

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2301039

Desimber Rose Wattleton  
PLAINTIFF(S)

Westlake Financial Services et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter is before the Court on Defendant Westlake Financial Services' Motion To Dismiss. Based on a review of the file, submissions of the parties, and oral arguments, the Defendant's Motion is hereby respectfully GRANTED. Counsel for Defendant Westlake to prepare formal order.

It is so ordered.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/15/2023 .

Desimber Rose Wattleton for Desimber Rose Wattleton  
Desimber Rose Wattleton for Desimber Rose Wattleton

RECEIVED  
 Oct 04 2023  
 SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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Greenville Common Pleas

**Case Caption:** Desimber Rose Wattleton vs. A&K Auto Sales And Leasing LLC ,  
defendant, et al  
**Case Number:** 2023CP2301039  
**Type:** Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-09-15 15:33:41 page 3 of 3



Desimber Rose &lt;desimberrose@gmail.com&gt;

**Wattleton v A&K Auto and Westlake C/A 2023CP2301039**

1 message

**Jennifer Lisandrelli** <jennifer.lisandrelli@smithrobinsonlaw.com>

Wed, Oct 4, 2023 at 12:51 PM

To: "gmorgansc@sccourts.org" &lt;gmorgansc@sccourts.org&gt;

Cc: Murrell Smith &lt;murrell@smithrobinsonlaw.com&gt;, Shanon Peake &lt;shanon.peake@smithrobinsonlaw.com&gt;, Robert Childs &lt;Robert@lawyerchilds.com&gt;, Terry Rouse &lt;terry@lawyerchilds.com&gt;, Desimber Rose &lt;desimberrose@gmail.com&gt;, Helen Mehls &lt;Helen.Mehls@smithrobinsonlaw.com&gt;

Good afternoon Judge Morgan. Attached is the proposed Order Granting Defendant Westlake's Motion to Dismiss pursuant to your Form 4 Order dated September 18, 2023. The attached Order has been filed today. By copy of this email to all parties, I am advising of this communication with the Court. Thank you.



**Jennifer Lisandrelli**  
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**2023.10.04 Prop Order Granting Westlake MTD, 3.pdf**  
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STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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Desimber Rose Wattleton, )  
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 )  
Plaintiff, )  
 )  
v. )  
 )  
A&K Auto Sales and Leasing, LLC and )  
Westlake Financial Services, )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
Case No.: 2023-CP-23-01039

**ORDER GRANTING DEFENDANT  
WESTLAKE SERVICES, LLC dba  
WESTLAKE FINANCIAL SERVICES'  
MOTION TO DISMISS**

**RECEIVED**

**Oct 04 2023**

**SC Court of Appeals**

This matter came before the Court on September 14, 2023, on Defendant Westlake Services, LLC d/b/a Westlake Financial Services' ("Westlake") Motion to Dismiss. Present at the hearing were Shanon N. Peake on behalf of Westlake; Robert C. Childs, III, on behalf of Defendant A&K Auto Sales and Leasing, LLC ("A&K Auto"); and Plaintiff Desimber Rose Wattleton, *pro se*.

**BACKGROUND**

Plaintiff initiated this action on March 1, 2023, against Defendants A&K Auto, Ameen Aljaouni, Tim Yarger, Tony Scott, Ryan Little, Atlantic Acceptance Corp. ("Atlantic Acceptance"), Westlake, Roy Owens, and Roy Owens Towing.<sup>1</sup> Plaintiff alleges she purchased a 2020 Ford Edge from A&K Auto on October 8, 2022. Plaintiff signed a Retail Installment Purchase Agreement on October 8, 2022, agreeing to purchase the vehicle for a total of \$27,400, less a down payment of \$2,000. Plaintiff alleges A&K Auto informed her Atlantic Acceptance was the finance company and lien holder for the vehicle. She alleges she received a telephone call

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<sup>1</sup> Plaintiff voluntarily dismissed Atlantic Acceptance and Ryan Little on April 18, 2023, after Defendants A&K Auto, Aljaouni, Scott, and Yarger filed a notice of automatic stay due to Atlantic Acceptance's Chapter 11 bankruptcy. Plaintiff settled her claims against Roy Owens and Roy Owens Towing. *See* July 10, 2023, Form 4 Order.

from Atlantic Acceptance and an email communication from Westlake on October 28, 2022, telling her to make her payments to Westlake.

Plaintiff alleges she made payments in accordance with these instructions until January 2023. Plaintiff alleges she received notification from A&K Auto that Atlantic Acceptance did not provide funding for the vehicle and that she needed to return to the dealership to obtain financing through another entity. She alleges she called Westlake, but Westlake was not aware of this information. Plaintiff alleges Roy Owens Towing repossessed the vehicle on February 25, 2023. She alleges Roy Owens Towing produced a repossession order dated February 23, 2023, which showed A&K Auto as the creditor.

In the First Amended Complaint, Plaintiff brought the following causes of action: (1) breach of contract, (2) breach of good faith and fair dealings, (3) civil conspiracy to commit fraud, (4) predatory lending, (5) violation of the Fair Credit Reporting Act, (6) false and misleading representations, (7) invasion of privacy, (8) emotional distress, (9) contributory negligence, and (10) promissory estoppel. Plaintiff only made specific allegations as to Westlake in the promissory estoppel and breach-of-contract causes of action. Westlake filed a motion to dismiss on April 21, 2023. The Court held a hearing on Westlake's motion to dismiss on June 30, 2023. On July 10, 2023, the Court granted Westlake's motion to dismiss. The Court allowed Plaintiff ten days to file an amended complaint to replead her causes of action.

Plaintiff filed the Second Amended Complaint on July 10, 2023. In the Second Amended Complaint, Plaintiff brings the following causes of action: (1) breach of contract, (2) breach of good faith and fair dealings, (3) fraud, (4) violation of the Fair Credit Reporting Act ("FCRA"), and (5) negligence. Plaintiff only makes specific allegations against Westlake as to her claims for

breach of good faith and fair dealing, violation of the FCRA, and negligence. Westlake filed a motion to dismiss the Second Amended Complaint on July 26, 2023.

### **STANDARD OF REVIEW**

“Under Rule 12(b)(6) [of the South Carolina Rules of Civil Procedure,] 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 Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Id.* The Court should “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.” *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting Rule 12(b)(6)). The Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other grounds by Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); *see also Carolina Winds Owners’ Ass’n, Inc. v. Joe Holden Builder, Inc.*, 297 S.C. 74, 76, 374 S.E.2d 897, 899 (Ct. App. 1988) (“A motion under Rule 12(b)(6) or Rule 12(c) admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law.”).

### **FINDINGS**

Viewing the facts in the light most favorable to Plaintiff, the Court hereby grants the motion and dismisses Westlake from this case.

**A. Breach of the implied covenant of good faith and fair dealing**

The Court grants the Motion to Dismiss as to Plaintiff’s claim for breach of the implied covenant of good faith and fair dealing against Westlake. “[T]he implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract.” *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Plaintiff initially brought a claim against Westlake for breach of contract, but the Court previously dismissed this claim because Plaintiff did not allege a contract existed between herself and Westlake. In the prior Order, the Court directed Plaintiff to replead her breach of the implied covenant of good faith and fair dealing cause of action and breach of contract cause of action as one cause of action for breach of contract. Plaintiff did not do so. Instead, she included a claim for breach of contract against A&K Auto and included a claim for breach of the implied covenant of good faith and fair dealing against Westlake. Plaintiff cannot maintain a separate cause of action for breach of the implied covenant of good faith and fair dealing. At the hearing, Plaintiff consented to the dismissal of this cause of action. Accordingly, this cause of action is dismissed.

**B. Violation of the FCRA**

The Court grants the Motion to Dismiss as to Plaintiff’s claim for violation of the FCRA against Westlake. Pursuant to the FCRA, “[a] person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(A). “[T]he term ‘reasonable cause to believe the information is inaccurate’ means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.” 15 U.S.C. § 1681s-2(a)(1)(D). The FCRA also prohibits a

furnisher from furnishing information if “(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and (ii) the information is, in fact, inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(B). “Additionally, any person who ‘regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies’ must correct and update the information provided so that it is ‘complete and accurate.’” *Saunders v. Branch Banking & Tr. Co. of Va.*, 526 F.3d 142, 148 (4th Cir. 2008) (quoting 15 U.S.C. § 1681s-2(a)(2)).

The “FCRA explicitly bars private suits for violations of § 1681s-2(a), but consumers can still bring private suits for violations of § 1681s-2(b).” *Id.* at 149. Therefore, there is no civil liability for alleged violations of § 1681s-2(a). A private cause of action only exists under the FCRA pursuant to 15 U.S.C. § 1681s-2(b).

Pursuant to 15 U.S.C. § 1681s-2(b), a furnisher of information to a consumer reporting agency must investigate after receiving notice of a dispute regarding the accuracy of information provided to a consumer reporting agency. However, this duty to investigate is contingent upon receiving proper notice of a dispute from a consumer reporting agency pursuant to 15 U.S.C. § 1681i(a)(2). *See* 15 U.S.C. § 1681s-2(b)(1) (“After receiving notice pursuant to subsection 1681i(a)(2) . . .”). “[A] furnisher’s duty to investigate is not triggered until it receives notification of a dispute from a consumer reporting agency.” *Mavilla v. Absolute Collection Serv., Inc.*, 539 F. App’x 202, 208 (4th Cir. 2013). Notification from a consumer is not sufficient to create a duty to investigate under the FCRA and cannot give rise to a private cause of action for violation of the FCRA. “Once the duty to investigate is triggered, a furnisher breaches that duty if it fails to comply within thirty days.” *Id.* A private cause of action for violation of the FCRA cannot arise until the expiration of the 30-day period for investigation. *Id.*

Therefore, to state a claim under the FCRA, Plaintiff must allege that (1) she disputed specific information on her credit report with a consumer reporting agency, (2) the consumer reporting agency notified Westlake about the dispute, and (3) Westlake failed to reasonably investigate the dispute. *See Wilson v. Wells Fargo Bank*, No. CV 2:22-3594-BHH-MHC, 2023 WL 4466948, at \*4 (D.S.C. June 13, 2023), *report and recommendation adopted*, 2023 WL 4458944 (D.S.C. July 10, 2023) (finding a plaintiff failed “to state a claim under [the FCRA] because she has not alleged any facts as to when she allegedly disputed information, with which [consumer reporting agencies] she disputed the information, how she disputed the information, what information about which account she disputed, and other facts to support her belief that these unidentified [consumer reporting agencies] notified Wells Fargo of the dispute”).

Plaintiff’s claim for violation of the FCRA fails because Plaintiff has not alleged that she disputed any information with a consumer reporting agency, that the consumer reporting agency notified Westlake of the dispute, or that Westlake failed to reasonably investigate the dispute. Plaintiff alleges that she called Westlake to inform them that the dealership said it never received funding from Atlantic Acceptance, but Westlake “was not aware of anything [the dealership] alleged concerning Atlantic Acceptance and processed another payment from Plaintiff on that day.” *Id.* ¶¶ 14, 55. Plaintiff alleges Westlake “had a duty to validate th[e] debt at the time of purchase and a further duty to take reasonable measures to resolve the loan once they became aware that the loan was illegitimate.” *Id.* ¶ 58. This is not sufficient to bring a claim under the FCRA. These allegations are an attempt to bring a private claim against Westlake under § 1681s-2(a), which the FCRA has explicitly barred. There are no allegations in the Second Amended Complaint to satisfy the requirements to bring a private cause of action under § 1681s-2(b).

Therefore, the Court dismisses the FCRA claim against Westlake.

### C. *Negligence*

The Court grants the Motion to Dismiss as to Plaintiff's claim for negligence against Westlake. "To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998). "If there is no duty, the defendant is entitled to a judgment as a matter of law." *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). "If the plaintiff fails to prove the defendants owed her a legal duty of care, she fails to prove actionable negligence." *Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 781 (Ct. App. 2010).

Plaintiff does not make any allegations that Westlake owed her a duty or that Westlake breached any duty. As to duty, Plaintiff alleges that A&K Auto owed a duty to Plaintiff to "adhere to the contracts in place concerning the sale, ownership, and laws governing vehicle recovery in the State of South Carolina." Sec. Am. Compl. ¶ 67. Plaintiff alleges A&K Auto breached this duty by issuing an order of repossession. *Id.* ¶ 68. Plaintiff alleges the repossession caused her to "exit her home at nearly midnight in an attempt to stop the repossession of her vehicle" and injure her foot when she "stepped off the embankment in the yard." *Id.* ¶ 69. Plaintiff's sole allegations as to Westlake in the negligence cause of action are as follows:

70. As a Direct Cause of the actions of Defendants A&K Auto Sales and Westlake Financial Services, Plaintiff has suffered a broken foot and sprained ankle, all of which is a result of her vehicle being unlawfully repossessed.
71. But for the willful negligence and conduct of A&K Auto Sales and Westlake Financial Services, Plaintiff would not have sustained this Physical Personal Injury on February 24th, 2023 and the Pain and Suffering Plaintiff has since and will continue to endure as a result. Therefore, Plaintiff is entitled to ACTUAL, CONSEQUENTIAL, and PUNITIVE

DAMAGES in an amount to be determined by a jury in accordance with the law and evidence in the case.

*Id.* ¶¶ 70–71. Therefore, Plaintiff’s claim fails to meet at least two elements of negligence.

Plaintiff’s claim for negligence against Westlake further fails because Westlake was not involved in the repossession of Plaintiff’s vehicle and did not proximately cause any injury to Plaintiff. “Negligence is not actionable unless it proximately causes the plaintiff’s injury.” *Hurd v. Williamsburg Cnty.*, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003), *aff’d*, 363 S.C. 421, 611 S.E.2d 488 (2005).

Proximate cause requires proof of both causation in fact, and legal cause. Causation in fact is proved by establishing the plaintiff’s injury would not have occurred “but for” the defendant’s negligence. Legal cause, in contrast to the “but for” nature of causation in fact, is proved by establishing foreseeability. The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act. . . . A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred.

*Id.* at 611–12, 579 S.E.2d at 144 (internal citations omitted). “One is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant’s negligent act.” *Id.* at 612, 579 S.E.2d at 144. The independent and intervening actions of a third person will break the causal chain where “the intervening act and the injury resulting therefrom are of such character that” the alleged negligent party would not have “reasonably foreseen and anticipated them in light of the attendant circumstances.”

The Court finds Westlake’s alleged actions or inactions did not proximately cause any injuries to Plaintiff. Westlake did not repossess the vehicle and is not alleged to have any involvement in the repossession the vehicle. Instead, Plaintiff alleges Roy Owens Towing repossessed the vehicle and the order of repossession showed A&K Auto as the creditor. Westlake did not provide financing to Plaintiff or promise to provide financing to Plaintiff; as Plaintiff

alleges, Westlake was a servicer of the loan. That Plaintiff would injure her foot while attempting to stop a repossession that was not ordered by Westlake is not foreseeable from Westlake's alleged conduct. There is no causation in fact or legal cause here, and thus Plaintiff cannot show Westlake proximately caused any injuries to her.

At the hearing, Plaintiff argued that Westlake had a duty under the FCRA to report accurate information and acted negligently in reporting an inaccurate tradeline on her credit. However, Plaintiff does not make these allegations related to negligence in her Second Amended Complaint. Plaintiff bases her negligence cause of action on the repossession of the vehicle and her resulting injury. Even if the Court were to construe Plaintiff's Amended Complaint to include the purported negligent actions Plaintiff argued at the hearing, Plaintiff may not maintain a state law claim for negligence because the FCRA preempts such a claim. *See* 15 U.S.C. § 1681h(e) (“[N]o consumer may bring any action or proceeding in the nature of . . . negligence with respect to the reporting of information against . . . any person who furnishes information to a consumer reporting agency . . . .”); 15 U.S.C. § 1681t(b)(1)(F) (“No requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681s–2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies . . . .”). Accordingly, this cause of action is dismissed.

***D. Declaratory Judgment***

In the wherefore clause of the Second Amended Complaint, Plaintiff requests “equitable relief in the form of compensatory damages, punitive damages, declaratory judgment, and applicable court costs, attorney’s fees, and administrative fees in the amount of \$1,000,000.” Westlake argues the Court should dismiss Plaintiff’s request for a declaratory judgment because

she does not make any specific allegations or request. The Court agrees and dismisses Plaintiff's request for declaratory judgment.

**CONCLUSION**

The Court hereby GRANTS the motion and dismisses Westlake from this action.

**AND IT IS SO ORDERED.**

\_\_\_\_\_  
Honorable G.D. Morgan, Jr.

*(judicial signature to follow)*