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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2023-CP-32-02473
Appellate Case No. 2024-000614

Thomas E. Dukes,

Appellant,

v.

Rocket Mortgage, LLC

Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING THE SECOND MOTION TO DISMISS FILED BY ROCKET MORTGAGE, LLC?
2. DID APPELLANT OVERSTEP IN MAKING NUMEROUS BASELESS ACCUSATIONS AGAINST ROCKET MORTGAGE AND ITS COUNSEL AND/OR COMPLY WITH APPELLATE RULES THROUGHOUT HIS INITIAL BRIEF?

STATEMENT OF THE CASE

The original Complaint was filed by Appellant at the trial court on July 3, 2023. It was met shortly thereafter with multiple Motions to Dismiss filed by all Defendants – including one filed by Rocket Mortgage, LLC – the Respondent herein (“Rocket Mortgage”). Shortly after the filings of these Motions to Dismiss, and without the benefit of any responsive pleadings being filed or discovery conducted, Appellant filed a Motion for Summary Judgment. After briefing and hearings on October 16, 2023 on all pending Motions, Judge McCaslin granted one of the dispositive Motions¹ and gave Appellant a limited amount of time within which to file an Amended Complaint that adequately set forth the required elements to establish any cause of action against the remaining Defendants – including Rocket Mortgage.²

Appellant timely filed an Amended Complaint; but, as pointed out in Rocket Mortgage’s second Motion to Dismiss, its related briefing, and at the in-person hearing on March 14, 2024³

¹ As a result, Defendant, Independent Insurance Brokers and Associates was dismissed as a Defendant, with prejudice. Upon information and belief, Appellant did not appeal that dismissal.

² Appellant was also required to have a Summons issued and served upon the remaining Defendants with his Amended Complaint. There was no Summons served upon Rocket Mortgage with the original Complaint.

³ The March 14, 2024 in-person hearing was the second held on Rocket Mortgage’s Motion to Dismiss the Amended Complaint – and third hearing at the trial court level. Although the Clerk of Court mailed notice for a related virtual hearing that was held on January 17, 2024, Appellant failed to appear at that hearing. When Appellant alerted the Court that he had not been aware of that hearing (which resulted in a conditional dismissal of the Amended Complaint), he was granted an additional hearing on Rocket Mortgage’s second Motion to Dismiss.

before the Honorable Brian M. Gibbons, Circuit Judge, the Amended Complaint likewise did not pass muster under South Carolina Rules of Civil Procedure 12, in that it did not state facts sufficient to constitute any cause of action against Rocket Mortgage under any state or federal law or regulation. Specifically, the Amended Complaint did not properly set forth sufficient facts to establish any duty that Rocket Mortgage had towards Appellant; any breach of such a duty; and/or damages proximately caused due to the action(s) or inaction(s) of Rocket Mortgage.⁴ As such, Judge Gibbons properly ordered that the Amended Complaint be dismissed, with prejudice, as it related to Rocket Mortgage. A related Order was entered by Judge Gibbons on March 18, 2024. On or about April 15, 2024, Appellant filed his Notice of Appeal that relates to the instant appeal.

STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a claim may be dismissed when the facts alleged in the pleadings fail to establish a cause of action. *Flateau v. Harrelson*, 355 S.C. 197, 201 (2003). The question 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 (Ct. App. 2001). A Rule 12(b)(6) motion “must be granted if the facts and the inferences reasonably deducible from them show that the Appellant could not prevail on any theory of the case.” *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651 (1997).

FACTS

The operative facts, as set forth in the Amended Complaint, are as follows: Appellant received a Notice of Non-Renewal letter from his previous insurer, GEICO, on April 3, 2023. Am.

⁴ Appellant purported to state a cause of action for negligence against Rocket Mortgage in both his original and the Amended Complaints.

Compl. at ¶ 4. Appellant used Independent Insurance Brokers & Associates and Palmetto State Insurance Agency to obtain new homeowner’s insurance policies (collectively the “Insurance Agents”). The Insurance Agents submitted at least three policy invoices to Rocket Mortgage for payment. *Id.* at ¶ 14. Each time a policy invoice was submitted to Rocket Mortgage, it was paid from Appellant’s related escrow account (as is permitted by the related mortgage and applicable law).⁵ *Id.* at ¶ 15. These payments created a deficiency in said escrow account. *Id.*

ARGUMENTS

1. AFTER BEING GIVEN MULTIPLE OPPORTUNITIES TO INCLUDE THE REQUIRED ELEMENTS, APPELLANT FAILED TO STATE FACTS IN HIS PLEADINGS SUFFICIENT TO CONSTITUTE ANY CAUSE OF ACTION AGAINST ROCKET MORTGAGE, LLC

Based on these operative facts, Appellant determined to sue Rocket Mortgage under a theory of negligence for paying the insurance premium invoices submitted to it. Am. Compl. at ¶¶ 29 (“grossly negligent and breached the terms of the mortgage contract in the management of Appellant’s escrow account by paying premiums”); 35 (“negligent in the management of Appellant’s escrow account and breaching the terms of the mortgage contract by collecting excessive escrow amounts by paying multiple premiums”). Similar to his original Complaint, Appellant’s Amended Complaint was also fatally flawed in that Appellant failed to allege sufficient facts to support a negligence cause of action. Accordingly, Rocket Mortgage’s Motion to Dismiss was granted by Judge Gibbons, and should be affirmed by this Honorable Court.

⁵ In order to protect its investment, like all other lenders, when Rocket Mortgage is presented an invoice for the payment of any insurance policy, it pays that invoice. Rocket Mortgage cannot pick and choose which invoices to pay, and which invoices not to pay. Appellant’s escrow account was eventually reconciled and he received all credits to which he was entitled. After this reconciliation was complete, Appellant’s monthly mortgage payment increased by approximately \$10.00.

In the alternative, in his Amended Complaint, Appellant misstated the applicable law governing the management of escrow accounts. Am. Compl. at ¶¶ 37-38. Although he cited to the proper set of regulations which govern the management of escrow accounts associated with federally related mortgage loans, Appellant made reference to the wrong specific regulation. The issue here does not involve a “cushion” established when an escrow account is created; but rather how to resolve a borrower-created deficiency to his escrow account. Rocket Mortgage’s actions relative to Appellant’s escrow account here were in full compliance with the deficiency-related regulation and the applicable loan documents. Accordingly, and as an additional related ground for dismissal, Rocket Mortgage was entitled to judgment as a matter of law, and the judgment entered by Judge Gibbons should now be affirmed by this Honorable Court.

A. Appellant failed to allege sufficient facts to constitute a cause of action for negligence against Rocket Mortgage in his Amended Complaint.

“To state a cause of action for negligence, the Appellant must allege facts which demonstrate the concurrence of three elements: (1) a duty of care owed by the defendant; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach.” *Doe v. Batson*, 345 S.C. 316, 322 (2001). The existence of a legal duty owed by a defendant to a plaintiff is an essential element of a negligence claim. *Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 86, (1998). “Without a duty, there is no actionable negligence.” *Doe v. Batson*, 345 S.C. at 322. Whether a duty exists is a question of law. *Id.*

In the present case, Appellant wholly failed to allege any duty owed to him by Rocket Mortgage, and/or that any damage he allegedly suffered was proximately caused by Rocket Mortgage. In fact, the word “duty” only appears once in Appellant’s Amended Complaint. Am. Compl. at ¶ 39 (“Due to the financial hardship caused by the negligence and breach of contract

and/or professional duty of the Defendant's [sic], Plaintiff was unable to pay Rocket Mortgage, LLC, his other creditor, medical expense and monthly living expenses"). Appellant never identified the mystery duty that Rocket Mortgage apparently owed to him in his Amended Complaint. Also telling is that the term "professional duty" is targeted at Defendant Palmetto State Insurance Agency, not Rocket Mortgage. Am. Compl. at ¶ 28 ("As licensed insurance agents by the State of South Carolina, Defendant Palmetto State Insurance Agency, LLC was professionally negligent and breached the professional standard of care...") (Emphasis added). By extension, Appellant has also failed to allege any breach by Rocket Mortgage of any such duty (because there isn't a duty alleged to begin), and that any of his alleged damages were proximately caused by Rocket Mortgage. Ultimately, Appellant's problems were caused by his or his agents' mistakes – not by Rocket Mortgage. Because Appellant failed to allege sufficient facts to constitute any cause of action against Rocket Mortgage, Judge Gibbons' dismissal of the Amended Complaint was proper and should be affirmed by this Honorable Court.

B. Appellant's efforts to allege a violation by Rocket Mortgage of the regulations governing the management of escrow accounts are likewise misguided.

Appellant made a valiant effort to overcome a Rule 12 Motion near the end of his Amended Complaint when he referenced alleged violations by Rocket Mortgage of the regulations which govern the management of escrow accounts that are associated with federally related mortgage loans. Am. Compl. ¶¶ 37-38.

In his Amended Complaint, Appellant mistakenly referred to 12 CFR § 1024.17(c)(1)(i). This subparagraph sets limits on the amount of "cushion" a lender can impose when creating an escrow account at the inception of a related loan. That is not what we have here. Instead, what we have is a deficiency in an existing escrow account that was created by the borrower or one of his

agents. Lender options for remedying that type of deficiency can be found at 12 CFR 1024.17(f)(4). Specifically, that particular regulation states, in pertinent part:

Deficiency. If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency . . . If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments (Emphasis added.)

Here, after performing a related escrow account analysis, Rocket Mortgage determined that a deficiency was created in the related escrow account due Appellant's or his agents' actions (transmission of three separate invoices for insurance premiums). It then asked – as is permitted by the governing regulation – that Appellant repay the deficiency in two equal monthly installments.

There was no violation by Rocket Mortgage of related regulations in this instance. To the contrary, Rocket Mortgage complied with all of its related obligations. Accordingly, Rocket Mortgage was entitled to judgment as a matter of law; and the judgment so entered by Judge Gibbons should be affirmed by this Honorable Court.

2. BRIEF RESPONSES TO BASELESS ALLEGATIONS BY APPELLANT, AS WELL AS HIS FAILURE TO COMPLY WITH APPELLATE RULES THROUGHOUT HIS INITIAL BRIEF

Throughout the pendency of this litigation – both in his filings and in open court at the trial court level; and now in his filings and communications with the Court of Appeals – the Appellant has consistently cast defamatory aspersions, chiefly aimed at Rocket Mortgage and its counsel. Judge Gibbons, the trial court clerk, the court reporter, and the appellate court clerk have also been subjected to similar of the Appellant's misplaced and discourteous communications and allegations. Notwithstanding such behavior, Rocket Mortgage and its counsel – and everyone else involved – have attempted to proceed with professional and courteous decorum. It is self-evident

that the Appellant is angry. Leveling false, inflammatory, and baseless allegations towards others, however, is not only ineffective; it is inappropriate. Rocket Mortgage defers to the Court as to whether such behavior and lack of civility by Appellant should be the subject of related sanctions.

As a *pro se* Appellant, Rocket Mortgage understands that brief formatting and other inconsistencies require some flexibility from the Court. With that said, the South Carolina Rules of Appellate Procedure and professional norms of civility still apply.

At the risk of being accused of acquiescence through silence, Rocket Mortgage and its counsel will briefly respond – in bullet point-like fashion – to many of the related allegations/potential Rules compliance issues found in the Initial Brief of Appellant (although responding to each one would be impossible). In doing so, Rocket Mortgage and its counsel will track the Initial Brief of Appellant.

A. STATEMENT OF ISSUES ON APPEAL

Paragraphs 1 through 3 in this section of Appellant’s Initial Brief are based upon an improper premise: that Judge Gibbons found Rocket Mortgage negligent. To the contrary, and as reflected in the Record, both Judge McCaslin and Judge Gibbons found that Appellant failed to state facts sufficient to constitute any cause of action in both his original and Amended Complaints. Appellant’s disagreement and/or dissatisfaction with Judge Gibbons’ findings are not precedential – nor should they be persuasive – under applicable law.

Responding to Paragraph 4, Rocket Mortgage and its counsel deny any conspiracy to deceive or defraud the trial court. The applicable affidavit – which was presented in opposition to Appellant’s ill-timed Motion for Summary Judgment⁶ – was considered by Judge McCaslin when

⁶ That Motion was filed by Appellant before any Answer had been filed by any Defendant, or any discovery

she denied that Motion. Appellant did not file a timely Motion to Reconsider that Motion, nor was Judge McCaslin's Order referred to in Appellant's Notice of Appeal here. Accordingly, its consideration is not before the Court in the instant appeal.⁷

Responding to Paragraph 5, Rocket Mortgage acknowledges that Appellant has made a related report to the Consumer Financial Protection Board ("CFPB") in connection with his current frustrations and that Rocket Mortgage responded to the same. That report is not at issue in the instant appeal.

Responding to Paragraph 6, Rocket Mortgage asserts that both Judge Gibbons and Judge McCaslin and all other agents of the trial and appellate courts have been more than accommodating to Appellant. He was given three separate hearings and allowed to prepare and file two separate Complaints. Ultimately, Judge Gibbons properly applied South Carolina and other law when he dismissed Appellant's case, with prejudice. Upon information and belief, Rocket Mortgage and its counsel deny any and all alleged malfeasance in said Paragraph 6 (or otherwise), and would point out that Appellant has offered no admissible evidence in support thereof. To the extent appropriate, such allegations should be stricken from the record herein.

B. STATEMENT OF THE CASE

This section reads more like a Statement of Facts. Rocket Mortgage respectfully refers the Court to its Statement of the Case above. The great majority of facts asserted in this section of the Initial Brief of Appellant are not based on the record on appeal. Although they refer to similar

conducted.

⁷ Moreover, and notwithstanding what Appellant alleges, the language of the affidavit simply denies that Appellant ever presented any refund check from an insurance company to Rocket Mortgage. In addition, counsel for Rocket Mortgage is not a custodian of its business records. As such, personal knowledge of the same cannot be properly attributed to him.

statements – oral and written – made by Appellant throughout, they are not properly before this Court on appeal.

This section also improperly includes multiple instances of argument. Rocket Mortgage refers the Court to its arguments above in response. Rocket Mortgage and its counsel deny any referred-to violation(s) of South Carolina Code of Laws § 16-19-10 and point out that Appellant has presented no admissible evidence of the same. To the extent appropriate, such allegations should be stricken from the record herein.

Rocket Mortgage refers to its statement above relative to any interactions with the CFPB. Reference to that matter is not before this Honorable Court and should be disregarded.

Rocket Mortgage and its counsel acknowledge an unidentified mortgage loan number could be found in the corner of the mortgage document filed as an exhibit to the related affidavit.⁸ A request to redact that exhibit was made by counsel for Rocket Mortgage immediately upon realizing the unidentified number could be seen on that exhibit. Shortly thereafter, the Clerk of Court filed a redacted version of the exhibit. To date, Appellant has provided neither Rocket Mortgage nor its counsel with any indication of harm or damages that this very-short lived inadvertency may have caused.

Rocket Mortgage refers the Court to its argument above regarding related federal regulations and Appellant's misunderstanding of the same.

Rocket Mortgage and its counsel refer the Court to the transcript as to any statements made during the March 14, 2024 hearing. In considering the Motion which is the subject of the instant appeal, Judge Gibbons considered not only the arguments at that hearing, but also the written

⁸ As set forth above, the Motion for Summary Judgment which relates to the referred-to Exhibit is not at issue in this appeal.

record at the trial court.

Appellant withdrew his Motion to Reconsider at the trial court – after Rocket Mortgage filed a Response to the same.

C. STANDARD OF REVIEW

Rocket Mortgage refers the Court to its section on Standard of Review. Judge Gibbons dismissed Appellant’s Amended Complaint under South Carolina Rule of Civil Procedure 12(b)(6). The referred to federal law citations can be persuasive, but are not precedential.

Rocket Mortgage likewise refers the Court to its argument in response to the arguments made in this section of Appellant’s Initial Brief.

D. STATEMENT OF FACTS

Again, this section of Appellant’s Initial Brief includes components of the case history, certain non-precedential authority, facts, and statements that are not in the appellate record, as well as somewhat incoherent argument. Rocket Mortgage refers the Court to related sections above in response to the same. Appellant made reference in this Section to discovery he served while Rocket Mortgage’s Motion to Dismiss was pending; and, as indicated by Appellant, that discovery was properly stayed pending resolution of Rocket Mortgage’s previously-filed Motion to Dismiss.

Appellant repeats his unfounded allegations of “conspir[acy] to defraud the Court” in this section by Rocket Mortgage and its counsel (see related statement by Rocket Mortgage above), and also made reference (again) to the unidentified mortgage account number – which he admits was quickly resolved. Appellant upped the ante of his related vitriol towards Rocket Mortgage and its counsel by further asserting in this Section that they “engag[ed] in dishonest conduct, obstructing the process, abused the judicial process, or otherwise sought to perpetuate a fraud on the court.”

Suffice it to say, both Rocket Mortgage and its counsel flatly deny such aspersions. Appellant has presented no factual or admissible evidence of such assertions. To the extent appropriate, such assertions should be stricken from the record herein.

In the final paragraph of this section, Appellant also claimed counsel for Rocket Mortgage “tried to deceive the court” by misquoting related authority. In addition to denying any attempted deception, Rocket Mortgage and its counsel defer to the Court in deciphering Appellant’s logic.

E. ARGUMENTS

In this section, Appellant makes reference to the wrong standard of review – although Rocket Mortgage would point out that application of both *Twombly* and *Iqbal* (which are typically considered to be a higher hurdle for litigants to cross than similar standards in state court) and their progeny would end with the same result: dismissal of Appellant’s Amended Complaint. Appellant also cites to non-precedential authority and re-argues his misplaced allegations without presentation or citation to any related factual or admissible evidence. Again, Rocket Mortgage and its counsel respectfully deny either engaged in the described behavior, and likewise respectfully request all such allegations be stricken from the record.

F. CONCLUSION

Appellant uses this section to re-assert many of his arguments. He not only also re-asserts his improper allegations of deception and fraud (see above), but also asks this Court to reverse Judge Gibbons and award him a default judgment against Rocket Mortgage. Rocket Mortgage respectfully denies that such a result would be appropriate.

Appellant then takes aim at Judge Gibbons for failing to consider all evidence he submitted, failing to apply court rules fairly, and ignoring his Motion to Reconsider (which he withdrew). Without any basis or the presentation of proper factual allegations or a shred of admissible

evidence, “Personnel” of the Circuit Court are then accused of deleting his testimony from the record of the October 16, 2023 hearing. These baseless accusations should likewise be stricken from the record. Appellant then closes with an improper request this matter be removed to the US District Court for the District of Columbia – which is also respectfully opposed herein.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of Judge Gibbons.

Respectfully submitted,

/s/ Brent B. Young

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