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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Dec 21 1:54 PM - JASPER - COMMON PLEAS - CASE#2023CP2700001

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
 Mark C. Boyles,)
)
 PLAINTIFF,)
)
 vs.)
)
 NCP Bayou, LLC,)
)
 DEFENDANT.)
 _____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-27-0001

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter came before the Court by WebEx on September 28, 2023, on Defendant NCP Bayou, LLC's Motion to Dismiss, dated July 19, 2023 ("Motion"). Present at the hearing were F. Truett Nettles, II, Esq. for Plaintiff and Lauren Williams, Esq. for Defendant. Based on the pleadings submitted to the Court, including Plaintiff's Objection to Motion to Dismiss, dated September 27, 2023; Defendant's Memorandum in Support, dated September 28, 2023; Plaintiff's Memorandum in Opposition, dated October 11, 2023; and Defendant's Reply Memorandum, dated October 19, 2023; and for the reasons stated below, Defendant's Motion is granted, and this matter is dismissed.

LEGAL STANDARD

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint where the plaintiff fails to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 874 (2006). The court should dismiss a complaint when "the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief of any theory." *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

LEGAL ARGUMENT

Assuming, for the purposes of this Motion only, Plaintiffs' allegation that the underlying deed to the Subject Property was prepared in connection with the unauthorized practice of law ("UPL") is correct, Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed. Plaintiffs' Complaint fails to establish a justiciable controversy exists because as a matter of law there is no private cause of action for the unauthorized practice of law, and it is not the law of South Carolina that a deed prepared by a non-lawyer is null and void.

1. Plaintiffs' Complaint Fails to State a Claim Because as a Matter of Law There Is No Private Cause of Action for the UPL.

It is well established in South Carolina there is no private cause of action for the unauthorized practice of law. *Franklin v. Chavis*, 371 S.C. 527, 535, 640 S.E.2d 873, 877 (2007) ("There is no private right of action in South Carolina for the unauthorized practice of law." (citing *Linder v. Insurance Claims Consultants, Inc.*, 348 S.C. 477, 496-97, 560 S.E.2d 612, 622-23 (2002)); *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 123-24, 634 S.E.2d 5, 8-9 (Ct. App. 2006) (affirming dismissal of complaint when charges of unauthorized practice of law were the basis for all alleged causes of action because no private cause of action for the unauthorized practice of law exists.)).

Here, there is no question that charges of unauthorized practice of law are the basis for Plaintiffs' declaratory judgment cause of action. Specifically, Plaintiffs are seeking a determination by this Court that the deed granting Boyles a property interest in the Subject Property is null and void due to the alleged fact that it was drafted, witnessed, notarized, and filed in the public record by a non-attorney. Based on this determination, Plaintiffs are then asking the Court to declare that Defendant's judgment lien does not attach to the Subject Property because of the invalidity of the underlying deed arising out of the unauthorized practice of law. These claims

constitute a private cause of action for the unauthorized practice of law, which does not exist under South Carolina law. Accordingly, Plaintiffs' Complaint must be dismissed for failure to state a valid claim as a matter of law.

2. Plaintiffs' Complaint Fails to State a Claim Because it is Not the Law of This State that a Deed Prepared in Connection with the UPL is Null and Void.

Throughout South Carolina case law there are multiple cases answering the question of what constitutes the unauthorized practice of law. *See, e.g. In re Helton*, 372 S.C. 245, 249, 642 S.E.2d 573, 575 (2007) (failure of attorney to supervise preparation of deeds by non-lawyer assistants constituted unauthorized practice of law); *In re Deddish*, 347 S.C. 614, 617, 557 S.E.2d 655, 657 (2001) (preparation of real estate deeds by non-lawyer constituted the unauthorized practice of law); *State v. Buyers Serv. Co.*, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987) (preparation of a deed falls within the definition of the practice of law and may constitute the unauthorized practice of law); *In re Easler*, 275 S.C. 400, 272 S.E.2d 32 (1980) (holding that the preparation of a deed for another constitutes the unauthorized practice of law). These cases cite case law that specifically addresses whether the preparation of a deed by a non-lawyer constitutes the unauthorized practice of law. *See supra*. However, there is not a single case in South Carolina holding that a deed prepared in connection with the unauthorized practice of law is null and void.

If the South Carolina Supreme Court wanted to establish that a deed prepared in connection with the unauthorized practice of law is null and void, the Court would and could explicitly state as a matter of law that a deed prepared by a non-lawyer constitutes the unauthorized practice of law and is void. The fact that not a single case that addresses the unauthorized practice of law in the preparation of deeds holds that the resulting deed is null and void. This is not the law of our state.

However, South Carolina case law does establish that a party who committed the UPL is barred from enforcing any document prepared in connection with its UPL as a matter of equity. *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) (“a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law”). The South Carolina District Court explicitly relied on that principle in *Hosey v. Quicken Loans Inc.*, when it stated that the UPL “acts as a bar (or defense) to foreclosure.” *Hosey v. Quicken Loans, Inc.*, 2018 WL 3216105, at *3 (D.S.C. July 2, 2018). Here, it is undisputed that Defendant NCP did not commit the UPL and is merely a third-party attempting to enforce its right to enforce its judgment against Mark Boyles as a matter of law, not in equity. Thus, the dicta stated in *Hosey* has no impact on this matter.

Accordingly, there is no justiciable controversy to be resolved because the underlying deed to the Subject Property is not null and void due to its alleged connection with the unauthorized practice of law. Plaintiffs’ conclusion regarding the validity of the underlying deed is incorrect as a matter of law. Therefore, there is no longer a question of whether Defendant’s judgment lien attaches to the Subject Property. S.C. Code Ann. § 15-35-810 (final judgments shall constitute a lien upon the real estate of the judgment debtor situate in the county in which the judgment is recorded). Accordingly, Plaintiffs’ Complaint must be dismissed pursuant to Rule 12(b)(6), SCRPC.

Therefore, Defendant’s Motion is Granted, and this matter is Dismissed.

AND IT IS SO ORDERED.

Signature page to follow



Jasper Common Pleas

Case Caption: Mark C. Boyles, Individually , plaintiff, et al VS Ncp Bayou, Llc
Case Number: 2023CP2700001
Type: Order/Dismissal

IT IS SO ORDERED!

s/ Alison Renee Lee