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**Dec 18 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
G.D. Morgan, Jr., Circuit Court Judge

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Civil Action No. 2023-CP-23-01039

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Appellate Case No. 2023-001469

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Desimber Rose Wattleton,

Appellant,

v.

A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger, Tony Scott, Ryan Little,  
Atlantic Acceptance Corp., Westlake Financial Services, Roy Owens and Roy Ownes Towing,  
Defendants,

Of Which A&K Auto Sales and Leasing, LLC and Westlake Financial Services are the  
Respondents.

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**MOTION TO CLARIFY NOVEMBER 27, 2023 ORDER AND MOTION TO DISMISS  
WESTLAKE SERVICES, LLC dba WESTLAKE FINANCIAL SERVICES FROM  
APPEAL**

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Westlake Services, LLC dba Westlake Financial Services (“Westlake”), erroneously sued as its fictitious business name, previously filed a Motion to Dismiss the October 4, 2023 Notice of Appeal filed by Appellant Desimber Rose Wattleton. There have been two Notices of Appeal filed in this case:

1. September 18, 2023 Notice of Appeal, attaching a Form 4 order of the circuit court ruling on Respondent A&K Auto Sales and Leasing, LLC’s motion to dismiss Plaintiff’s second cause of action (“the First Notice of Appeal”); and

2. October 4, 2023 Notice of Appeal, attaching a Form 4 order of the circuit court granting Westlake’s motion to dismiss and directing Westlake to prepare a formal order (“the Second Notice of Appeal”).

One November 27, 2023, this Court issued an Order ruling on Westlake’s Motion to Dismiss, stating:

To the extent that Appellant’s intention is to file an amended notice of appeal of the aforementioned order [granting Westlake’s motion to dismiss], the motion is denied because the order is not immediately appealable. *See Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) (explaining “a Form 4 order is used on a plethora of occasions” as a final order, when nothing remains to be done by the circuit court after signing the order, but a Form 4 is “not efficacious as a final order” if the circuit court explicitly provides that “a more formal order will be filed,” or “the final order will be prepared by [counsel]” (emphasis removed)).

Respondent Westlake’s motion to dismiss this appeal is denied. The order on appeal, the circuit court’s September 18, 2023 order dismissing Appellant’s second cause of action, is interlocutory but appealable. *See Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986) (“An order granting a Rule 12(b) motion as to one of multiple claims is directly appealable under § 14-3-330(2) because it affects a substantial right and strikes out part of a pleading.”).

Westlake’s Motion to Dismiss sought dismissal of the Second Notice of Appeal, appealing the circuit court’s dismissal of Westlake as a party from the action because the Form 4 Order directed counsel to prepare a more formal order. The Court agreed in the November 27, 2023 Order, finding that order was not immediately appealable. However, the Court indicated it was denying Westlake’s motion to dismiss and found the appeal could proceed based on the First Notice of Appeal. It appears that the Court only ruled as to the First Notice of Appeal, which was not the subject of Westlake’s motion to dismiss, instead of the Second Notice of Appeal. Therefore, because the Court agreed that the Form 4 order dismissing Westlake as a party was not a final order and was not immediately appealable, Westlake requests the Court clarify whether the Second Notice of Appeal from the order dismissing Westlake—filed on October 4, 2023—is dismissed.

It appears from the Court’s November 27, 2023 Order that this appeal may only proceed on one issue—whether the circuit court erred in granting A&K Auto’s Motion to Dismiss as to Appellant’s second cause of action.<sup>1</sup> However, in her initial brief, Appellant argues issues well beyond whether the circuit court properly granted A&K Auto’s motion to dismiss as to the second cause of action. Appellant raises four issues in her initial brief, and only the first two issues are related to the second cause of action. (App. Br. p. 5.)

The third issue argues that the circuit court erred in dismissing the breach of contract cause of action against Westlake. (App. Br. p. 5.) However, Appellant’s breach of contract cause of action was dismissed as to Westlake by the circuit court in the July 10, 2023 Form 4 Order and the circuit court’s formal August 15, 2023 Order, which memorialized the Court’s July 10, 2023 Form 4 Order. Exhibits A and B. Neither of these orders were appealed to this Court. In these orders, the circuit court granted Westlake’s motion to dismiss and allowed Appellant to replead her complaint. Specifically, as to Westlake, the circuit court ruled:

Plaintiff only brings causes of action for breach of contract and promissory estoppel against Defendant [Westlake]. The Court finds there is no contract between Westlake and Plaintiff and promissory estoppel is not a proper cause of action. Westlake’s Motion to Dismiss is granted. However, the Court will allow Plaintiff 10 days to replead her Complaint to clarify whether she intended to bring any other causes of action against Westlake.

Exhibit B at ¶ 5. These unappealed orders are now the law of the case. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (“Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case. Under the law of the case doctrine, a party is precluded from relitigating . . . matters that were either not

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<sup>1</sup> The Form 4 order attached to the first notice of appeal states the order was ruling on A&K Auto’s motion whereas the Form 4 order attached to the second notice of appeal states it was ruling on Westlake’s motion to dismiss.

raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.”).

In the fourth issue, Appellant argues the circuit court erred in granting Westlake’s motion to dismiss. However, as the Court ruled in the November 27, 2023 Order, the Form 4 order granting Westlake’s motion to dismiss was not immediately appealable. Therefore, in the interest of judicial economy, Westlake requests clarity on the Court’s November 27, 2023 Order and how to proceed as the responsive briefing deadline is on December 27, 2023.<sup>2</sup> Specifically, Westlake requests clarity from the Court on whether the Second Notice of Appeal was dismissed by this Court and whether the appeal may only proceed on the First Notice of Appeal and the limited issue related to the circuit court’s dismissal of the second cause of action.

Additionally, Westlake moves the Court to dismiss it entirely from this appeal due to events that arose after Westlake filed its first motion to dismiss. As found by the Court in the November 27, 2023 Order, the circuit court’s Form 4 order granting Westlake’s motion to dismiss and directing counsel to prepare a formal order was not final or immediately appealable. *See Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) (stating a Form 4 order is not effective as a final order if the circuit court specifies that the final order will be prepared by the attorney). After Westlake filed its motion to dismiss in this Court, the circuit court issued the final order in the case. Exhibit C, October 9, 2023 Order. Appellant did not file a notice of appeal from this order, and the time for Appellant to file a notice of appeal from the final order has elapsed. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (“[T]he requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or

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<sup>2</sup> Westlake requests this deadline be held in abeyance while the Court considers this motion.

discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”). Therefore, the October 9, 2023 order dismissing Westlake from this case is the law of the case as it has not been timely appealed. *See Judy*, 381 S.C. at 458, 674 S.E.2d at 153 (“Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case. Under the law of the case doctrine, a party is precluded from relitigating . . . matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.”); *see also Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (holding an unappealed ruling, right or wrong, is the law of the case).

Even if the appeal proceeds as to the circuit court’s Form 4 order granting A&K Auto’s motion to dismiss the second cause of action, Westlake should not be a party to that appeal because the circuit court’s order dismissing Westlake from the case entirely is a final, unappealed order. In the unappealed October order, the circuit court held, specifically as to Westlake’s motion and the second cause of action:

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.

Exhibit A at 4. This ruling as to Westlake, as well as the circuit court’s rulings related to the other causes of action brought against Westlake, is the law of the case and may not be collaterally attacked in this appeal. *See Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015) (“The policy behind the law of the case is to ‘promote[ ] the finality and efficiency of the judicial process by protecting against the agitation of settled issues.’” (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988))). It is also the law of the case that Appellant consented to the dismissal of the second cause of action. Because the circuit court’s order that Westlake be dismissed from this case has not been appealed, it should not be a party to the appeal.

Accordingly, Westlake requests the Court (1) clarify whether the Court’s November 27 Order dismissed the Second Notice of Appeal and (2) dismiss Westlake from the appeal because the circuit court’s unappealed final order dismissing Westlake from the case is the law of the case.

RESPECTFULLY SUBMITTED,

**SMITH | ROBINSON**  
**Smith Robinson Holler DuBose and Morgan, LLC**

s/Shanon N. Peake  
G. Murrell Smith, Jr.  
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Columbia, South Carolina  
December 18, 2023

# EXHIBIT A

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-23-01039

DESIMBER ROSE WATTLETON  
PLAINTIFF(S)

A&K AUTO SALES AND LEASING LLC, ET  
AL.  
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

**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.  See Page 2 for additional information.
- 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:

**ORDER INFORMATION**

**DEFENDANTS A&K AUTO SALES & LEASING LLC, AMEEN ALJAOUNI, TIM YARGER, AND TONY SCOTTS' MOTION TO DISMISS IS GRANTED IN PART AND DENIED IN PART. THE FOLLOWING CAUSES OF ACTION ARE DISMISSED PURSUANT TO CONSENT FROM PLAINTIFF: PROMISSORY ESTOPPEL, EMOTIONAL DISTRESS, AND ALL CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS. DEFENDANTS A&K AUTO SALES & LEASING LLC, AMEEN ALJAOUNI, TIM YARGER, AND TONY SCOTTS' MOTION TO DISMISS IS DENIED AS TO PLAINTIFF'S CLAIMS FOR VIOLATION OF FAIR CREDIT REPORTING ACT. PLAINTIFF HAS 10 DAYS TO REPLEAD THE FOLLOWING CLAIMS: EMOTIONAL DISTRESS, CONTRIBUTORY NEGLIGENCE, PREDATORY LENDING, AND CIVIL CONSPIRACY TO COMMIT FRAUD.**

**DEFENDANTS A&K AUTO SALES & LEASING LLC, AMEEN ALJAOUNI, TIM YARGER, AND TONY SCOTTS' MOTION FOR PROTECTIVE ORDER WAS WITHDRAWN.**

**DEFENDANT WESTLAKE SERVICES LLC D/B/A WESTLAKE FINANCIAL SERVICES' MOTION TO DISMISS IS GRANTED. PLAINTIFF HAS TEN DAYS TO REPLEAD THE CAUSES OF ACTION BROUGHT AGAINST DEFENDANT.**

**PLAINTIFF AND DEFENDANTS ROY OWENS AND ROY OWENS TOWING ENTERED AND READ INTO THE RECORD THEIR SETTLEMENT AGREEMENT. THUS, DEFENDANTS ROY OWENS AND ROY OWENS TOWING'S MOTION TO DISMISS IS MOOT.**

**MR. ROBERT CLYDE CHILDS III, ESQ. TO PREPARE A GLOBAL FORMAL ORDER.**

This order  ends  does not end the case.

<b>INFORMATION FOR THE JUDGMENT INDEX</b>
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.





Greenville Common Pleas

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

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

# EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Desimber Rose Wattleton,	)	C. A. No.: 2023-CP-23-01039
Plaintiff,	)	
	)	
v.	)	
A&K Auto Sales and Leasing, LLC,	)	<b>ORDER</b>
Ameen Aljaouni, Tim Yarger, Tony Scott,	)	
Ryan Little, Atlantic Acceptance Corp.,	)	
Westlake Financial Services, Roy Owens,	)	
And Roy Owens Towing,	)	
	)	
_____ Defendant.	)	

This matter came before me on several motions by the parties. This Order addresses the Defendants, A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger, Tony Scott’s (hereinafter referred to as “Defendants”) and Westlake Financial Services’ (hereinafter referred to as “Westlake”) Motion to Dismiss Plaintiff’s Amended Complaint.

This Court, having considered the submissions and arguments of the parties and their counsel, IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

1. The Plaintiff has already dismissed Ryan Little and Atlantic Acceptance Corp., and they can be removed from this action when the Plaintiff repleads.
2. Defendants A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger and Tony Scott’s Motion to dismiss is granted in part and denied in part. Both the first and second cause of action are contract claims against A&K Auto Sales and Leasing, LLC and can be repled as one cause of action for Breach of Contract when the other causes of action are repled.
3. The causes of actions for Emotional Distress, the Eighth Cause of Action, Contributory Negligence, the Ninth Cause of Action and Promissory Estoppel, the Tenth Cause of Action are dismissed. However, Plaintiff may replead those causes of action within 10 days.

4. All claims against the individual Defendants, Ameen Aljaouni, Tim Yarger and Tony Scott are dismissed with prejudice.

4. The Defendants Roy Owens Towing and Roy Owens have entered into a settlement agreement with the Plaintiff including payment in the amount of \$500.00 to Plaintiff, making Defendants Roy Owens Towing and Roy Owens' Motion to Dismiss moot. They are dismissed with prejudice pending conclusion of their settlement and that eliminates Plaintiff's Sixth and Seventh Causes of Action and part of Plaintiff's Ninth Cause of Action against Roy Owens Towing and Roy Owens.

5. Plaintiff only brings causes of action for breach of contract and promissory estoppel against Defendant Westlake Financial Services, LLC. The Court finds there is no contract between Westlake and Plaintiff and promissory estoppel is not a proper cause of action. Westlake's Motion to Dismiss is granted. However, the Court will allow Plaintiff 10 days to replead her Complaint to clarify whether she intended to bring any other causes of action against Westlake.

6. Defendants A&K Auto Sales & Leasing LLC, Ameen Aljaouni, Tim Yarger and Tony Scott's Motion for Protective Order was withdrawn.

7. The Third Cause of Action of Civil Conspiracy to Commit Fraud is to be replead as Civil Conspiracy by the Plaintiff within 10 days to clarify the specific allegations against A&K Auto Sales & Leasing LLC.

8. The Fourth Cause of Action for Predatory Lending is dismissed against all Defendants and Plaintiff has 10 days to replead this cause of action against A&K Auto Sales and Leasing, LLC, citing appropriate statutory authority for that action.

9. The Fifth Cause of Action of Violation of the Fair Credit Reporting Act shall proceed against A&K Auto Sales & Leasing LLC but shall be repled by the Plaintiff with more specific allegations within 10 days.

10. The Eighth Cause of Action for Emotional Distress is dismissed against all Defendants and Plaintiff has 10 days to replead or an Intentional Infliction of Emotional Distress cause of action against A&K Auto Sales and Leasing, LLC.

11. The Ninth Cause of Action for Contributory Negligence is dismissed against all Defendants and Plaintiff has 10 days to specifically replead this cause of action to state a cause of action upon which relief can be granted against A&K Auto Sales and Leasing, LLC.

12. Defendant A&K Auto Sales & Leasing LLC's motion for protective order was withdrawn based upon Plaintiff's revisions of her discovery requests.

IT IS SO ORDERED!

\_\_\_\_\_  
The Honorable R. Lawton McIntosh

Greenville, South Carolina  
Date: \_\_\_\_\_



Greenville Common Pleas

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

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

# EXHIBIT C



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)*



Greenville Common Pleas

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

So Ordered

G.D. Morgan Jr.

**RECEIVED**

**Dec 18 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
G.D. Morgan, Jr., Circuit Court Judge

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Civil Action No. 2023-CP-23-01039

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Appellate Case No. 2023-001469

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Desimber Rose Wattleton,

Appellant,

v.

A&K Auto Sales and Leasing, LLC, Ameen Aljaouni, Tim Yarger, Tony Scott, Ryan Little,  
Atlantic Acceptance Corp., Westlake Financial Services, Roy Owens and Roy Ownes Towing,  
Defendants,

Of Which A&K Auto Sales and Leasing, LLC and Westlake Financial Services are the  
Respondents.

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**PROOF OF SERVICE**

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I certify that a true copy of Westlake Services, LLC dba Westlake Financial Services' Motion to Clarify November 27, 2023 Order and Motion to Dismiss in this case has been served on the following, this 18th of December, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447) and by depositing the same in the United States Post Office, postage prepaid, addressed to Appellant Desimber Rose Wattleton at the address below.

Robert Childs, III – robert@lawyerchilds.com  
Childs Law Firm  
20 Center Street  
Travelers Rest, SC 29690  
*Counsel for A&K Auto Sales, LLC*

Desimber Rose Wattleton  
4359 Wade Hampton Blvd., Unit 1075  
Taylors, SC 29687  
*Pro se Plaintiff*

RESPECTFULLY SUBMITTED,

**SMITH | ROBINSON**  
**Smith Robinson Holler DuBose and Morgan, LLC**

*s/Shanon N. Peake*  
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Columbia, South Carolina  
December 18, 2023

**From:** [Shanon Peake](#)  
**To:** ["robert@lawyerchilds.com"](mailto:robert@lawyerchilds.com); ["Terry Rouse"](#); ["Desimber Rose"](#)  
**Cc:** [Jennifer Lisandrelli](#)  
**Subject:** RE: Appellate Case No. 2023-001469 - Wattelton v. A&K Auto, et al.  
**Date:** Monday, December 18, 2023 10:30:00 AM  
**Attachments:** [Mtn to Clarify and Mtn Dismiss with exhibits, 1.pdf](#)  
[POS Mtn Clarify and Mtn Dismiss, 2.pdf](#)

---

All,

I inadvertently forgot to attach the exhibits to the below email. The attached copy has the exhibits as well.

Thanks,  
Shanon



**Shanon Peake**  
Attorney at Law

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**From:** Shanon Peake  
**Sent:** Monday, December 18, 2023 10:27 AM  
**To:** [robert@lawyerchilds.com](mailto:robert@lawyerchilds.com); [Terry Rouse <terry@lawyerchilds.com>](mailto:Terry Rouse <terry@lawyerchilds.com>); [Desimber Rose <desimberrose@gmail.com>](mailto:Desimber Rose <desimberrose@gmail.com>)  
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**Subject:** Appellate Case No. 2023-001469 - Wattelton v. A&K Auto, et al.

Good Morning,

Please find attached for service Westlake's Motion to Clarify November 27, 2023 Order and Motion to Dismiss that we are filing with the Court of Appeals today. Ms. Wattleton, we are also placing a copy for service in the mail to your address today.

Thank you,  
Shanon



Forward thinking. Results driven.

*Smith Robinson Holler DuBose and Morgan, LLC*

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## Shanon Peake

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