

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2021-CP-10-01343

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fargnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fargnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS
CLAWSON FARGNOLI, LLC, SAMUEL
R. CLAWSON, JR., ESQ., AND
CHRISTINA R. FARGNOLI, ESQ.’S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

On March 2, 2022, this Court heard a Motion to Dismiss¹ filed by Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Clawson Fargnoli Defendants”). Appearing at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”) was Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC. Appearing at the hearing for the Clawson Fargnoli Defendants was James A. Dedman, Esquire, of Gallivan, White & Boyd, PA. Appearing at the hearing for Defendants Barrett R. Brewer, Esq. and Brewer Law Firm, LLC (“Brewer Defendants”) was R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC. Following the hearing, this Court took the Motion to Dismiss the Second Amended Complaint under advisement. After careful consideration and review of the Second Amended Complaint and caselaw, along with memoranda submitted by the Clawson Fargnoli Defendants, the Motion to Dismiss is **GRANTED**.

RECEIVED

Nov 14 2023

SC Court of Appeals

¹ The Clawson Fargnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their client. This order will focus solely on the Clawson Fargnoli Defendants’ representation of Plaintiff Andrew Pampu.

FACTUAL BACKGROUND

This case arises out of Plaintiffs' allegations of legal professional negligence and breach of fiduciary duty by the Clawson Fagnoli Defendants. Plaintiffs' allegations center primarily around the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu in a federal court lawsuit mediation.

On November 2, 2017, the Clawson Fagnoli Defendants agreed to represent Plaintiff Andrew Pampu in two separate lawsuits: (1) a case pending in the United States District Court for the District of South Carolina asserting Title IX and other claims against Clemson University (the "Federal Lawsuit") and (2) a case pending in the Pickens County Court of Common Pleas² asserting causes of action for defamation, civil conspiracy, and other tort claims against an accuser who submitted claims of sexual misconduct against Plaintiff Andrew Pampu to Clemson University (the "State Lawsuit").

The facts underlying the two lawsuits involved an accusation of sexual misconduct against Plaintiff Andrew Pampu. In Fall 2015, Plaintiff Andrew Pampu attended Clemson University as a freshman student. He was accused of and ultimately found by Clemson University to have engaged in "nonconsensual sexual activities" at an administrative hearing, resulting in Plaintiff Andrew Pampu's suspension from the school. (*See* Second Amended Complaint, ¶ 19). Plaintiff Andrew Pampu appealed Clemson University's administrative hearing decision but this appeal resulted in the imposition of heavier sanctions, including an additional suspension. (*Id.*, ¶ 20, 21).

As part of the Clawson Fagnoli Defendants' representation of Plaintiff Andrew Pampu, they participated in mediation with Clemson University. (*Id.*, ¶ 37). On March 2, 2018, prior to the

² A Pickens County jury returned a verdict in favor of Plaintiff Andrew Pampu following his jury trial in March 2022. There are pending post-trial motions that have not yet been ruled upon.

mediation, Plaintiffs emailed the Clawson Fagnoli Defendants with the goals for the mediation, including:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against Andrew Pampu, which by implication would have limited the University's future treatment of Andrew Pampu's academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) Andrew Pampu's arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

Id., ¶ 36.

On March 21, 2018, following a lengthy mediation, Plaintiff Andrew Pampu signed a settlement agreement with Clemson University.³ However, Plaintiff Andrew Pampu developed “buyer's remorse” in the days after the mediation and attempted to abandon the settlement. In the Second Amended Complaint, Plaintiffs contend that the settlement with Clemson University conflicted with the goals explained in the March 2, 2018 email and the goals for both the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41).

On May 8, 2018, Plaintiff Andrew Pampu terminated his attorney-client relationship with the Clawson Fagnoli Defendants and sought new counsel. (*Id.*, ¶ 47-48). Clemson University filed a motion to enforce the settlement in the Federal Lawsuit, which was ultimately granted. (*Id.*, ¶ 55-57).

³ Plaintiffs Amanda Pampu and John Pampu were not signatories to the Settlement Agreement. (*Id.*, ¶ 39).

PROCEDURAL BACKGROUND

On June 16, 2021, Plaintiffs filed a Second Amended Summons and Complaint against Defendants in the Charleston County Court of Pleas.⁴ In their Second Amended Complaint, Plaintiffs assert claims against the Clawson Fagnoli Defendants for legal professional negligence and breach of fiduciary duty. They allege:

[t]he Lawyers failed to meet the minimum standard or care thereby breaching professional duties to the Does to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case, and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner to protect, preserve and advanced the rights and interests of the Does; meet the goals of the Federal Case mediation; the goals of the Federal Case litigation; and the goals of the State Case.

Id., ¶ 83.

On June 28, 2021, the Clawson Fagnoli Defendants filed a Motion to Dismiss the Second Amended Complaint. A hearing on that Motion was held before this Court on March 2, 2022.

STANDARD OF REVIEW

Rule 12(b)(6) motions challenge the legal sufficiency of a complaint. In considering a motion to dismiss, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). SCRCP Rule 12(b)(6) permits a trial judge to 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.

⁴ Plaintiffs initially filed suit against Defendants on March 19, 2021 and did not include an expert witness affidavit as required by the statute. The Amended Complaint was filed on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. The Complaint was then amended for a second time on June 16, 2021 to include arguments from the Defendants' respective Motions to Dismiss that asserted Mr. Dillon's affidavit was defective. The substantive allegations across the three (3) Complaints remained virtually the same.

2002). The court “must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). When reviewing a Rule 12(b)(6) motion, a court must view the complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff’s favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then the court may not grant a Rule 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

DISCUSSION

I. Plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs’ claims are dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiffs’ allegations of legal malpractice center almost exclusively around Plaintiff Andrew Pampu’s unhappiness with the settlement following the Federal Lawsuit mediation. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Clawson Fagnoli Defendants committed professional error in advising Plaintiff Andrew Pampu whether or not to accept the settlement. There are no allegations of professional error on the part of the Clawson Fagnoli Defendants in advising Plaintiff Andrew Pampu as to whether he should accept the terms of the settlement in the Federal Lawsuit. There are also no allegations that the Clawson Fagnoli Defendants induced Plaintiff Andrew Pampu into signing the mediation agreement. Plaintiff Andrew Pampu’s later regret regarding the terms of the settlement agreement is not a proper ground for a legal malpractice claim.

In their Memorandum Law in Opposition to the Motion to Dismiss, Plaintiffs claimed that the Clawson Fargnoli Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Clawson Fargnoli Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Clawson Fargnoli Defendants. Second, there are no allegations (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Therefore, Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

II. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs Amanda Pampu and John Pampu's claims are dismissed for lack of subject matter jurisdiction pursuant to the South Carolina Rules of Civil Procedure 12(b)(1) as Plaintiffs Amanda Pampu and John Pampu lack standing to assert claims in this lawsuit. Neither Amanda Pampu and John Pampu were parties to the Federal Lawsuit or the State Lawsuit. The only named party is Plaintiff Andrew Pampu. While Plaintiffs Amanda Pampu and John Pampu attended the mediation, Plaintiff Andrew Pampu alone signed the settlement agreement. The only individual that could assert any allegations of legal malpractice by the Clawson Fargnoli Defendants is Plaintiff Andrew Pampu as he was the only party to the Federal Lawsuit and the State Lawsuit. Plaintiff Andrew Pampu was also the only signatory to the Federal Lawsuit settlement agreement.

Plaintiffs assert that their allegation contained within the Second Amended Complaint that the Clawson Fargnoli Defendants undertook representation of all of the Plaintiffs, including Plaintiffs Amanda Pampu and John Pampu, is sufficient for this Court to have subject matter jurisdiction over Plaintiffs Amanda Pampu and John Pampu. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Clawson Fargnoli Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). The Clawson Fargnoli Defendants' Motion to Dismiss is **GRANTED**.

III. Plaintiffs' required expert witness affidavit was untimely and insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed as the required expert witness affidavit was untimely and insufficient as a matter of law. On March 19, 2021, Plaintiffs initially filed their Complaint against Defendants in the Charleston County Court of Common Pleas. That Complaint did not include an expert witness affidavit as required by South Carolina statute. South Carolina Code § 15-36-100(B) requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], 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.

Id.

Plaintiffs amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs argue that the Complaint was originally filed three (3) days before the three (3) year anniversary of the date on which any reasonable person would know or should have known of a claim against Defendants (i.e., the date of the Federal Lawsuit mediation). However, this argument does not address their original failure to file an expert witness affidavit. It merely suggests that, based on the filing date of the original Complaint, the Clawson Fargnoli Defendants should have **presumed** that there were time limitations to obtaining an expert witness affidavit. However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint, which blatantly fails to comply with the requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Clawson Fargnoli Defendants are dismissed because their expert witness affidavit was untimely filed.

Even if Plaintiffs had asserted that there was not time for an expert witness affidavit to be prepared to be filed with the original Complaint, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id.

In the expert witness affidavit, Mr. Dillon holds himself out as an expert in legal malpractice claims in South Carolina district court litigation. However, Mr. Dillon is not, and apparently has never been, licensed to practice in the state and federal courts of South Carolina or the U.S. District Court for the Fourth Circuit Court of Appeals. Mr. Dillon makes no claim of familiarity with the nature of federal practice in the U.S. District Court for the District of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Mr. Dillion admits in his affidavit that he has reviewed few materials related to the underlying federal and state litigation at issue.

While Plaintiffs are correct that the Rules do not require a South Carolina barred attorney to serve as an expert witness, the crux of the legal malpractice claim centers almost solely around the Clawson Fagnoli Defendant's advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Clawson Fagnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

IV. Plaintiffs' claim for breach of fiduciary duty is duplicative.

“Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship.” *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs’ Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore “encompassed by the claim for legal malpractice.” *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. *See also* Rule 12(f), SCRCP (authorizing the court to strike any redundant matter).

Therefore, the Clawson Fargnoli Defendants’ Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

V. Plaintiffs' claims are adverse to public policy.

Plaintiffs' claims should be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case in both the state and federal courts of South Carolina. *See, e.g.*, Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met. Mediation is about compromising to reach a solution that all parties can tolerate. Plaintiffs' allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. Plaintiffs' response to the argument that their claims are against public policy is merely that the Clawson Fagnoli Defendants did not cite to any controlling law. Again, Plaintiffs reiterate that an attorney's act or omissions into leading a client to sign a settlement agreement permit legal malpractice lawsuits. However, the crux of Plaintiffs' claim against the Clawson Fagnoli Defendants is merely that the settlement agreement did not accomplish all of their goals. Plaintiffs did not identify any acts or omissions by the Clawson Fagnoli Defendants that led Plaintiff Andrew Pampu to sign the settlement agreement.

If this Court were to permit Plaintiffs' malpractice claims to continue against the Clawson Fagnoli Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Therefore,

the Clawson Fargnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED.**

CONCLUSION

The Clawson Fargnoli Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED.**

AND IT IS SO ORDERED.

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court

Orangeburg, South Carolina

June _____, 2022



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fargnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

Andrew Pampu, Amanda Pampu, and
John Pampu,

Plaintiffs,

v.

Clawson Fagnoli, LLC; Samuel R. Clawson,
Jr., Esq.; Christina R. Fagnoli, Esq.; Barrett R.
Brewer, Esq.; and Brewer Law Firm, LLC,

Defendants.

IN THE COURT OF COMMONS PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2021-CP-10-01343

**ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION
AND TO ALTER OR AMEND THE
ORDERS GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

The Court has now considered Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. On June 23, 2022, in two separate orders, this Court granted the motion to dismiss of Defendants Clawson Fagnoli, LLC, Samuel R. Clawson, and Christina R. Fagnoli and the motion to dismiss of Defendants Barrett R. Brewer and the Brewer Law Firm, LLC. The orders disposed of all of Plaintiffs' claims in the Second Amended Complaint. On July 5, 2022, Plaintiffs filed their Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss. The Court has considered the motion, pleadings, arguments of counsel, and governing legal authority at issue. Following its review and consideration of the issues, the Court finds that Plaintiffs' Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss should be DENIED.

AND IT IS SO ORDERED.

October _____, 2023

Orangeburg, South Carolina

The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court

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Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fargnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT

Andrew Pampu, Amanda Pampu, and
John Pampu,

Case No. 2021-CP-10-01343

Plaintiffs,

**ORDER GRANTING
MOTION TO DISMISS
FOR DEFENDANTS
BARRETT R. BREWER AND
BREWER LAW FIRM, LLC**

v.

Clawson Fargnoli, LLC;
Samuel R. Clawson, Jr., Esq.;
Christina R. Fargnoli, Esq.;
Barrett R. Brewer, Esq.; and
Brewer Law Firm, LLC,
Defendants.

This Court heard a Motion to Dismiss¹ on March 2, 2022 filed by Defendants Barrett R. Brewer and Brewer Law Firm, LLC (“Brewer Defendants”). Thomas A. Pendarvis, Esquire, of Pendarvis Law Office, PC appeared at the hearing for Plaintiffs Andrew Pampu, Amanda Pampu, and John Pampu (“Plaintiffs”)². R. Bruce Wallace, Esquire, of Nexsen Pruet, LLC appeared at the hearing for the Brewer Defendants. James A. Dedman, Esquire, of Gallivan, White & Boyd, PA appeared at the hearing for Defendants Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., and Christina R. Fargnoli, Esq. (“Clawson Fargnoli Defendants”). Following the hearing, this Court took the Motion to Dismiss under advisement. Upon review of the Second Amended

RECEIVED

Nov 14 2023

SC Court of Appeals

¹ The Clawson Fargnoli Defendants and Brewer Defendants filed a joint Memorandum of Law in Support of their Motions to Dismiss. I granted both of their motions but directed counsel to submit a separate proposed order for their clients. This order will focus solely on the Brewer Defendants’ representation of Plaintiff Andrew Pampu.

² By Order dated March 4, 2022, the Court granted Defendants’ motions to prohibit Plaintiffs from proceeding anonymously and ordered the Plaintiffs to proceed in this case in their proper true names.

Complaint and relevant case law, along with memoranda submitted by the parties, the Motion to Dismiss is **GRANTED**.

FACTUAL BACKGROUND

This case arises out of Plaintiff's allegations of legal professional negligence and breach of fiduciary duty against the Brewer Defendants and Clawson Fargnoli Defendants which stems in part from their representation of Plaintiff Andrew Pampu in a federal court lawsuit. Specifically, Plaintiffs' complaint contained allegations of legal professional negligence, breach of contract, and breach of fiduciary duty against Defendants.

On November 2, 2017, Defendants agreed to represent Plaintiff Andrew Pampu in two related, ongoing lawsuits. Plaintiffs filed the first suit in the United States District Court for the District of South Carolina (the "Federal Lawsuit") and asserted Title IX and related claims against Clemson University. Plaintiffs filed the second suit in the Pickens County Court of Common Pleas (the "State Lawsuit") and asserted claims for defamation, civil conspiracy, and other causes of action arising out of accusations of sexual misconduct submitted to Clemson University against Plaintiff Andrew Pampu. (See Second Am. Compl. at ¶ 13). These accusations spurred the Title IX investigation which was the subject of the Federal Lawsuit. Notably, neither Plaintiff Amanda Pampu nor Plaintiff John Pampu were parties to the Federal Lawsuit or State Lawsuit.

The underlying facts are taken from the Complaint. While attending Clemson University in the Fall of 2015, a female student accused Plaintiff Andrew Pampu of sexual misconduct. (See Second Am. Compl. at ¶ 19). After conducting an administrative hearing, the University found Plaintiff Andrew Pampu to have engaged in "nonconsensual sexual activities" and suspended him. (*Id.*). Plaintiff Andrew Pampu appealed this

determination, which only resulted in the University issuing heavier disciplinary action, including an additional suspension. (*Id.*, ¶ 20-21). Plaintiff Andrew Pampu subsequently sued the University in the Federal Lawsuit. After the Brewer Defendants substituted as counsel for Andrew, the Brewer Defendants represented Plaintiff Andrew Pampu in a court-ordered mediation on March 21, 2018. (*Id.*, ¶ 16, 37).

On March 2, 2018, prior to the mediation, Plaintiffs sent the Brewer Defendants an email containing the supposed goals for the mediation which included:

(a) Based on the Charles Doe text messages and a lengthy and detailed report (the Swinton Report), the University vacate its findings and all related sanctions against [Andrew Pampu], which by implication would have limited the University's future treatment of [Andrew Pampu's] academic records; (b) The State Case remain separate and unaffected by any settlement of the Federal Case; (c) There be no confidentiality or silencing provisions restricting sharing of the settlement terms; and (d) [Andrew Pampu's] arguments regarding lack of due process afforded by the University during the investigation and adjudicatory process be buttressed by reference to the cases listed in the email.

(*Id.*, ¶ 36). When the mediation session concluded, Plaintiff Andrew Pampu signed a written settlement agreement³ on March 21, 2018 with Clemson University, but he soon developed "buyer's remorse" and attempted to abandon the settlement. (*Id.*, ¶ 39). Plaintiffs contend the settlement conflicted with the goals outlined in their aforementioned email to the Brewer Defendants and the goals of the Federal Lawsuit and State Lawsuit. (*Id.*, ¶ 41). Plaintiffs terminated their attorney-client relationship with the Brewer Defendants on or about May 8, 2018 and sought new counsel. (*Id.*, ¶ 47-48).

³ Because Amanda Pampu and John Pampu were not parties to the Federal Lawsuit, they did not sign the settlement agreement. (*Id.*, ¶ 39).

Meanwhile, the University filed a motion to enforce the settlement, which the district court ultimately granted. (*Id.*, ¶ 55-57).

PROCEDURAL BACKGROUND

Plaintiffs initially filed a Complaint in the Charleston County Court of Pleas on March 19, 2021, without any affidavit as required by S.C. Code Ann. § 15-36-100. Plaintiffs then filed an Amended Complaint on April 30, 2021 to include an expert witness affidavit from Justin Dillon, Esquire. When Defendants filed motions to dismiss the first Amended Complaint, Plaintiffs then filed the Second Amended Complaint on June 16, 2021 to address arguments raised by the Brewer Defendants and Clawson Fargnoli Defendants' initial Motions to Dismiss directed to the deficiencies of the expert's affidavit filed with the first Amended Complaint. The Brewer Defendants filed the instant motion to dismiss on June 30, 2021.

STANDARD OF REVIEW

South Carolina Rule of Civil Procedure 12(b)(6) provides that, upon a defendant's motion, a court may dismiss a plaintiff's claim for "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss, the court must base its decision on the plaintiff's allegations, as set forth in the complaint." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The question for the Court is whether the pleadings, taken in the light most favorable to the plaintiff, articulate a valid claim for relief. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). A Rule 12(b)(6) motion must be granted if the facts alleged and the inferences reasonably deducible from the pleadings show that the plaintiff could not prevail on any theory of the case. *See Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

DISCUSSION

A. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

Plaintiffs' claims are dismissed for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, because Plaintiffs' "buyer's remorse" is not proper grounds for legal malpractice. Plaintiffs only allege facts demonstrating their unhappiness with the settlement agreement that Plaintiff Andrew Pampu voluntarily signed. While Plaintiffs are correct in stating that there may be grounds for a malpractice suit where a client alleges his former attorney was negligent in advising him to accept a settlement, there is no allegation in the Second Amended Complaint giving rise to a colorable claim the Brewer Defendants committed professional error in advising him whether or not to accept the settlement. Nor does the Second Amended Complaint present any allegation that Plaintiff Andrew Pampu was improperly induced by the Brewer Defendants to sign the agreement.

Plaintiffs claimed in their response to the Motion to Dismiss that the Brewer Defendants committed tortious conduct after the mediation. That allegedly tortious conduct pertains to the Brewer Defendants' assertion of a lien for their attorney's fees on the settlement amounts for their work in the Federal Lawsuit and State Lawsuit. First, asserting such a lien was permissible under the terms of the representation agreement between Plaintiff Andrew Pampu and the Brewer Defendants. Second, there is no allegation (beyond conclusory ones) that tortious conduct occurred in the assertion of that lien. To the extent Plaintiffs claim that Plaintiff Andrew Pampu's position in the Federal Lawsuit and/or State Lawsuit was damaged due to the assertion of the lien, the Second

Amended Complaint lacks proper allegations demonstrating proximate cause for such harm.

Plaintiffs failed to state a claim in the Second Amended Complaint upon which relief can be granted and, therefore, the Motion to Dismiss is **GRANTED**.

B. Plaintiffs Amanda Pampu and John Pampu lack standing.

Plaintiffs' claims are dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rules of Civil Procedure 12(b)(1) as neither Amanda Pampu or John Pampu have standing to assert these claims. Neither Amanda Pampu nor John Pampu were parties to the State Lawsuit or Federal Lawsuit, and because Andrew Pampu was the only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.

Plaintiffs' argue that their allegations the Brewer Defendants undertook representation of all named Plaintiffs (See Second Am. Compl. at ¶ 13) in this action. Such allegations are insufficient to confer subject matter jurisdiction. Plaintiffs cite to *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, 826 S.E.2d 270, 426 S.C. 154 (2019) in arguing that an attorney-client relationship existed between Amanda Pampu, John Pampu, and the Brewer Defendants. However, that case pertains to the contractual relationships between insurers, insureds, and the attorneys hired to defend insureds pursuant to insurance policies. It is therefore factually and legally distinct from the case at bar. Plaintiffs have provided no evidence of the existence of either an attorney-client relationship or fiduciary duty between Plaintiffs Amanda Pampu and John Pampu and the Brewer Defendants. As such, no legal malpractice action can stand.

Therefore, the claims of Plaintiffs Amanda Pampu and John Pampu should be dismissed for lack of subject matter jurisdiction pursuant to South Carolina Rule of Civil Procedure 12(b)(1). Brewer Defendants' motion to dismiss is hereby **GRANTED**.

C. Plaintiffs' required expert witness affidavit was untimely and is insufficient as a matter of law.

Plaintiffs' Second Amended Complaint is dismissed because the required expert witness affidavit was untimely and is insufficient as a matter of law. Plaintiffs filed their initial complaint against the Brewer Defendants on March 19, 2021 but did not include an expert witness affidavit. South Carolina law requires that:

in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) [...], 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.

S.C. Code Ann. § 15-36-100(B). Plaintiffs' original Complaint, although it alleged professional negligence, contained no reference to the lack of an expert affidavit required by section 15-36-100.

Plaintiffs then amended their Complaint forty-two (42) days later and included an expert witness affidavit. Plaintiffs now argue that simply by filing the initial Complaint only three (3) days before the expiration of the statute of limitations for their legal malpractice claims, the Brewer Defendants should have presumed an affidavit of an expert witness could not be filed due to time constraints.⁴ However, Plaintiffs failed to allege such time constraints in the initial filing of the Complaint which blatantly fails to comply with the

⁴ Legal malpractice claims are subject to three-year statute of limitations under South Carolina Code § 15-3-535.

requirements of S.C. Code § 15-36-100(B)-(C).⁵ Therefore, Plaintiffs' claims against the Brewer Defendants are dismissed because their expert witness affidavit was untimely filed.

Furthermore, even if Plaintiffs had fully complied with the contemporaneous filing requirement or any of its exceptions, Plaintiffs' expert witness affidavit is insufficient as a matter of law because he lacks relevant experience. South Carolina Code § 15-36-100(A)(3) states that an expert witness:

means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who: [...] (3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

Id. In his affidavit, Plaintiffs' proposed expert witness, Mr. Dillon, holds himself out as having expert knowledge of proper attorney action to be undertaken in South Carolina district court litigation. There are several reasons why his claims of expertise in this area are insufficient. First, Mr. Dillon has never been licensed to practice law in South Carolina state or federal courts, nor is he licensed in the Fourth Circuit Court of Appeals. Second,

⁵ South Carolina Code § 15-36-100(C)(1) provides that:

[t]he contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the *plaintiff alleges that an affidavit of an expert could not be prepared.*

Mr. Dillon makes no claim to have obtained *pro hac vice* admission to any court in South Carolina. Third, Mr. Dillon makes no mention of familiarity with the nature of federal practice in the district courts of South Carolina, the Local Civil Rules for the U.S. District Court for the District of South Carolina, or the nature or manner of mediations conducted in South Carolina. Lastly, Mr. Dillon notes he has reviewed few materials related to the underlying facts at issue.

Though Plaintiff is correct in stating the Rules do not require an expert to be a South Carolina barred attorney, it is the Brewer Defendants' advice to Plaintiff Andrew Pampu during the mediation in the Federal Lawsuit for a South Carolina case that is at the heart of Plaintiffs' legal malpractice claims. Mr. Dillon's purported experience relates mainly to Title IX claims with no claimed familiarity with South Carolina federal or state court procedures or litigation. As such, Mr. Dillon's experience is not sufficiently related to Plaintiffs' allegations of legal malpractice as contained in the Second Amended Complaint. Based on the forgoing, both Mr. Dillon's affidavit and credentials are deficient. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

D. Plaintiffs' claim for breach of fiduciary duty is duplicative.

"Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011). Where a breach of fiduciary duty claim and a legal malpractice claim arise out of the attorney-client relationship and the same facts support both claims, the claim for breach of fiduciary duty is duplicative of the claim for legal malpractice. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019). Moreover, where the

Complaint fails to allege facts demonstrating the fiduciary relationship arises from some source other than the attorney-client relationship, the court should dismiss the breach of fiduciary duty claim as duplicative. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 337, 732 S.E.2d 166, 173 (2012). Plaintiffs' Second Amended Complaint alleges both a negligence cause of action and a breach of fiduciary duty claim arising out of the same attorney-client relationship and the same set of operative facts. As a result, the breach of fiduciary duty is also dismissed as duplicative.

While counsel for Plaintiffs argues this is an election of remedies issue, the above cited cases clearly demonstrate that dismissal is the appropriate remedy because the alleged breach of fiduciary duty arises out of the same operative facts as the attorney-client relationship and is therefore "encompassed by the claim for legal malpractice." *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt.*, *supra*, 399 S. at 336, 732 S.E.2d at 173). Duplicative matters are always subject to dismissal at this stage. See *also* Rule 12(f), SCRC (authorizing the court to strike any redundant matter).

Therefore, the Brewer Defendants' Motion to Dismiss the breach of fiduciary duty cause of action is **GRANTED**.

E. Plaintiffs' claims are averse to public policy.

Plaintiffs' claims will also be dismissed because they violate the important public policy on the finality of mediation in civil cases. South Carolina courts "greatly favor the settlement of cases and allowing litigants to achieve their own resolution to disputes." *Riddle v. City of Anderson*, S.C., No. 8:12-CV-03480-TMC, 2015 WL 12830369, at *5 (D.S.C. Jan. 26, 2015). In fact, the public policy of South Carolina favors settlement of cases and early resolution to disputes so much so that mediation is required in every case

in both the state and federal courts of South Carolina. See, e.g., Local Civ. Rule 16.05 (D.S.C.); Rule 3 of the South Carolina ADR Rules.

While mediation is an invaluable tool for South Carolina litigants, participants rarely, if ever, leave mediation completely satisfied with the outcome and having had all of their desires met, because mediation is about compromising to reach a solution that all parties can tolerate. Here, the allegations of legal malpractice center almost exclusively on the fact that Plaintiff Andrew Pampu did not get everything that he wanted at mediation. In response, Plaintiffs argue the Brewer Defendants did not cite to any controlling law and that an attorney's negligent representation in settlement agreements can give rise to legal malpractice lawsuits. But as previously stated, Plaintiffs failed to allege facts showing the Brewer Defendants committed professional error in advising or representing Plaintiff Andrew Pampu in the relevant matters, and the Plaintiffs' claims against the Brewer Defendants are merely that the settlement agreement did not accomplish all of their goals.

If this Court were to permit Plaintiffs' "buyer's remorse" masquerading as a malpractice claim to continue against Defendants, it would essentially open the flood gates to frivolous claims made by unhappy litigants who were not completely satisfied with the outcome of mediation. Plaintiffs' claims are little more than a thinly veiled attempt to relitigate the validity of the underlying settlement – an issue that has already been litigated and ruled on by the federal courts of South Carolina. Therefore, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

CONCLUSION

The Court has considered all of the arguments made by the parties, including Plaintiffs' written memoranda in opposition, and the oral arguments they set forth at the

hearing on the Motion. To the extent such arguments are not discussed hereinabove, the court has considered them and rules in favor of the Brewer Defendants on the motion to dismiss. Therefore, for the reasons stated above, the Brewer Defendants' Motion to Dismiss the Second Amended Complaint is **GRANTED**.

AND IT IS SO ORDERED.

Electronic signature on following page
The Honorable Edgar W. Dickson
Circuit Court Judge, First Circuit Court



Charleston Common Pleas

Case Caption: John Doe , plaintiff, et al VS Clawson Fagnoli Llc , defendant, et al

Case Number: 2021CP1001343

Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153