STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A NO.: 2024-CP-02-00187
Janice Meusel and Adam Meusel,	)	
	)	
Plaintiffs,	)	**ORDER**
	)	
vs.	)	
	)	
Woodside Plantation Property Owners' Association, Inc., Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club, and Invited,	)	
	)	
Defendants.	)	
	)	

THIS MATTER came before the Honorable Courtney Clyburn Pope on Defendants Woodside Plantation Country Club, Inc. d/b/a Woodside Country Club and Invited's (hereinafter "Defendants") Motion to Dismiss. The hearing took place on May 23, 2024, in person at the Aiken County Courthouse. Present at the hearing were attorneys Daniel C. Plyler and Rachel E. Lee on behalf of Defendants; Andrew Radeker on behalf of Plaintiffs; and Samuel Key on behalf of Defendant Woodside Plantation Property Owners' Association.

This Court has carefully considered the briefs submitted by the parties, the oral arguments, the complaint, the relevant authorities, and the South Carolina Rules of Civil Procedure. Based on those considerations, it is the judgment of this Court that Defendants' Motion to Dismiss be granted and Plaintiffs' claims against Defendants dismissed in their entirety with prejudice.

Facts

On January 24, 2024, Plaintiffs Janice Meusel and Adam Meusel (hereinafter "Plaintiffs") filed a complaint against Defendants and Woodside Plantation Property Owners' Association, Inc., ("HOA") alleging negligence/recklessness, unfair trade practices, breach of fiduciary duty by

HOA, and intentional infliction of emotional distress. Plaintiffs assert that they brought this lawsuit because of incidents that arose at their property and home which is in the same subdivision as the Woodside Plantation Country Club. It is undisputed that Plaintiffs' yard borders the golf course in the neighborhood, which is operated by Defendants. Plaintiffs state that presumed country club members and golfers often walk into their yard while playing golf. Plaintiffs contend that they have been met with hostility, "racist harassment," unwarranted trespasses on their property and have been the recipients of "racial slurs and insults" because they told golfers they were not allowed to trespass onto their property.[1] According to Plaintiffs, they brought these issues of harassment and trespass to the attention of Defendants and the HOA, but nothing changed.

On March 24, 2024, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure asserting that Plaintiffs failed to allege facts sufficient to establish a claim for a violation of the South Carolina Unfair Trade Practices Act (SCUTPA), failed to allege facts sufficient to establish a claim for intentional infliction of emotional distress, and Plaintiffs were not owed a duty by Defendants.

Standard of Review

In considering a Motion to Dismiss, "the court must view the allegations in the light most favorable to the plaintiff, 'with every doubt resolved in his behalf,'" *Food Lion, Inc. v. United Food & Comm. Workers Intern. Union,* 351 S.C. 65, 69, 567 S.E.2d 251, 252 (Ct. App. 2002) (quoting *Gentry v. Yonce,* 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)). "Under Rule 12(b)(6) 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 Cty.*, 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

[1] The Complaint states that Ms. Janice Meusel is of Hispanic descent. Complt. ¶ 12.

allegations set forth on the face of the complaint." *Id.* "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "A trial [court] may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *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)).

"When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true." *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497–98 (2014). At the pre-trial stage only a prima facie showing of jurisdiction is required. *Brown v. Inv. Mgt. and Research,* 323 S.C. 395, 475 S.E.2d 754 (1996). The allegations of the complaint are sufficient to make a determination and are accepted as true. *Id.*

Analysis

I. *South Carolina Unfair Trade Practices Act*

In order to establish a claim under the SCUTPA, the plaintiff must show: "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 483, 498 (Ct. App. 2006). "The UTPA declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful." *Christina G. deBondt v. Carlton Motorcars, Inc.*, 324 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000).

As defined by the SCUTPA, "'trade or commerce" involves "the advertising, offering for

sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State."' *Health Promotion Specialists, LLC v. S.C. Bd. Of Dentistry*, 403 S.C. 623, 638-39, 743 S.E.2d 808, 816 (2013) (quoting S.C. Code Ann. § 39-5-10(b)). To be considered unfair under the SCUTPA, "the unfair or deceptive act or practice must have an impact upon the public interest." *deBondt*, 324 S.C. at 270, 536 S.E.2d at 408.

Plaintiffs failed to meet the elements required to establish a claim against Defendants under the SCUTPA and therefore this claim is DISMISSED. Plaintiffs alleged that Defendants' inaction to stop presumed club members and golfers from trespassing and harassing Plaintiffs amounted to the "deceptive" or "unfair" acts of Defendants in trade or commerce under the SCUTPA. The Court does not find the actions of Defendants, or the lack thereof, within the facts of this Complaint to constitute unfair or deceptive acts in the conduct of trade or commerce as the law intends. South Carolina courts have held the plain language of the SCUTPA statute is clear and "the General Assembly intended for the SCUTPA to apply to business or consumer transactions." *Health Promotion Specialists*, 403 S.C. at 639, 743 S.E.2d at 816. Defendants' lack of inaction in this instance is not applicable to business or consumer transactions and does not establish a cognizable claim under the SCUTPA. Moreover, Plaintiffs failed to demonstrate how Defendants' inactions had a negative impact on the public interest within the SCUTPA and failed to demonstrate any loss they incurred due to Defendants' deceptive acts. Therefore, the claim of a violation of the SCUTPA against Defendants is DISMISSED.

II. *Intentional Infliction of Emotional Distress*

To recover from a claim of intentional infliction of emotional distress, a plaintiff must

demonstrate the following:

> (1) The defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
>
> (2) The conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
>
> (3) The actions of the defendant caused plaintiff's emotional distress; and
>
> (4) The emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it.

Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981).

Plaintiffs' claim for intentional infliction of emotional distress against Defendants arose from the offending golfers' "extreme and outrageous conduct" which Plaintiffs relate to Defendants. As the conduct that Plaintiffs attribute their claims of intentional infliction of emotional distress to is the conduct of golfers and not that of the Defendants, the Court finds that Plaintiffs have failed to demonstrate the required elements of intentional infliction of emotional distress as provided in the *Ford* case.

Further, this Court finds that Plaintiffs have failed to establish a prima facie claim for damages from intentional infliction of emotional distress as is required in this specific claim. *See Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 258, 650 S.E.2d 68, 72 (2007)(holding that there is a "heightened standard of proof for emotional distress claims" and a "party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions."). Moreover, the conduct provided in the Complaint did not meet the threshold of severe emotional distress that South Carolina courts have held is required to meet for intentional infliction of emotional distress. *Hansson*, 374 S.C. at 356, 650 S.E.2d at 71 (holding that the courts

are reluctant to "permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct.") Therefore, the claim for intentional infliction of emotional distress against Defendants is DISMISSED.

III. *Negligence*

For a plaintiff to demonstrate negligence, the plaintiff must show the following: "(1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages." *Wright v. PRG Real Estate Mgm't, Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). However, "'[i]f there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.'" *Wright*, 426 S.C. at 212, 826 S.E.2d at 290 (quoting *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006)).

Based on the Complaint, there is no evidence that Plaintiffs were members of the Woodside Plantation Country Club or that a duty was owed to Plaintiffs by Defendants. However, Plaintiffs do assert that Defendants voluntarily undertook a duty to "reasonably perform reasonable measures to address the past harassment and stop the ongoing harassment of the Plaintiffs."

In South Carolina, a voluntary undertaking is rooted in the Restatement (Second) of Torts and is considered if an individual and/or group,

> undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

Wright, 426 S.C. at 213, 826 S.E.2d at 291. Based on the facts and background provided in the

Complaint, the Court finds that Defendants did not voluntarily undertake a duty to Plaintiffs. The Complaint fails to provide any evidence that Defendants' failure to uphold its duty to address the past harassment and stop the ongoing harassment led to an increased risk of harm to Plaintiffs or that Plaintiffs suffered the harm because they relied on Defendants to stop the offending conduct. The Complaint provides that the harassing behavior remained the same after informing Defendants and Plaintiffs suffered the harm before informing Defendants of the behavior.

Thus, there was no duty owed to Plaintiffs from Defendants and the negligence cause of action is DISMISSED.

Conclusion

For the reasons contained herein, I hereby find as a matter of fact, and conclude as a matter of law, that Defendants' Motion to Dismiss be GRANTED and Plaintiffs' Complaint be dismissed against these Defendants with prejudice.

AND IT IS SO ORDERED.

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The Honorable Courtney Clyburn Pope

June 18, 2024

Aiken, South Carolina

Aiken Common Pleas

Case Caption: Janice Meusel , plaintiff, et al VS Woodside Plantation Property Owners Association Inc , defendant, et al

Case Number: 2024CP0200187

Type: Order/Dismissal

So Ordered

The Honorable Courtney Clyburn Pope