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SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 Linda Hartley,)
 Plaintiff,)
 vs.)
)
 US Trust National Association)
 Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2025-CP-32-00616

**ORDER GRANTING MOTION TO
DISMISS WITHOUT PREJUDICE**

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This matter came before this Court on Defendant’s Motion to Dismiss. A hearing on this matter was held on January 27, 2026, where the Plaintiff appeared *pro se* and the Defendant was represented by John Ferrell, Esquire. For the reasons set forth herein, this Court hereby **GRANTS** the Motion.

BACKGROUND

On February 12, 2025, Linda Hartley (“Plaintiff”) filed this Complaint alleging fraud and embezzlement against the Defendant. On February 20, 2025, McMichael Taylor Gray, LLC received a copy of the Summons and Complaint via Certified Mail. The Defendant, US Bank Trust National Association as Trustee for BKPL-EG Holding Trust, has not been served with the Summons and Complaint. On October 30, 2024, the underlying foreclosure matter referenced in the Plaintiff’s Complaint was adjudicated in Case No. 2024-CP-32-01909. On October 31, 2025, written notice of the Master In Equity’s Order And Judgment Of Foreclosure And Sale, along with the Notice Of Sale, were mailed to the Plaintiff. The Plaintiff failed to file a notice of appeal pursuant to Rule 203 of the South Carolina Rules of Appellate Practice. On December 2, 2024, Plaintiff’s property known as 141 Eisleben Road, Leesville, South Carolina 29070 was sold at public auction to a bona-fide third-party purchaser for value.

STANDARD OF REVIEW

Under the South Carolina Rules of Civil Procedure, a complaint must contain “a short and plain statement of the facts showing that the Pleader is entitled to relief, ...” Rule 8, SCRPC. Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based on a “failure to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRPC. A Rule 12(b)(6) motion to dismiss “must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.” *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997). “Although we are aware of the difference between alleging a cause of action and successfully proving it, the legal sufficiency of a pleading must be tested by the facts alleged therein.” *Save Charleston Foundation v. Murray*, 286 S.C. 170, 179, 333 S.E.2d 60, 66 (Ct. App. 1985).

“In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). “A 12(b)(6) [SCRPC] motion should not be granted if ‘facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.’” *Id.* (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). “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.” *Id.*

“In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRPC, this court should consider whether [the plaintiff] has ‘state[d] facts sufficient to constitute a cause of action.’” *Paradis v. Charleston County School District*, 819 S.E.2d 147, 153, 424 S.C. 603, 613 (Ct. App. 2018). “Rule 12(b)(6), SCRPC, ‘retains the Code Pleading standard ... rather than the more lenient notice pleading standard found in the federal rules.’” *Id.* See also *Gaskins v. S. Farm*

Bureau Cas. Ins., 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93 (2nd ed. 1996)). When a plaintiff states nothing more than legal conclusions, a claim should fail. *Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889).

Rule 8(a), SCRCP, provides that a pleading “which sets forth a cause of action... shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, ..., (2) a short and plain statement of the facts showing that the pleader is entitled to relief....”

Rule 9(b) states that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” “Rule 9(b) by its terms applies only to those cases in which fraud or mistake are averred. The particularity requirement is a means for courts to summarily dispose of frivolous lawsuits based on fraud.” *Gentry v. Yonce*, 522 S.E.2d 137, 337 S.C. 1 (1999).

The South Carolina Rules of Appellate Practice, Rule 203(b), states that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.”

DISCUSSION

At the Hearing, Plaintiff continuously asserted that she is not, nor has ever been, behind on her mortgage payments. She also maintained that her mortgage was with another lender and not Defendant. Defendant informed this Court that Plaintiff's mortgage was bought and sold around five times before it ultimately landed with Defendant. Defendant then made this Court aware of case no. 2024-CP-32-01909 which is the foreclosure action that Defendant initiated against

Plaintiff in which Defendant ultimately obtained a judgment against Plaintiff. Ultimately, Plaintiff's home was sold in a foreclosure sale.

Simply put, Plaintiff's pleadings do not meet the standard under Rule 12 and as such, should be dismissed. Nothing in Plaintiff's pleadings suggests a cognizable cause of action. Plaintiff's allegations of fraud and embezzlement cannot meet the pleadings standard when it is verified that Defendant's owned Plaintiff's mortgage and foreclosed on her property in a valid foreclosure action that resulted in a public sale of the property. Furthermore, the Plaintiff's allegations of fraud and embezzlement do not comply with the notice pleading as required under Rule 8 and also fails the more stringent requirement of "particularity" set forth in Rule 9(b). The Complaint contains numerous incoherent allegations which contain no facts, evidence, or elements to support the alleged cause of action.

It should be noted that the Plaintiff failed to appear and failed to file a timely appeal of the decision in the underlying foreclosure matter. As stated above, on October 31, 2024, the Master in Equity's Order and Judgment of Foreclosure and Sale along with the Notice of Sale were mailed to the Plaintiff at her address. The Plaintiff failed to file a notice of appeal or any motion under Rule 203 within the requisite thirty (30) days as is required by the South Carolina Rules of Appellate Practice, Rule 203(b).

Accordingly, this Court hereby **GRANTS** Defendant's Motion to Dismiss without Prejudice. As a result, Plaintiff's pending motions are now moot and are also dismissed.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Linda Hartley VS US Trust National Association
Case Number: 2025CP3200616
Type: Order/Dismissal

It Is So Ordered

s/ Walton J. McLeod