

Jul 19 2024

SC Court of Appeals

ELECTRONICALLY FILED - 2024 Apr 02 11:18 AM - OCONEE - COMMON PLEAS - CASE#2022CP3700182

STATE OF SOUTH CAROLINA)
 COUNTY OF OCONEE)
)
 DOROTHY PIERCE,)
 Plaintiff,)
 v.)
 JERRY EDWARDS; EDWARDS GROUP)
 HOLDINGS; EDWARDS PRINTING;)
 RICHARD HUNT MCDUFF; MJM LAW,)
 LLC; RILEY MORNINGSTAR; THE)
 JOURNAL NEWSPAPER; AND HAL)
 WELCH,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

Case No.: 2022-CP-3700182

**ORDER ON DEFENDANTS
 RICHARD HUNT MCDUFF AND
 MJM LAW LLC's MOTION FOR
 SUMMARY JUDGMENT**

THIS MATTER is before the Court on Defendants Richard McDuff and MJM Law LLC's ("Attorney Defendants") Motion for Summary Judgment. Based on the Motion, the Parties' Briefs in Support and Opposing the Motion, and the arguments of counsel during the March 12, 2024 hearing on the Motion, the Court FINDS and CONCLUDES as follows:

I. FACTUAL BACKGROUND

A. General Background

1. This case involves three separate but related legal proceedings involving the Plaintiff, each of which is or was pending before the Court of Common Pleas for Oconee County or the District Court of South Carolina.

2. In September 2020, after the death of her husband, Plaintiff proffered Doyle Pierce's purported last will and testament, naming herself as the Personal Representative of the estate.

3. Jared Pierce, represented by Mr. Richard Hunt McDuff, filed a motion in the Oconee County Probate Court to determine the validity of his father's purported last will and testament.

4. After analysis by the South Carolina Law Enforcement Division ("SLED") and the testimony of the two purported witnesses to the challenged will, the Probate Court concluded that

Doyle Pierce's purported will was "invalid". Further, because Plaintiff "possessed the invalid Will and presented it to the Court, an inference arises that she has knowledge that the Will is a forgery." *Id.* at 8. The Probate Court thus held that Plaintiff "must be removed as Personal Representative as not fit for the office." *Id.*

5. Plaintiff filed an appeal of the Probate Court's decision with the Oconee County Court of Common Pleas, arguing among other things that the Probate Court "[i]ntentionally discriminated against [her] based on race, color and national origin," and that "it's absolutely cruel for the probate Court to taint the reputation of [Plaintiff] for having knowledge the will was forged and yet the Will is Valid and Authentic."

6. The Court of Common Pleas (Maddox, J.) denied that appeal, "find[ing] that there is sufficient evidence to support the Probate Court's ruling and findings." Plaintiff has not perfected an appeal from the Court of Common Pleas' decision as of this Order.

7. On March 15, 2022, Plaintiff filed the original Complaint in this case, and she filed a subsequent Amended Complaint on March 17, 2022.

8. The Amended Complaint asserted claims against the Attorney Defendants for defamation (Count I), intentional infliction of emotional distress (Count II), gross negligence (Count III), discrimination (Count IV), intentional invasion of privacy (Count V), and invasion of interference with business interest (Count VI), purportedly stemming from Mr. McDuff's alleged contributions to several articles published by the Upstate Journal Newspaper (the "Journal"). Counts II, III, V, and VI have been dismissed previously. Count I, defamation, and Count VI, intentional interference with contractual interest are the subject of the Attorney Defendants' Motion for Summary Judgment

B. Facts Specific to the Defamation Claim

9. When asked in discovery to identify each and every fact on which she bases her contention that the Attorney Defendants defamed her, Plaintiff referred to her “Amended Complaint and other pleadings on file for all defamatory statements made by Defendants McDuff and Defendant MJM, Law, LLC.”

10. When deposed on this Interrogatory Response, Plaintiff testified that the defamatory comments are in three publications which appeared in The Journal in March, 2022.

11. After learning about the above referenced probate trial Riley Morningstar, a Journal reporter, contacted Mr. McDuff to ask about his dealings with Ms. Pierce. Mr. McDuff advised Mr. Morningstar of a news report printed by the Ugandan Alliance for Finance Monitoring “ACFIM”, which was on the internet. The ACFIM news report discussed Plaintiff’s campaign for public office in Uganda.

12. Neither Mr. McDuff nor anyone at his law firm requested, encouraged, demanded, advised, proposed, or suggested that The Journal publish anything about the ACFIM news report. Plaintiff even admits this news report was in the public domain when it was brought to Mr. Morningstar’s attention.

13. On March 4, 2022, The Journal published its first report on Ms. Pierce, entitled, “Report: Queen Passed Out Cash During Uganda Campaign” authored by Mr. Morningstar. This news report paraphrased, and sometimes quoted, the ACFIM news report concerning Plaintiff’s alleged passing out of cash during campaign rallies in Uganda.

14. When deposed, Plaintiff conceded on multiple occasions that Mr. McDuff was not the source of the information contained in this news report. She testified that she is unaware of any email, text message or other written communication from Mr. McDuff stating Plaintiff was

handing out money at her campaign rallies, or otherwise attributing him as the source of the information contained in this news report. Instead, she conceded that the Journal's report quoted verbatim the ACFIM news report.

15. According to Mr. Morningstar, the March 4, 2022, news report was principally based on Mr. Morningstar's interview with the Plaintiff and the ACFIM news report, not on his discussions with Mr. McDuff.

16. On March 5, 2022, The Journal published a news report entitled "She's Running Long Cons," also authored by Riley Morningstar. This chronicled the dispute between the Plaintiff, and Mr. Doyle's sons, Jared and Gregory Pierce. When deposed, Plaintiff identified the following statements within it as defamatory: (i) "She's running long cons. Very immersive cons;" (ii) "nothing but a predator and a con artist;" (iii) "Jared said he believes Dorothy 'spun a big yarn' to his father and glamorized ways of making cash quickly;" (iv) "He said the two didn't even share a bedroom;" and (v) "Gregory Pierce said he thought his father was 'manipulated and lied to.'"

17. When deposed on these statements, Plaintiff admitted that Mr. McDuff was not the source of any of them, and that she did not know the source. The summary judgment evidence reveals the March 5, 2022, news report was based on Mr. Morningstar's interviews with Plaintiff and Jared Pierce and his review of the court records in the lawsuit over Doyle Pierce's Will, not with any discussions with Mr. McDuff. Mr. McDuff at no time requested, encouraged, demanded, advised, proposed, or suggested that The Journal publish the March 5, 2022, news report.

18. Finally, on March 8, 2022, The Journal published a news report entitled, "Pierce Scammed \$16K, Provided False and Damaged Machine," again authored by Riley Morningstar. This news report addressed a lawsuit brought by Firewalker Hot Sauce, alleging American

Pharmacy Machinery Company, of which Plaintiff is the sole Member , had sold Firewalker a damaged machine, different from that which it had ordered.

19. As with the other articles, Plaintiff was questioned about each allegedly defamatory statement within it, line by line. In each instance, she attributed the source as the Complaint filed in the Firewalker Action, not Mr. McDuff. She even conceded this news report simply regurgitated the contents of the Firewalker Suit.

20. The summary judgment evidence reveals this report was principally based on Mr. Morningstar's interview with Plaintiff, his review of the court records in the lawsuit that Firewalker Hot Sauce filed against Plaintiff and her company, his attendance at the August 2021 hearing in that lawsuit, and his review of court records in other lawsuits filed against Plaintiff or her company.

C. Facts Specific to the Intentional Interference With Contract Claim

21. In Count Six of her Amended Complaint, Plaintiff alleges that the Attorney Defendants "maliciously and recklessly" directed the Journal Defendants to discontinue any advertising of her products. When asked in discovery to state each and every fact on which she bases this contention, Plaintiff referred to "Plaintiff's Amended Complaint and other pleadings on file."

22. When deposed, Plaintiff confirmed that the only contract with which she accuses the Attorney Defendants of interfering is an alleged advertising contract with The Journal, which resulted in her purportedly losing business from current and prospective customers. Notably, this alleged contract was between The Journal and American Pharma, not the Plaintiff. Plaintiff admits that this means any interference with contract claim is one belonging to American Pharma.

23. Moreover, the summary judgment evidence reveals that the Journal Defendants decided to discontinue its advertising with American Pharma on its own due to Plaintiff's legal issues. This decision was not attributable to the Attorney Defendants.

D. Facts Regarding Plaintiff's Alleged Damages

24. On April 4, 2023, this Court entered an Order sanctioning Plaintiff for her refusal to participate in discovery thereby limiting those documents she may present in support of her damages claim to Exhibits 1, 2 & 3, produced by Plaintiff in response to this Court's Order of February 13, 2023. These documents pertain to Plaintiff's alleged customer information, and were filed under seal at the Court's March 22, 2023, hearing on Defendants' Motion for Sanctions pursuant to a Protective Order entered February 14, 2023.

25. Without divulging any confidential information within them, Exhibits 1, 2 & 3 may be identified as a Tradekey Report, a Thomasnet Report, and a spreadsheet Plaintiff prepared concerning her damages. They were attached as Exhibits 37, 38 & 39 to Plaintiff's deposition respectively, about which she was questioned extensively.

26. Plaintiff admits that the Tradekey Report is only a list of inquiries, and not solid orders for her business' products. Moreover, all of these inquiries preceded the March 2022 Articles. Thus, Plaintiff concedes that the failure of these potential customers to order product had nothing to do with the news reports at issue in this lawsuit.

27. Plaintiff even admitted that whether potential sales may have been lost to these Tradekey customers is just speculation on her part.

28. Plaintiff admits that the volume of the Thomasnet inquiries did not decrease after the publication of the March, 2022, Articles, but in fact increased. Plaintiff knows of no Thomasnet

inquiries resulting in actual orders. She concedes that whether the Thomasnet inquiries would have led to actual orders is a matter of speculation.

29. Finally, Plaintiff prepared a spreadsheet of her alleged damages with estimates of revenue. They are delineated by category: (i) “initial investment;” (ii) “customers with letters of intent;” (iii) “pro forma customers;” and (iv) “online sales.” Plaintiff agrees that her “initial investment” figure is subject to reduction, as the machinery used to calculate same can be re-used

30. Of the three “letters of intent” customers, one cancelled its order because of delayed delivery which Plaintiff attributes to sabotaged machinery unrelated to the Attorney Defendants . The second customer never issued a letter of intent at all. Plaintiff knows of no document from her third “letters of intent” customer stating it was discontinuing its business with Plaintiff due to the March, 2022, Articles, nor did this alleged client tell her so .

31. Finally, Plaintiff confessed that her “online sales” figures are all speculative projections.

II. CONCLUSIONS OF LAW

A. The Summary Judgment Standard

32. Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCF. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976).

33. Issues need not be presented to a jury where, as here, the claims “rest on speculative, theoretical and hypothetical views.” *Hurd v. Williamsburg County*, 353 S.C. 596, 609, 579 S.E.2d 136, 142–143 (Ct.App.2003).

34. This is part and parcel of the firmly established rule that “verdicts may not be permitted to rest upon surmise, conjecture or speculation.” *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct.App.1997).

B. Summary Judgment Is GRANTED as to Plaintiff’s Defamation Claim For Failure to Prove the Attorney Defendants Made Any Defamatory Statements.

35. “[T]o prove defamation, the plaintiff must show: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

36. Plaintiff has failed to prove the Attorney Defendants made any defamatory statements.

37. The defamatory statements which the Attorney Defendants are accused of making are the three Articles appearing in The Journal on March 4, 5 & 8, 2022. Plaintiff has conceded, however, that she has no evidence the Attorney Defendants were the source of same.

38. Moreover, the author of these Articles, Riley Morningstar, has testified – in unrebutted fashion – that they were not based on discussions with the Attorney Defendants, nor did the Attorney Defendants request, encourage, demand, advise, or suggest that The Journal publish these Articles.

39. Plaintiff has failed to provide any evidence upon which this Court or any reasonable jury could find that the Attorney Defendants made any defamatory statements. *Abbott v. Pollock*, 946 S.W.2d 513, 520 (Ct. App. Tx, 1997) (summary judgment granted on defamation claim due to lack of evidence defendants made the statements at issue); *Crouch v. J.C. Penny Corporation, Inc.* 564 F. Supp.2d 642, 649 (E.D. Tex., 2008) (plaintiff must establish some connection that the

defendant is indeed the source of the allegedly defamatory statements); *Sullivan v. Young*, 678 S.W.2d 906 (Ct. App. Tenn., 1984) (action for libel was not viable absent proof establishing a connection between defendants and the alleged libel); *Riisna v. American Broadcasting Companies, Inc.*, 219 F. Supp.2d 568 (2002) (failure to establish necessary connection between allegedly defamatory statements and their source precluded defamation claim).

40. As Plaintiff has failed to prove the essential elements of the defamation claim, summary judgment for the Attorney Defendants is **GRANTED**.

C. Summary Judgment Is GRANTED on Plaintiff's Contractual Interference Claim as Plaintiff Did Not Maintain a Contract with The Journal and Cannot Prove Damages.

41. In paragraphs 66-69 of her Amended Complaint, Plaintiff accuses the Attorney Defendants of interfering with her alleged advertising contract with The Journal, resulting in her purportedly losing business from current and prospective customers. Plaintiff has once again failed to provide any evidence to support this claim.

42. To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages." *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372, S.C. 470, 642 S.E.2d 726, 731 (S.C. 2007). Plaintiff has not proven elements Nos. 1, 3, or 5.

43. As Plaintiff has admitted, the advertising contract at issue in this case was one between American Pharma Machinery, LLC, and The Journal, not between Plaintiff and The Journal.

44. Although Plaintiff is American Pharma's sole Member, outside of specific tax issues, a limited liability company is a legal entity separate from its members. S.C. Code § 33-44-201.

45. As a result, “a shareholder or member of a corporation or LLC may not recover for tortious interference of the business or contract of the corporation or LLC.” *Baron Financial Corporation v. Natanzon, et al*, 471 F. Supp. 2d 535, 540 (D. Md., 2006); *Painter’s Mill Grille, LLC v. Brown*, 716 F.3d 342, 349 (4th Cir. 2013) (holding LLC members lacked standing to bring claims for tortious interference with contract when they were not parties to the contract and the injuries suffered derived entirely from the injury their company allegedly sustained); *First Commercial Bank, N.A. v. Walker*, 333 Ark. 100, 109, 969 S.W.2d 146, 150 (1998) (sole shareholder lacked standing to bring claim for tortious interference with the company’s contracts).

46. Plaintiff has no standing to assert an interference with contract claim for the LLC, and summary judgment is **GRANTED** on this claim.

47. Even if Plaintiff had standing to assert a claim for interference with a contract, she has failed to provide any evidence to support the material elements of the claim against the Attorney Defendants.

48. The uncontradicted evidence reveals that neither Richard McDuff nor anyone at MJM Law, LLC at any time requested, encouraged, demanded, advised, proposed, or suggested that The Journal discontinue its advertising for American Pharma.

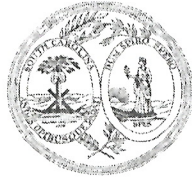
49. As Plaintiff cannot prove the Attorney Defendants intentionally procured the Journal’s alleged breach of contract, summary judgment is **GRANTED** on this claim. *Nave v. Life Bank*, 224 B.R. 586 (M.D. Tenn., 2005) (lack of evidence that lender acted with intent to induce brokerage to breach its agreement with debtors precluded lender’s liability for wrongful inducement of breach of contract); *Furness Withy, Inc. v. World Energy Systems Associates, Inc.*, 772 F.2d 802 (11th Cir., 1985) (summary judgment on tortious interference with contract claim affirmed because there was no evidence of same).

III. CONCLUSION

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that the Attorney Defendants' Motion for Summary Judgment is **GRANTED**.

THE HONORABLE R. LAWTON McINTOSH
OCONEE COUNTY CIRCUIT COURT,
PRESIDING JUDGE

Dated:



Oconee Common Pleas

Case Caption: Dorothy Pierce VS Edwards Group Holdings Inc , defendant, et al
Case Number: 2022CP3700182
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S/R. LAWTON McINTOSH

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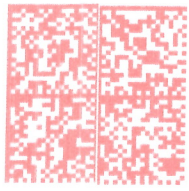
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