust was successful in having its application for R-10 rezoning approved. Indeed, Defendant Georgetown County enacted two ordinances to change the zoning on the Goff Trust parcel from R-1/2 to R-10. Goff Trust got what it asked for. There is simply no factual basis to support an injury or deprivation of a constitutionally protected right.

For these reasons, the court properly dismissed all constitutional claims and constitutional conspiracy claims raised in the Counterclaim.

C. CIVIL CONSPIRACY UNDER SOUTH CAROLINA STATE LAW

Count II of Goff Trust’s Counterclaim (R. pp. 171-172) blends elements of conspiracy against rights arising under federal law with those of civil conspiracy arising under state law.

Under South Carolina state law,

a plaintiff asserting a civil conspiracy claim 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 County School District, 433 S.C. 562, 574, 861 S.E.2d 774 (SC Sup. Ct. 2021).

If an unlawful act is not alleged as part of the civil conspiracy, then it must be shown that “the objective is to ruin or damage the business of another. Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff.” Allegro, Inc. v. Scully, 418 S.C. 24, 32, 791 S.E.2d 140 (SC Sup. Ct. 2016) (citations omitted) (emphasis added).

In other words, injury that occurs to a plaintiff as an incidental consequence of a legitimate primary purpose is not actionable. Plaintiff is “required to prove that the object of the conspiracy was to ruin or damage the business of another.” Waldrep Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co., Inc., 992 F.2d 59, 63 (C.A. 4 1993) (emphasis added).

In the present case, Goff Trust has not set forth facts beyond conclusory allegations to support any of the four elements of civil conspiracy under South Carolina law. As in the case of the conspiracy against rights cause of action, there have been no facts alleged to identify who entered into an agreement with whom or to show that the primary purpose of such agreement was to ruin or damage or injure Goff Trust. There were no acts alleged in furtherance of this agreement. Finally, there has been no showing of any damage whatsoever. Goff Trust got the rezoning it asked for and even if it had not, it would be in the exact same position it was in before the alleged “conspiracy.”

Accordingly, the court properly dismissed all claims for civil conspiracy raised in the Counterclaim.

D. DECLARATORY JUDGMENT

The first count of Goff Trust's Counterclaim (R. pp. 170-171) asks for Declaratory Judgment, but asserts no basis for a declaration of rights. South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann., Section 15-53-30, states:

[a]ny person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

(emphasis added).

Goff Trust cites no statute, ordinance, contract or franchise to which a declaration of rights, status or other legal relation is required. The Counterclaim simply reiterates and repeats defenses to the Complaint that have been raised in Goff Trust's Motion to Dismiss and Answer and Affirmative Defenses. There is nothing alleged for the court to declare judgment upon independent of responses or defenses raised to the Complaint. Accordingly, the court properly dismissed the Declaratory Judgment claims with prejudice.

E. INJUNCTIVE RELIEF

A party seeking injunctive relief must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy of law. Rawlinson Road Homeowners Association, Inc., v. Jackson, 395 S.C. 25, 35 (Ct. App. 2011). The Courts recognize that an injunction is a drastic remedy and should be issued only to prevent irreparable harm suffered by the moving party. AJG Holdings, LLC, v. Dunn, 382 S.C. 43 (Ct. App. 2009). In the present case, the court properly dismissed Goff Trust's request for injunctive relief (R. pp. 173-174) on the basis that the Counterclaim did not establish facts sufficient to warrant injunctive relief.

CONCLUSION

South Carolina courts have made it clear that a complaint must state facts and not merely legal conclusions. Thus, “[w]hen a plaintiff states nothing more than legal conclusions, a claim should fail ... [and while the courts] recognize the pleadings must be liberally construed ... Rule 12(b)(6) *requires* the plaintiff to allege *facts*” and not simply legal conclusions. Paradis v. Charleston County School District, 424 S.C. 603, 613-614, 819 S.E.2d 147, 153 (Ct. App. 2018) (emphasis added) (reversed on other grounds). While the court must examine the legal sufficiency of the complaint and construe the facts alleged in the light most favorable to the nonmoving party, it is nevertheless Appellant's burden to establish a *prima facie* case and a right to relief within the four corners of the Counterclaim.

Accordingly, for these reasons, the court properly dismissed Goff Trust's Counterclaim.

II. THE TRIAL COURT DID NOT ERR IN STRIKING PORTIONS OF RESPONDENT GOFF TRUST'S AFFIRMATIVE DEFENSES AS IMPROPER AND/OR IRRELEVANT TO ANY ISSUE IN THE CASE.

SCRCP 12(f) permits a motion to strike pleadings containing improper, insufficient, redundant, immaterial, impertinent or scandalous matters. "It is well settled that a motion to strike is addressed to the sound discretion of the trial court ... [and t]he trial court's decision will not be reversed absent an abuse of discretion." Totaro v. Turner, 273 S.C. 134, 254 S.E.2d 800, 801 (SC Sup. Ct. 1979) (citations omitted).

In Totaro, the South Carolina Supreme Court affirmed the lower court's granting of a motion to strike many irrelevant paragraphs contained in appellant's lengthy original complaint.

Paragraphs 4-16, 18-48, 50-51, 53-73 of the Counterclaim (R. pp. 151-166) relate only to Goff Trust's defenses to Plaintiff's Complaint and raise issues of Standing, Justiciability, Service of Process, Failure to State a Cause of Action, and other miscellaneous defenses, all of which have been raised repeatedly in Goff Trust's various filings and are irrelevant to and not appropriately raised in a Counterclaim. These matters do not form a basis for any cause of action and Plaintiffs respectfully request these paragraphs to be dismissed pursuant to Rule 12(b)(6).

In addition the following matters raised as affirmative defenses in Goff Trust's Answer to Plaintiffs' Complaint are improper and/or irrelevant to any issue in this case: Fourth Affirmative Defense of Civil Conspiracy (Par. 167) (R. pp. 148-149); Fifth Affirmative Defense of Conspiracy Against Rights (Par. 168) (R. p. 149); Sixth Affirmative Defense of Deprivation of Rights Under Color of Law (Par. 169) (R. p. 149); Seventh Affirmative Defense of Misrepresentation (Par. 170) (R. p. 149); Tenth Affirmative Defense of Estoppel (Par. 173) (R. p. 150); Eleventh Affirmative Defense of Unclean Hands (Par. 174) (R. p. 150) are not proper defenses to any matter raised in the Complaint nor relevant to any issue in this case.

For these reasons, the court properly granted Respondents' Motion to Strike these matters

CONCLUSION

The United States District Court for the District of South Carolina noted that while courts liberally construe *pro se* documents, *pro se* litigants are not excused from meeting minimum legal requirements, and the Court cannot "ignore a clear failure in the pleading to allege facts which set forth a claim." Bruce v. Wilmington Savings Fund Society, (United States District Court, D. South Carolina) (2019) WL 1293718, 1 (citations omitted). The court further observed in a situation similar to this one,

[a]lthough Plaintiff mentions certain federal statutes and appears to assert that his constitutional rights have been violated, his allegations are so generally incomprehensible and filled with what could only be considered by a reasonable person as unconnected, conclusory, and unsupported comments, ... that it is unclear what is to be made of them.

Id. at 2 (citations omitted).

Goff Trust's Counterclaim and many of its Affirmative Defenses, as set forth above, fall into the category cited by the court in Bruce. Defendant Goff Trust has elected not to retain legal counsel and to proceed on a *pro se* basis. Plaintiffs respect this decision as fully within Defendant Goff Trust's rights, and they understand and sympathize with the *pro se* litigant who may not fully understand the nature of a landowner's role in a Declaratory Judgment action involving land that it owns. Respondents have done their best to exercise patience and understanding in light of the fact that Goff Trust is a *pro se* litigant. That said, this case has been bogged down and substantially delayed by numerous Goff Trust filings that have been improper, without legal basis, repetitive, and/or largely incomprehensible.

FINAL CONCLUSION

For the foregoing reasons, Respondents respectfully request this court to affirm the judgment of the trial court.

Respectfully submitted,

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