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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

) IN THE COURT OF COMMON
) PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2024-CP-39-00073

Alan G. Nix,

Plaintiff,

v.

Churchill Park Homeowners' Association,
Inc., McCabe, Trotter & Beverly, PC,
Churchill Park, MP Morris Law Firm, PA,
State Street Holdings, LLC, Mikell
Scarborough, County of Charleston, Cedar
Management Group, LLC, Lee Jansen, James
Thornton, Stephanie Trotter, Christopher
Craven, Town of Mt. Pleasant Police
Department, City of Charleston Police
Department, County of Charleston Sheriff's
Department, Kristin Graziano, Scarlett Wilson,
Christina Smith, Jeffrey Booker, Matthew
Colburn, Bobby Green, Elyssa Rookey, John
Cox, Stewart Murphy, Charleston Dorchester
Mental Health Center, Nerissa Hardin, Nerissa
Hardin's Supervisor, Amanda Haselden, Julie
Armstrong, Patrick Summerell, Rachel Filer,
The Discount Real Estate Company, LLC,
Navy Federal Credit Union, South State
Corporation, Jeffrey Scranton, Laura
Westbrook, Anderson Oconee Pickens
Mental Health Center, Adam Lambert/Acker,
Lambert & Hinton, Nicholas Uricchio,
Benjamin Mack, Adams Property Group,
LLC, Michael P. Morris, Butler & College,
LLC, Michael Miller, Carolina Real Estate &
Investment Group, LLC, Marshall Overton,
and James Gosnell, Jr.,

**ORDER
ON MOTIONS TO DISMISS,
FOR A GATEKEEPER ORDER, AND
FOR SANCTIONS OF
DEFENDANTS**

Defendants.

This matter came before the Court on the following motions:

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SC Court of Appeals

1. Motion to Dismiss, for Sanctions, and for a Gatekeeper Order of Defendants McCabe, Trotter & Beverly, PC ("MTB") and Stephanie Trotter;
2. Defendant Churchill Park's Motion to Dismiss Plaintiff's Complaint and for Sanctions;
3. Defendant Town of Mt. Pleasant Police Department's Motion to Dismiss Plaintiff's Complaint and for Sanctions;
4. Motion to Dismiss and for a Gatekeeper Order of Defendants Adams Property Group, LLC and Marshall Overton;
5. Defendant Butler & College, LLC's Motion to Dismiss;
6. Motion to Dismiss of Defendants MP Morris Law Firm, PA and Michael P. Morris;
7. Motion to Dismiss of Defendants County of Charleston, Mikell Scarborough, Christopher Craven, County of Charleston Sheriff Department, Kristin Graziano, Scarlett Wilson, Christina Smith, Jeffrey Booker, Matthew Colburn, Bobby Green, Amanda Haselden, Julie Armstrong, Nicholas Uricchio, Benjamin Mack, and James Gosnell, Jr.; and
8. Defendant Southstate Bank National Association's Motion to Dismiss.

A hearing took place via WebEx on October 17, 2024. Plaintiff (*pro se*) and counsel for the above-referenced Defendants attended. After careful review of the file and submissions of the parties, as well as consideration of oral argument, all the Defendants' Motions to Dismiss and Motions for a Gatekeeper Order are GRANTED, and the Court declines to award sanctions at this time.

FINDINGS OF FACT

Plaintiff Alan Nix and his wife once owned a home at 1401 Densmore Circle, Mt. Pleasant, South Carolina (Charleston County). The home is a part of the Churchill Park subdivision in the Park West development in Mt. Pleasant, South Carolina and subject to

certain governing documents. Those governing documents include Covenants which provide for annual, special, and specific assessments for which each owner is responsible to pay.

Nix purchased the home in 2000 and stopped paying money owed to the HOA under the Covenants in 2012. The HOA filed a lien seeking recovery of the monies owed in 2014 and a lawsuit seeking to foreclose that lien in 2014, Churchill Park v. Alan Nix, et al., C/A 2014-CP-10-05407, Charleston County Court of Common Pleas. MTB represented the HOA (Churchill Park) in the foreclosure case.

Nix owed the HOA money in principal, late fees, interest, and other charges. The court dismissed that case under SCRCP 40(j) on March 23, 2016. Nix defended the case *pro se*, and the Court restored it as 2017-CP-10-04031. Charleston County Master-in-Equity Mikell Scarborough issued an Order in the foreclosure action on November 9, 2017. That Order resulted in a monetary judgment against Nix and for the home to be sold at auction to pay the judgment.

After years of litigation, the home was ultimately sold at auction. State Street Holdings, LLC purchased the home and became the owner of it via Deed recorded on December 9, 2020, Book 0941, Page 914, Charleston County Register of Deeds. Nix filed multiple appeals of the foreclosure case, including Appellate Cases No.: 2018-000056, 2018-000174, and 2020-001599. The Court of Appeals denied all the appeals.

Law enforcement ultimately became involved to remove Nix from the property. Nix was then arrested for trespass, resisting arrest, and intimidation of court official, jurors, or witnesses in Charleston County in 2021. Nix was again arrested in Charleston County in October 2023 on a charge of threatening the life, person or family of a public official, teacher,

or principal. Nix was found guilty of threatening the life of a public official and resisting service of process on November 7, 2024. Nix was sentenced to five years with a suspended sentence of three years with an active one-year sentence and suspended one-year sentence with time served of 159 days to be served concurrent on November 7, 2024. Nix is currently incarcerated at Kirkland Correctional Institution.

Despite not owning or living in 1401 Densmore Circle in Mt. Pleasant for years, Nix has represented to this Court and the litigants to this case that this is his mailing address. USPS has stopped forwarding mail sent to Nix at this address, and he has failed to provide a mailing address for service of papers in this case. Despite this, Nix was personally served with Notice of the subject hearing, and counsel for Defendants have taken measures to serve Nix with pleadings filed in this case via other means and to additional addresses, including where Nix has been incarcerated.

Nix, *pro se*, has filed numerous lawsuits against those he perceived to have been involved with the foreclosure matter, including:

MISSING
NIX V CRUMEN

1. Nix v. Churchill Park, et al., 2019-CP-10-0067, Charleston County Court of Common Pleas. Dismissed this case via Order filed October 17, 2019. Nix appealed and lost. Appellate Case No.: 2019-001951.
2. Nix v. McCabe, Trotter, & Beverly, PC, et al., 2018-CP-10-2302, Charleston County Court of Common Pleas. Removed to federal court and dismissed with Judgment in favor of the Defendants. C/A 2:18-1352-RMG.
3. Nix v. McCabe, Trotter, & Beverly, PC, et al., 2018-CP-10-2356, Charleston County Court of Common Pleas. Removed to federal court dismissed with Judgment in favor of the Defendants. C/A 2:18-1360-RMG.
4. Nix v. Churchill Park, et al., 2020-CP-40-05255, Richland County Court of Common Pleas. Judge J. Newman dismissed certain Defendants from this case via an Order dated July 21, 2022. That Order included a directive to the Richland County Clerk of Court to refrain from filing further material Nix submitted as a

- pro se* litigant. Judge McFaddin issued an Order dated January 3, 2023, dismissing other Defendants in that case, again directing the Clerk of Court from accepting further *pro se* filings from Nix, and ordering him to pay \$4,950 in attorney's fees.
5. Nix v. Churchill Park, et al., 2020-CP-40-6054, Richland County Court of Common Pleas. Judge McFaddin issued an Order dated January 3, 2023, dismissing the case, again directing the Clerk of Court from accepting further *pro se* filings from Nix, and ordering him to pay \$5,290 in attorney's fees. Nix appealed this ruling and again lost. Appellate Case No.: 2023-000781.
 6. Nix v. Sloan Law Firm, PA, et al., C/A 2019-CP-10-1496, Charleston County Court of Common Pleas. Judge Cole dismissed this case via Order filed Feb. 14, 2020. Nix appealed and lost. Appellate Case No.: 2020-000676.
 7. Nix v. McCabe, Trotter, & Beverly, PC, et al., C/A 2:21-cv-03756-RMG, United States District Court, District of South Carolina, Charleston Division. Judge Gergel dismissed this case via Order entered April 21, 2022.
 8. Nix v. Churchill Park, et al., C/A 2023-CP-32-03717, Lexington County Court of Common Pleas. Dismissed for failure to prosecute/provide an accurate address on July 5, 2024.

Nix (*pro se*) also sued Churchill Park and other Defendants in a Charleston County case in a case arising out of a dispute with a neighbor. Nix v. Churchill Park, et al.; C/A 2018-CP-03315. The court dismissed that case with prejudice and imposed sanctions on Nix.

Nix has also filed multiple medical malpractice actions, *pro se*, on behalf of his late wife's Estate:¹ Estate of Nix v. Prisma, 2019-NI-10-00065 (Charleston County Court of Common Pleas); and Estate of Nix v. Greenville Health System, 2018-NI-23-00060. These were dismissed as well, and Judge Dennis determined Nix was engaging in the unauthorized practice of law.

¹ Which is the unauthorized practice of law, as Alan Nix is not a licensed lawyer, thus is unable to represent any estate in Circuit Court.

Nix filed the Complaint in this case on January 26, 2024, naming forty-seven Defendants. The caption of the Complaint lists causes of action for fraud/misrepresentation, civil conspiracy, constructive fraud, abuse of process, conversion, unjust enrichment, intentional infliction of emotional distress, aiding and abetting breach of fiduciary duty, forcible entry and detainer, false imprisonment, invasion of privacy, cruelty to animals, illegal search and seizure, and interference with contractual relationship.

The Complaint contains approximately fifty paragraphs of facts detailing various elements of the foreclosure matter as Nix sees it. After the “facts” section of the Complaint, the document includes apparently copied and pasted headings of the afore-mentioned causes of action, each followed by a paragraph stating, “Plaintiff hereby reasserts and realleges each and every allegation set forth above.” None of the causes of action contains anything further or any explanation or allegation of how the Defendants are liable for any cause of action alleged. The Complaint concludes with a boilerplate prayer for relief and includes nearly 600 pages of exhibits.

Despite not being served, counsel for the Defendants entered appearances and filed the subject Motions. The Motions ask the Court to dismiss the Complaint with prejudice, issue a gatekeeper order precluding Nix from submitting further *pro se* filings, and awarding sanctions against him.

On July 15, 2024, Nix filed pleading titled, “Motion for extra time to amend and move to join Churchill Park Homeowners’ Association, Inc.” The Defendants opposed that Motion.

RULING

1. SCRCP 12(b)(6), Failure to State a Claim

SCRCP 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). 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." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). One of the exceptions to the rule that generally a court may not consider anything outside the four corners of the complaint when deciding a motion to dismiss is public records. See Whittohn v. Fed. Ins. Co., 164 F. Appx. 395, 396 (4th Cir. 2006) ("court may consider official public records, documents central to plaintiff's claim, and documents sufficiently referred to in the complaint so long as the authenticity of these documents is not disputed"); see also Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (Since the SCRCP are based on the Federal Rules, South Carolina Courts may look to federal courts for guidance interpreting the South Carolina Rules).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." Id. The question is whether, in the light most favorable to the plaintiff, and with every

doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

The facts alleged in the Complaint contain a recitation of Nix' disagreement with how the parties to the foreclosure action handled that case. The facts appear to be largely copied and pasted from other lawsuits Nix has filed and lost related to the foreclosure matter. The statements of facts in the Complaint is followed by mere headings of various causes of action with no substantive allegations explaining how any Defendant is liable for any cause of action alleged. The causes of action only include boilerplate language referring to prior paragraphs. The Complaint is facially void of any explanation of any cause of action against any Defendant and fails to state a claim under SCRPC 12(b)(6).

a. As to Defendants Craven, County of Charleston Sheriff Department, Graziano, Wilson, Smith, Booker, Colburn, Green, Haselden, Armstrong, Uricchio, Mack, Butler & College and Gosnell.

Plaintiff fails to make any allegations against these Defendants and fails to even reference the majority of them at all in his Complaint. Plaintiff mentions Defendants Wilson and Uricchio on page 4 of his Complaint, but states only that they are residents of Charleston County. Plaintiff makes no allegation against Defendants Wilson and Uricchio, but again states only that they are residents of Charleston County. Plaintiff also fails to even mention the remaining Defendants in the Complaint. As Plaintiff makes no allegations of any kind against these Defendants his action against them is dismissed pursuant to Rule 12(b)(6) for failure to state a claim.

b. As to Defendant Scarborough.

Plaintiff references Defendant Judge Scarborough in his Complaint discussing his role in relation to the foreclosure action against Plaintiff but fails to set forth any facts to show negligence on the part of Judge Scarborough. Plaintiff sets out 16 separate causes of action in his Complaint including fraud/misrepresentation, constructive fraud, conversion/theft, trespassing, cruelty to animals, and false imprisonment among others. Plaintiff, under each of the 16 enumerated causes of action, states only, "Plaintiff hereby reasserts and realleges each and every allegation set forth above."

Plaintiff fails to set forth facts to state a claim for any of these causes of action as to Judge Scarborough. Plaintiff fails to address the elements of these causes of action and fails to set out facts as to Judge Scarborough as to any of these causes of action. For example, Plaintiff asserts a cause of action for animal cruelty but sets out no facts to support this claim as to Judge Scarborough or any of the other Defendants. Even assuming all allegations in favor of Plaintiff, the Complaint fails to set forth facts sufficient to state a claim for the causes of action in his Complaint against Judge Scarborough, and his action against him is dismissed for failure to state a claim.

2. Improper Venue

Venue is the place or geographical location of a trial. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). Venue is proper in the county in which the subject of the action occurred, or in the county where the defendant resides. S.C. Code § 15-7-10 and 15-7-30. If a case has more than one defendant, whether individual or corporate, the action may be tried in any county where one or more of the defendants reside. Ellis v. Oliver, 307 S.C. 365, 415 S.E.2d 400 (1992).

In situations where the defendant is a corporation, the residence of the corporation is the principal place of business as defined in S.C. Code § 15-7-30(A)(10). A civil action against a domestic corporation must be brought and tried in the county in which the (1) corporation has its principal place of business at the time the cause of action arose or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred. S.C. Code § 15-7-30(E). S.C. Code § 15-7-100 gives the court the power to change the place of trial if: (1) there is reason to believe a fair and impartial trial cannot be had there; or (2) the convenience of witnesses and the ends of justice would be promoted by the change.

A defendant has a substantial right to have a case tried in the county where the defendant resides. Chestnut v. Reid, 299 S.C. 305, 384 S.E.2d 713 (1989); Blizzard v. Miller, 306 S.C. 373, 412 S.E.2d 406 (1991). This is a question of law and not discretionary. Lucas v. Atlantic Greyhound Federal Credit Union, 268 S.C. 30, S.E.2d 302 (1977); Shelton v. Southern Kraft Corporation, 195 S.C. 81, 10 S.E.2d 341 (1940).

Plaintiff maintains he is a resident of Charleston County. According to the Complaint, three of the forty-seven Defendants named are in Pickens County, while one (a bank) allegedly has locations across South Carolina, including Pickens County. Most of the other Defendants in the case are residents of Charleston County, and the events complained of in the Complaint relate to the Charleston County foreclosure matter.

The Complaint fails to include a paragraph regarding Defendant MTB's place of formation or principal place of business. This does not comply with SCRCP 8(a) which requires a complaint to set forth a short and plain statement of the grounds upon which the court's jurisdiction depends. The Complaint alleges nothing regarding why MTB is subject

to being hauled into court in Pickens County. MTB is a South Carolina professional corporation with its principal office in Richland County, South Carolina at 4500 Fort Jackson Blvd., Ste. 335, and Ms. Kellahan is a resident of Richland County. Churchill Park Homeowners' Association, Inc. governs the community association for homes located in Charleston County.

The Complaint fails to include a paragraph regarding Defendant Butler & College's place of formation or principal place of business in violation of SCRCP 8(a). The Complaint makes no allegations as to why or how Butler & College is subject to any court proceedings in Pickens County. Butler & College is a South Carolina Limited Liability Company with its principal office in Charleston County, South Carolina and has no offices in or contacts with Pickens County.

Based on the prior lawsuits, this Complaint appears to relitigate the Charleston County foreclosure matter. Nix' prior home was located in Charleston County, and that was a Charleston County case. The Complaint contains no factual basis for venue in Pickens County. The only relation to Pickens County one can glean from the Complaint is a Petition for Judicial Admission submitted to the Pickens County Probate Court regarding Nix' need for psychiatric evaluation.

Therefore, the case is subject to dismissal for improper venue as to Defendants MTB, Butler & College and Trotter.

3. Statute of Limitations:

The statute of limitations applicable to the causes of action referenced in the Complaint is three years pursuant to S.C. Code § 15-3-530. SCRCP 3(a) provides that a civil

action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the applicable statute of limitations; or (2) if not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing.

The discovery rule says that the statute of limitations begins to run from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993). The “exercise of reasonable diligence” means that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333 (1981). The fact that the injured party may not comprehend the full extent of the damage is immaterial. Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App.1985); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1995).

The Complaint arises primarily out of the underlying foreclosure action, which took place from 2014 - 2017. The Complaint also references activities taken in conjunction with the foreclosure case, including the sale of Nix’s home on October 6, 2020. The factual allegations that could under the most generous reading relate to Defendants MTB and Trotter conclude as of October 2020.

The statute of limitations for claims against Defendants MTB and Trotter therefore began to run at the very latest in October 2020. Nix filed this Complaint on January 28, 2024, more than three years later.

Further, Nix has failed to perfect service of the Summons and Complaint on Defendants MTB and Trotter. Pursuant to SCRCP 3(a), the case has not commenced.

**RULE 3
COMMENCEMENT OF ACTION**

(a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

The three-year statute of limitations has expired on all claims alleged in the Complaint against Defendants MTB and Trotter even considering the latest possible date for the commencement of the statute. The Complaint is therefore subject to dismissal.

- a. **As to Defendants Charleston County, Craven, County of Charleston Sheriff Department, Graziano, Wilson, Smith, Booker, Colburn, Green, Haselden, Armstrong, Uricchio, Mack, Scarborough and Gosnell.**

Plaintiff states in paragraph 24 of his Complaint that a foreclosure action was filed against him on April 29, 2013. Plaintiff in paragraph 30 alleges that Judge Scarborough entered an order that the foreclosure action had been dismissed pursuant to Rule 40(j), SCRCP, on March 23, 2016, and in paragraph 31 that Judge Scarborough issued an order on May 9, 2017, improperly restoring the case.

Plaintiff by his own Complaint was or should have been aware of any alleged improper action no later than May 9, 2017. Plaintiff in paragraph 23 of his Complaint states that “This action covers events starting on or about 3 November 2020 with damages accruing on or about 26, Jan 2021.” (Plaintiff’s Complaint, para. 23). Plaintiff filed his action with the Court

on January 28, 2024. Defendants maintain that the statute of limitations began to run no later than May 9, 2017, but even if the statute began to run on November 3, 2020, as stated by Plaintiff his action is still barred.

The above Defendants are current or former employees of Charleston County and therefore, the two-year statute of limitations found in the South Carolina Tort Claims Act would apply. Section 15-78-110 of the South Carolina Code states “[E]xcept as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered” S.C. Code Ann. §15-78-110 (Supp. 2022). Plaintiff alleges that Judge Scarborough acted improperly in relation to the handling of the foreclosure action filed against him. Regardless of whether the statute began to run on May 9, 2017, or on November 3, 2020, as claimed by Plaintiff, it is still barred by the two-year statute of limitations in the Tort Claims Act. Even assuming the statute began to run on November 3, 2020, as stated by Plaintiff, his action would have to be filed no later than November 3, 2022. Plaintiff filed this action on January 28, 2024, over 14 months after the statute of limitations expired. Therefore, Plaintiff’s action is barred by the statute of limitations and is dismissed.

4. SCRCP 12(b)(4), Insufficient process:

Process is the procedure by which a defendant is compelled to plead, the proceedings in any action or prosecution, and/or a summons or writ to appear or respond in court. Black’s Law Dictionary, Second Pocket Ed. (1995). SCRCP 12(b)(4) provides insufficient process as a basis to dismiss a Complaint. SCRCP 4(b) requires summons to include the

plaintiff's address (if *pro se*). Similarly, SCRPC 11(a) requires a party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address.

Further, “[If] a pleading, motion, or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. Id. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney’s fee.” Id.

As detailed, it appears Nix continues to sign pleadings, including the Summons and Complaint in this case, with a caption showing his mailing address as “1401 Densmore Circle, Mt. Pleasant, South Carolina 29466.” This is not an accurate mailing address as the Rules require. This is the address of Nix’ former home which was sold at foreclosure action and in which another family lives. It also appears Nix is under court order not to come within five miles of that address, and current mailings to him “care of” that family are being returned undeliverable. The Complaint is therefore subject to dismissal for failure of process.

5. SCRPC 12(b)(5), Insufficient service of process:

Service is the formal delivery of a writ, summons, or other legal process or notice. Black’s Law Dictionary, Second Pocket Ed. (1995). The summons and complaint must be served together and details the manners in which one may perfect service. SCRPC 4. SCRPC 4(d)(3) says that process on a corporation or partnership is made_ by delivering a copy of the

summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant. SCRCP 4(d)(7) details how process may be made (certified mail, commercial delivery service, personal service, etc.). SCRCP 4(g) requires the person serving process to make proof of service thereof and file an affidavit showing the same. SCRCP 5(d) requires this proof of service of the summons and complaint to be filed within ten days after service.

Nix has failed to serve the Summons and Complaint on any Defendant or file an affidavit showing proper service on any Defendant. The Complaint is therefore subject to dismissal pursuant to SCRCP 12(b)(5).

a. As to Defendants Charleston County and County of Charleston Sheriff Department.

Pursuant to SCRCP Rule 4(d)(6), service on a county or governmental entity is to “by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.” Plaintiff filed with the Court on June 3, 2024, purported service whereby the Summons and Complaint was sent to the Charleston County Attorney’s Office by FedEx Ground.

This is not proper service according to the Rule because the Summons and Complaint were not delivered to the chief executive officer of Charleston County or the clerk thereof as required by the Rules. Furthermore, there is nothing in the Rules that provides for service by FedEx Ground as done by Plaintiff. As the Plaintiff has failed to comply with

the requirements set forth in Rule 4(d)(6), SCRCPP, Plaintiff's action against Charleston County is dismissed for lack of personal jurisdiction. Plaintiff fails to set forth any attempted service on County of Charleston Sheriff Department and the action against them is also dismissed for lack of personal jurisdiction.

b. As to Defendants Craven, Graziano, Wilson, Smith, Booker, Colburn, Green, Haselden, Armstrong, Uricchio, Mack, Scarborough and Gosnell.

Plaintiff has failed to serve the above Defendants. Rule 4(d)(1), SCRCPP, states that service upon an individual is accomplished "by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by law to receive service of process." Rule 4(d)(1), SCRCPP. Rule 4(d)(8) states that service may also be made "by registered or certified mail, return receipt requested and delivery restricted to the addresses." Rule 4(d)(8), SCRCPP.

Plaintiff fails to show that these Defendants were served either by delivering a copy of the summons and complaint to them or sending a copy to them by certified mail, return receipt requested and delivery restricted to the addresses. Not only does Plaintiff fail to show that he served these Defendants in the manner required by the Rules, he fails to show that he even attempted to serve these Defendants in any manner. As the Plaintiff has failed to comply with the requirements set forth in Rule 4(d)(1) or 4(d)(8), SCRCPP, Plaintiff's action against the above Defendants is dismissed for lack of personal jurisdiction.

6. Res judicata

The doctrine of *res adjudicata* (or *res judicata*) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action. First Nat. Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945). Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992); Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). “When claims arising out of a particular transaction or occurrence are adjudicated, *res judicata* bars the parties to that suit from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit.” Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

Res judicata applies if the following elements are met: (1) the identities of the parties are the same as in the prior litigation; (2) the subject matter or cause of action is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250-251, 452 S.E.2d 832, 833 (1994); Griggs v. Griggs, 214 S.C. 177, 51 S.E.2d 622, 627 (1949).

This appears to be at least the eighth lawsuit Nix has filed against MTB arising out of the underlying foreclosure matter in which MTB represented Nix’ homeowners’ association. In essence, Nix argues that everyone involved in the foreclosure matter was wrong and acted

improperly, resulting in him losing his home. The record reflects Nix has lost all those cases at the trial court level. He has appealed most of them and has not been successful in that Court as well. *Res judicata* applies to this case, and the Complaint is therefore subject to dismissal.

7. S.C. Code § 15-36-10 (Frivolous Proceedings Act):

S.C. Code § 15-36-10, *et seq.* is the South Carolina Frivolous Proceedings Act (“the Act”). The record again reflects Nix has already been found to be in violation of the Act four prior times in other similar lawsuits he filed. This lawsuit violates the Act.

S.C. Code § 15-36-10(A)(2) requires a *pro se* party to sign pleadings to include the address and phone number of the party. Nix has failed to include an accurate address in the Summons and Complaint. As noted above, Nix no longer owns the Mt. Pleasant home, does not live there, and is under court order not to come within five miles of that address.

The signature of a *pro se* litigant constitutes a certificate to the court that the person has read the document, the pleading is reasonable and in good faith and is not intended to merely harass or injure the other party. S.C. Code § 15-36-10(A)(3). The court may sanction a *pro se* litigant for filing a frivolous pleading for various grounds including if the pleading was not filed with a good faith basis and was filed to merely harass or injure the defendant. S.C. Code § 15-36-10(A)(4)(a). If a document is signed in violation of the Act or otherwise does not comply with it, it *must* be stricken unless it is signed promptly or amended to comply. S.C. Code § 15-36-10(B)(1). If a document is signed in violation of the Act, the court, upon its own motion or motion of a party, may impose upon the violating party any

sanction which the court considers just, equitable, and proper under the circumstances. S.C. Code § 15-36-10(B)(2).

In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances. S.C. Code § 15-36-10(E).

The decision as to whether to award sanctions under the Act is treated as one in equity. Pee Dee Health Care, PA v. Estate of Thompson, 418 S.C. 557, 795 S.E.2d 40 (Ct. App. 2016). The court has wide discretion when ordering sanctions, to include: (1) reasonable costs and attorney's fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith. S.C. Code § 15-36-10(G).

Lack of familiarity with legal proceedings is not an acceptable excuse, and the court will hold a layperson to the same standard as a lawyer. Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001). *Pro se* litigants are subject to the Act, and sanctions may be awarded

regardless of whether the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence the party should be sanctioned. Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 758 S.E.2d 483 (2012). Sanctions against a *pro se* litigant are proper for frivolous and dilatory tactics. Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 760 S.E.2d 399 (2014).

Nix appears to be very familiar with legal proceedings or the Act and has plainly filed a lawsuit without merit here. He has previously been found by other courts to have violated the Act at least four prior times. Those four Orders all relate to matters alleged in this case. In each of those cases, the court determined Nix violated the Act, dismissed the case with prejudice, and awarded sanctions. Those sanctions have included not only dismissal but also monetary awards in costs and attorney's fees and gatekeeper orders precluding clerks of court from accepting further *pro se* filings from him. Nix apparently has also been found to have engaged in the unauthorized practice of law.

Nix has alleged numerous causes of action that are complex, and which will require many hours and costs to litigate if allowed to proceed. Nix has been vacated from 1401 Densmore Circle home for years now yet continues to represent it to the court as his address. The issues about which Nix complains have been determined - numerous times, and all against him.

And Nix has previously been found to have violated the Act multiple times. Nix has never offered any viable response to these allegations and has not responded to the subject Motion. The Complaint is therefore subject to dismissal, and sanctions would be

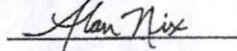
appropriate. The Court dismisses the Complaint, but in an act of grace, declines to award sanctions at this time.

8. SCRCP 11:

SCRCP 11(a) requires pro se litigants to sign his pleading and state his address. Rule 11(a) also says signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. Further, if a pleading, does not comply with this Rule, it *shall* be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. SCRCP 11(a).

Nix listed his address on the Summons and Complaint as:

Respectfully submitted,



Alan G. Nix
c/o Michael & Taryn Lazroff
1401 Densmore Circle
Mount Pleasant, SC 29466
(843) 991.4170

1401 Densmore Circle is not Nix' address. He does not own the home or live there and is precluded from coming within five miles of it. Further, mail sent to Nix addressed care of the current owners has been returned. Nix is in violation of Rule 11 for failing to include his address on the subject pleadings.

Moreover, the facially deficient Complaint lacks any basis for a belief there are grounds to support it, as evidenced by the eight prior lawsuits Nix failingly filed related to the foreclosure matter. This, in addition to Nix' failure to take measures to serve the Summons and Complaint, include any substantive allegations related to causes of action, or to respond to the subject Motion is evidence he filed this lawsuit for purposes of delay and other dilatory reasons. The Complaint is subject to dismissal under Rule 11.

9. SCRCP 41(b), Failure to Prosecute:

“For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him.” SCRCP 41(b). The plaintiff has the burden of prosecuting her action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with her cause. Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 755 (1983). “In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant.” McComas v. Ross, 626 S.E.2d 902, 368 S.C. 59 (Ct. App. 2006) *citing* Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996).

After filing at least eight prior civil cases in various court arising out of the same issues, Nix filed this lawsuit on January 28, 2024. Nearly ten months later, Nix has not perfected service on any Defendant with the Summons and Complaint or done anything to advance the case. He has not served discovery. He has failed to file any response to any motion filed in the case. Further, his Complaint is facially deficient and fails to include any substance in the cause of action sections.

Defendants, all of whom have been forced to retain counsel, have incurred costs and fees, and spent time dealing with the lawsuit. There is evidence of unreasonable neglect in prosecuting this lawsuit and additionall has been prejudicial to the Defendants' rights. Finally, Nix has failed and refused to provide an accurate mailing address, which is a violation of the Rules.

10. Judicial immunity as to Defendants Scarborough, Haselden, and Gosnell.

It is a well settled principle of law that judges are entitled to absolute immunity from claims for damages arising out of their judicial actions. See Mireles v. Waco, 502 U.S. 9 (1991); see also O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998); McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998); Chu v. Griffith, 771 F.2d 79 (4th Cir. 1985). These cases clearly show the well-established principle of law that judges are entitled to absolute immunity for claims for damages arising out of their judicial actions. The South Carolina Court of Appeals in McEachern stated there are only three exceptions to this rule. First, there is no judicial immunity if the judge acts in clear absence of all jurisdiction. Second, judicial immunity extends only to judicial acts. Finally, judges cannot claim judicial immunity for suits seeking only prospective or injunctive relief. McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998). Plaintiff fails to fall under any of the exceptions.

CONCLUSION

The Court GRANTS the Defendants' Motions to Dismiss this case and hereby dismisses the Complaint with prejudice as to all Defendants.

The Court GRANTS the Defendants' requests for a gatekeeper Order and hereby precludes the Pickens County Clerk of Court from accepting further *pro se* filings from Alan Nix. Filings submitted on his behalf are only to be accepted if submitted by a licensed South Carolina lawyer in good standing.

The Court declines to award sanctions against Nix at this time but cautions him against filing additional actions based on the same facts against the parties involved in this case.

The Court DENIES Nix' Motion for extra time to amend and move to join Churchill Park Homeowners' Association, Inc.

The Clerk of Court is hereby directed to close this file as dismissed with prejudice.

IT IS SO ORDERED.

[judge's signature page to follow]



Pickens Common Pleas

Case Caption: Alan G Nix , plaintiff, et al VS Churchill Park Homeowners Association Inc Anderson Oconee P , defendant, et al
Case Number: 2024CP3900073
Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-12-05 13:29:14 page 26 of 26