

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

Tony Williams,)
)
Plaintiff,)
)
Vs.)
)
Lowe's Home Centers, LLC, and)
Andrew Melling)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No. 2025-CP-07-01666

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SC Court of Appeals

ORDER GRANTING DEFENDANTS LOWE'S HOME CENTERS, LLC'S AND ANDREW MELLING'S MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter came before the Court on December 12, 2025, for a hearing on Defendant Lowe's Home Centers, LLC's ("Lowe's") Motion to Dismiss Plaintiff's Complaint¹, and Motion to Dismiss Plaintiff's Amended Complaint, as well as defendant Andrew Melling's ("Melling") Motion to Dismiss Plaintiff's Amended Complaint in the above-captioned case.²

After reviewing the matters before the Court, all documents³, and arguments of counsel, the Court makes the following findings.

¹ This motion to dismiss the original complaint was rendered moot by the Plaintiff's filing of an Amended Complaint, and Lowe's filing of a motion to dismiss Plaintiff's Amended Complaint.

² The Plaintiff Tony Williams failed to appear at the hearing, despite having received appropriate notice. As further confirmation that Mr. Williams had notice of the hearing, he contacted the Clerk of Court on the morning of the hearing and obtained instructions on participating through the Court's Webex system. Mr. Williams never made any further communication to the clerk's office or the Court indicating that he was unable to participate by Webex. Had he contacted the clerk of the Court, he would have been provided additional assistance or given the opportunity to participate telephonically. As he failed to make any additional attempt to participate in the hearing, I conclude that his failure to attend was willful. Accordingly, the Court proceeded with the Defendants' motions to dismiss the Amended Complaint.

³ Although not yet filed with the Court, Plaintiff emailed his written objections to this Order. Those arguments – received on December 16 and 17 – have been considered as well.

I. Plaintiff has Failed to Plead the Elements of a Claim for Defamation

Plaintiff's lawsuit captioned "Tony Williams v. Lowe's Home Centers, LLC and Andrew Melling" C/A No. 2025-CP-07-01666 ("Defamation Case"), is based on statements made by defense counsel Andrew Melling while representing Lowe's Home Centers, LLC in a separate premises liability action captioned "Tony Williams v. Lowes" C/A No. 2023-CP-07-01623 ("Premises Case").

As stated in the Plaintiff's Amended Complaint, and in the Defendants' memoranda in support of their motions to dismiss, the Plaintiff's lawsuit stems from written statements made in briefings filed with the Court, or oral statements made at a hearing in open court.

As a part of Lowe's discovery process in the Premises Case, its counsel performed online research to determine whether Plaintiff had ever been arrested. This is relevant information as certain crimes are crimes involving moral turpitude and can be used to impeach a witness at trial. As part of that research, defense counsel searched the Jasper County Public Index. This website is publicly available. This search identified a Tony Alexander Williams residing at the Plaintiff's home address of 145 Fort Sullivan Drive, Ridgeland, South Carolina, that had been arrested on August 1, 2022, for 3rd degree Domestic Violence. Defense counsel reasonably concluded that this was an arrest of the Plaintiff.

Lowe's served discovery on Plaintiff as part of discovery in the Premises Case. Plaintiff's responses were deficient in multiple regards, and Lowe's filed a Motion to Compel complete discovery responses. Amongst other deficiencies, the Plaintiff did not disclose the above-stated arrest. Accordingly, when defense counsel filed Lowe's Motion to Compel, it contained the following statement:

“Interrogatory #12: This interrogatory requested information regarding Plaintiff’s arrests, etc. Plaintiff failed to provide the requested information, in particular as regard to the 3rd degree domestic violence arrest in Jasper County.”

That written statement was made in a motion filed with the Court, and as such was part of a judicial proceeding, and therefore is afforded absolute privilege protection.

Lowe’s Motion to Compel was heard by the Honorable Lawton McIntosh. During that hearing, defense counsel raised Plaintiff’s failure to disclose the above-mentioned arrest. Plaintiff informed the Court that he was not the person identified as being arrested in the Jasper County Public Index. The statement made by defense counsel in Court regarding the arrest, was part of a judicial proceeding, and as such is afforded absolute privilege protection.

Further, Lowe’s filed a motion for sanctions against Plaintiff. In a Supplemental memorandum in support of its motion, Lowe’s noted that Plaintiff had called defense counsel a “racist” and accused defense counsel of being engaged in “illegal racketeering.” As those statements were also contained in a motion filed with the Court, they were part of a judicial proceeding, and are therefore afforded absolute privilege protection.

Absolute privilege with regard to communications in judicial proceedings is well established by the South Carolina courts:

Historically there has been a tendency to restrict the **absolute privilege** to judicial proceedings, legislative proceedings and acts of state. *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979). See *Corbin v. Washington and Marine Ins. Co.*, *supra*. This is so, ostensibly, because when a communication is **absolutely privileged**, no action will lie for its publication. *Richardson v. McGill*, *supra*. This, however, does not answer the question of whether there is or has been a tendency to restrict the definition of “judicial proceeding” to exclude preliminary steps leading up to a formal judicial proceeding. Previous decisions of our Supreme Court have afforded the **privilege** to pleadings, affidavits sworn before a magistrate and letters between counsel in litigation. There have been,

however, no decisions pertaining to depositions, briefs or informal affidavits sworn to before someone other than an officer of the court. **We hold the absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it**, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relation to it. *Cf.* Restatement (Second) of Torts Section 587 comment. (1977).

Crowell v. Herring, 301 S.C. 424, 329 S.E.2d 464 (Ct. App. 1990) (Bold added).

When a communication is **absolutely privileged**, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice. *Hainer v. American Medical Intern, Inc.* 328 S.C. 128, 135, 492 S.E.2d 103, 106 (S.C. 1997) (citing *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979); *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989); *Crowell v. Herring*, 301 S.C. 4, 392 S.E.2d 464 (Ct. App. 1990)). Unquestionably, the statements of which Plaintiff complains in his Amended Complaint have absolute privilege protection, and no action lies for their publication.

Further, the above statements were reasonably related to the ongoing Premises Liability lawsuit between *pro se* Plaintiff and Lowe's. Based on the above, all of defense counsel's written and verbal statements identified in the Amended Complaint arose out of a judicial proceeding and had a reasonable relation to it. Accordingly, they are subject to absolute privilege and cannot, as a matter of law, be the basis of a lawsuit. There are no allegations of statements made outside of the context of a judicial proceeding.

Accordingly, Plaintiff has failed to plead the elements of a cause of action for Defamation.

II. Plaintiff Has Failed to Plead the Elements of a Claim for Abuse of Process.

Plaintiff's Amended Complaint includes a second cause of action for Abuse of Process. In the "Factual Allegations" section of his Amended Complaint, Plaintiff offers no facts to support his claims for Abuse of Process. Plaintiff simply states legal conclusions in paragraph V of the Amended Complaint. As stated by the South Carolina Supreme Court, the elements of a tort for abuse of process are:

The essential elements of abuse of process are **(1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding.**

The first element, an "ulterior purpose," exists if the process is used to secure an objective that is "not legitimate in the use of the process." An allegation that a party had a "bad motive" or an "ulterior purpose" in bringing an action, standing alone, is insufficient to sustain an abuse of process claim. Moreover, no action lies where a person has an incidental or concurrent motive of spite or merely seeks to gain a collateral advantage from the process.

Pallares v. Seinar, 756 S.E.2d 128, 133 (S.C. 2014) (Internal citations omitted) (Bold added).

The tort centers on events occurring outside the process; the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. (stating the improper purpose usually takes the form of coercion to obtain a collateral advantage).

Id. at 134. (Internal citations omitted). There are no facts alleged in Plaintiff's Amended Complaint regarding Lowe's using its motions to obtain a collateral advantage not properly involved in the proceeding itself.

The second element, a "willful act," has been described as "[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]" The "willful act" element consists of three components: (1) "a 'willful' or overt act"; (2) "in the use of the process"; (3) "that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective."

Id. at 134. (Internal citations omitted).

Plaintiff has failed to plead how Lowe's filing of a Motion to compel discovery responses from Plaintiff, which was granted by Judge McIntosh (1) had an ulterior purpose other than getting the Plaintiff to actually respond to discovery; and (2) was a willful act in the use of that motion to compel, that was not proper in the regular conduct of proceedings, or aimed at an illegitimate collateral objective. When a Plaintiff does not respond to a defendant's discovery requests, filing a motion to compel is standard practice on the part of the defendant. Judge McIntosh clearly agreed and granted the defendant's motion.

Further, Plaintiff has failed to plead how Lowe's filing of a Motion for Sanctions for failure to comply with Judge McIntosh's Order, which was granted by Judge Carmen Mullen, (1) had an ulterior purpose other than getting the Plaintiff sanctioned for his failure to comply with Judge McIntosh's Order; and (2) was a willful act in the use of that motion for sanctions that was not proper in the regular conduct of proceedings, or aimed at an illegitimate collateral objective. When a plaintiff fails to comply with a judge's order, filing a motion for sanctions is an appropriate action on the part of the defendant. Judge Carmen Mullen clearly agreed and granted the defendant's motion for sanctions.

Accordingly, Plaintiff has failed to plead the elements of a cause of action for Abuse of Process.

III. Plaintiff's Third Cause of Action Fails as Vicarious Liability is Not a Stand-alone Cause of Action.

Vicarious liability is not a stand-alone cause of action. It is a derivative method of assigning liability to a party. *Kargarian v. AutoZoners, LLC*, No. 3:12-CV-144-MOC-

DSC, 2012 WL 4753301, at *10 (W.D.N.C. Sept. 13, 2012) (citing *Bond v. Rexel, Inc.*, No. 5:09cv122, 2011 WL 1578502, at *9 (W.D.N.C. April 26, 2011)).

Plaintiff's third cause of action is based on Lowe's liability for the statements of its defense counsel Andrew Melling. As both of Plaintiff's underlying causes of action for defamation and abuse of process are dismissed as discussed above, the cause of action for vicarious liability cannot stand on its own and is hereby dismissed.

IV. Conclusions of Law

Under S.C.R.C.P. Rule 12(b)(6), a defendant may make a motion to dismiss based upon the plaintiff's failure to state a claim constituting a cause of action. *Nelson v. QHG of S.C., Inc.*, 354 S.C. 290, 300, 580 S.E.2d 171, 176 (Ct. App. 2003).

"In ruling upon a motion to dismiss a complaint for failure to state facts sufficient to constitute a cause of action, the court must look solely to the allegations set forth in the complaint." *Crocker v. Barr*, 295 S.C. 195, 197, 367 S.E.2d 471, 472 (Ct. App. 1988). "A motion to dismiss under 12(b)(6) cannot be sustained if the facts alleged in the complaint and inferences **reasonably** deducible therefrom would entitle plaintiff to any relief on any theory of the case. The trial court ... must presume all well pled facts to be true." *Morrow Crane Co. v. T.R. Tucker Const.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988) (emphasis added). The trial court may dismiss a claim if the defendant demonstrates the plaintiff has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *Nelson*, 354 S.C. at 300, 580 S.E.2d at 176.

As there is no relief, under any statement of facts, which could be proved in support of Plaintiff's claims, the Court hereby GRANTS defendants' motions to dismiss the Amended Complaint *with prejudice*, pursuant to S.C.R.C.P. 12(b)(6). Further, Plaintiff's

outstanding motions to amend the Amended Complaint are denied as futile,⁴ and rendered moot by this Order.

IT IS SO ORDERED this _____ day of December, 2025.

The Honorable Jocelyn Newman
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

⁴ A motion to amend should be denied when to amend the complaint would be futile. See *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 182, 826 S.E.2d 585, 589.



Beaufort Common Pleas

Case Caption: Tony Williams VS Lowes Home Centers Llc , defendant, et al
Case Number: 2025CP0701666
Type: Order/Dismissal

So Ordered

Jocelyn Newman