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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
Frank R. Addy Jr., Circuit Court Judge

Case No.: 2024-CP-24-00214

Carey Holtzclaw and Holtzclaw Lawn Service, LLC,

Appellants,

v.

Piedmont Technical College, William Craig Mayo,
Brian McKenna and State Fiscal Accountability Authority

Respondents.

INITIAL BRIEF OF RESPONDENT BRIAN MCKENNA

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FACTS

This matter comes to this Honorable Court on Carey Holtzclaw’s and Holtzclaw Lawn Service’s (collectively “Holtzclaw”) appeal of Judge Frank Addy Jr.’s dismissal of the Complaint.

In or around 2015, Holtzclaw entered into a contract for grounds maintenance with Appellant Piedmont Technical College (also referred to as “Piedmont Tech”). In 2020, Holtzclaw was awarded a subsequent five-year contract for grounds maintenance. When Holtzclaw failed to render services in accordance with the contract, Piedmont Tech took steps under the State Procurement Code to cure Holtzclaw’s default. When the default was not cured, the contract was terminated in or around January 2023. Holtzclaw chose not to grieve the termination. Instead, Holtzclaw filed a summons and complaint (“Complaint”) against Respondents Piedmont Technical College, William Craig Mayo and Brian McKenna (both employees of Piedmont Tech), and the State Fiscal Accountability Authority for the alleged breach of that contract.

STATEMENT OF THE CASE

Defendants Piedmont Tech, Craig Mayo and State Fiscal Accountability Authority filed nearly identical Rule 12 motions to dismiss. Appellant Brian McKenna, at the motion hearing on June 4, 2024, joined in their motions as both motions raised affirmative defenses pleaded in McKenna’s answer to the Complaint. Judge Addy granted Defendants’ motion on July 3, 2024.

In the Complaint, Holtzclaw only alleged a single cause of action against Appellant Brian McKenna – civil conspiracy. Therefore, this reply focuses on the one issue which makes McKenna a party to this action. Appellant McKenna joins by consent and stipulates to the facts and arguments set forth by Respondents Piedmont Technical College, William Craig Mayo and State Fiscal Accountability Authority in their respective replies and respectfully requests that this Court affirm the Circuit Court’s dismissal.

STANDARD OF REVIEW

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Id.* "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Id.* "Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019).

"[T]he complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). *Jane Doe v. Oconee Mem'l Hosp.*, 437 S.C. 574, 878 S.E.2d 920 (S.C. App. 2022).

ARGUMENT

I. NO ERROR WAS COMMITTED BY THE TRIAL COURT IN DISMISSING HOLTZCLAW'S CAUSE OF ACTION FOR CIVIL CONSPIRACY AGAINST DEFENDANT MCKENNA BECAUSE HOLTZCLAW FAILED TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AND FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

A plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. *See Charles II*, 199 S.C. at 176, 18 S.E.2d

at 727 ; *Charles I* , 192 S.C. at 101, 5 S.E.2d at 472.

It is well settled that although a corporation cannot conspire with itself, “the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct.App.1986). See also *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (S.C. App. 2011), 244.

“An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). “On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment.” *Crittenden v. Thompson–Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct.App.1986). See also *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (S.C. App. 2011), 244.

There is no doubt that when an employee steps outside of his official duties, he jeopardizes the vicarious shield. But here, by Holtzclaw’s own admission, Appellant McKenna never stepped outside the scope of his employment. In the Complaint, Holtzclaw alleged that Respondent McKenna and fellow Piedmont Tech employee Respondent Craig Mayo were “acting in the course and scope employment at all time relevant to this Complaint” (See Complaint ¶¶ 5-6). Appellant’s own admission warranted dismissal by the trial court and affirmation of that decision on appeal.

In his brief, Holtzclaw argues that the “complaint alleges sufficient facts to withstand dismissal of his civil conspiracy claim” and that Defendants had “intent to ruin or damage Holtzclaw’s business . . . “over and beyond just breaching the Piedmont Tech contract”. However, the complaint makes no such allegations. The Complaint sets forth a civil conspiracy claim solely on having lost “the contract to maintain Piedmont Tech’s grounds.” (Complaint ¶ 48). Indeed, the

entire complaint only theorizes a conspiracy to effect termination of a contract. No other harm is alleged. No special damages or general damages are detailed. And no relief should be granted by this Court to a Plaintiff who failed to exhaust the exclusive administrative remedy provided by the Consolidated Procurement Code and whose entire case rests squarely on the termination of said contract.

CONCLUSION

For the reasons argued above, this Court should affirm the Circuit Court's dismissal of Holtzclaw's complaint against Respondents.

Respectfully submitted,

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