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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
JOSEPH N. GRATE,	)	
	)	CASE NO. 2025-CP-26-06721
Plaintiff,	)	
v.	)	**ORDER**
DAVID A. ANDERSON, JAMES J. WINEBRAKE, COASTAL CAROLINA UNIVERSITY,	)	
Defendants.	)	

THIS MATTER CAME BEFORE THE COURT for hearing at 9:30 a.m. on February 4, 2026, on the following three motions: (1) Motion to Dismiss on behalf of Defendants James J. Winebrake ("Defendant Winebrake") and Coastal Carolina University ("CCU") (together, the "CCU Defendants"), filed September 30, 2025; (2) Motion for Summary Judgment on behalf of Plaintiff *pro se*, filed October 24, 2025; and (3) Motion to Dismiss on behalf of David A. Anderson ("Defendant Anderson"), filed September 23, 2025. The Court held an in-person hearing at the Horry County Courthouse. J.W. Nelson Chandler, Esq., appeared on behalf of the CCU Defendants; Plaintiff *pro se* appeared on his own behalf; and Eleanor P. White, Esq., appeared on behalf of Defendant Anderson. Having carefully considered the arguments and filings on behalf of all parties, as well as the applicable law, the Court finds that this case should be, and hereby is, DISMISSED with prejudice.

BACKGROUND

Plaintiff filed this action on August 27, 2025, arising out of his dissatisfaction with the enrollment and registration process at CCU. (Compl., (I) ¶¶ 4, 6, 12). Plaintiff alleges that he has made various complaints of a diverse nature to, and against, CCU. (*Id.*, ¶¶ 7-10). Plaintiff claims

that he is being blocked from registration based on the allegedly "erroneous position" that he has an account deficit of more than $4,000.00. (*Id.*, ¶-10). This lawsuit names CCU as a defendant, along with its current president, Defendant Winebrake, and outside legal counsel, Defendant Anderson. Defendant Anderson is currently representing CCU in a parallel lawsuit that Plaintiff has filed in Georgetown County. *See Joseph N. Grate v. Michael T. Benson, Linwood Jesse Rouse, Sam Sullivan / Samantha Sullivan, Coastal Carolina University*, Case No. 2025-CP-22-00606 ("*Grate I*"). Plaintiff filed *Grate I* approximately three months before the instant action. *Grate I* also includes allegations regarding Plaintiff's purported issues with enrollment, registration, and financial status. *(See, e.g.*, *Grate I*, Compl., ¶¶ 1, 4). *Grate I* also names CCU as a defendant, along with its then-president, Michael T. Benson, and two other administrative employees. *Grate I* was dismissed with prejudice on August 12, 2025, and is currently pending before the South Carolina Court of Appeals. (S.C. Court of Appeals Case No. 2025-001787). The instant lawsuit does not delineate a specific cause of action, but Plaintiff appears to assert a negligence-based tort claim, seeking a judgment of $9 million against each individual defendant and $18 million against CCU, along with punitive damages. (Compl., (II) ¶ 6).

LEGAL STANDARDS

Plaintiff's and Defendants' motions rely upon the following rules:

Rule 12(b)(5), SCRCP, allows a defendant to file a motion to dismiss a lawsuit due to "insufficiency of service of process." This defense challenges the method of delivery, such as improper service and/or failure to comply with procedural requirements for delivering a summons and complaint.

Rule 12(b)(6), SCRCP, allows a defendant to file a motion to dismiss for "failure to state a claim upon which relief can be granted." "Generally, in considering a 12(b)(6) motion, the trial

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court must base its ruling solely upon allegations set forth on the face of the complaint." *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277-78, 648 S.E.2d 295, 298 (Ct. App. 2007) (internal citations omitted). "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." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (internal citation omitted).

Rule 12(b)(8), SCRCP, provides a basis for dismissal when "another action is pending between the same parties for the same claim."

Rule 12(f), SCRCP, provides that a Court may strike from any pleading any "redundant, immaterial, impertinent or scandalous matter." "A motion to strike under Rule 12(f), SCRCP, which challenges a theory of recovery in the complaint, is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP." *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 567, 703 S.E.2d 197, 199 (2010).

Rule 56(a), SCRCP, permits a party seeking to recover upon a claim to move for summary judgment in his favor. Summary judgment is appropriate when the moving party "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In ruling on a motion for summary judgment, the court must view all ambiguities and reasonable inferences from the evidence in the "light most favorable to the non-moving party." *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 63, 906 S.E.2d 94, 103 (Ct. App. 2024), *reh'g denied* (Sept. 17, 2024), *cert. denied* (Apr. 22, 2025).

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DISCUSSION

The Court addresses each of the three motions, in turn:

A. CCU DEFENDANTS' MOTION TO DISMISS

As a threshold matter, Plaintiff disputes CCU Defendants' contention that the South Carolina Tort Claims Act ("SCTCA") applies to the claims against them. *See* S.C. Code Ann. § 15-78-10, *et seq*. The SCTCA "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C., 560, 570, 743 S.E.2d 778, 783 (2013). Plaintiff claims that CCU is a "corporation" by virtue S.C. Code Ann. § 59-136-130. This argument is misplaced.

S.C. Code Ann. § 59-136-130 is part of the enabling legislation for CCU. *See* S.C. Code Ann. §§ 59-136-100 through -520. It sets forth the authority of CCU's board of trustees, which is designed as a "body corporate and politic." *See* S.C. Code Ann. § 59-136-130(2) (delineating the power to "sue and be sued by the corporate name"). This does not mean that CCU is a private corporation. To the contrary, S.C. Code Ann. § 59-136-100 establishes CCU as an "institution of higher learning of the State of South Carolina." S.C. Code Ann. § 59-136-110 provides that the board of trustees shall be appointed by the General Assembly and the Governor. CCU is a public university of the State of South Carolina. Indeed, the Complaint affirmatively alleges that CCU "is a South Carolina State Supported Institution." (Compl., ¶ 2).

The SCTCA extends its coverage to state-supported universities such as CCU. Specifically, S.C. Code Ann. § 15-78-30(a) of the SCTCA defines "agency" to mean "the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental . . . school, college, university, or technical

college, which employs the employee whose act or omission gives rise to a claim under this chapter." (emphasis added). S.C. Code Ann. § 15-78-30(e) defines "State" to mean "the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities . . . and institutions, including state-supported governmental schools, colleges, universities, and technical colleges." (emphasis added). Under S.C. Code Ann. § 15-78-40, "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the SCTCA]." (emphasis added). Thus, the Court finds that the SCTCA applies to this action against the CCU Defendants because CCU is an "agency," or part of the "State," as defined in the SCTCA. *See, e.g., Martin v. Clemson Univ.*, 654 F. Supp. 2d 410, 426 (D.S.C. 2009) (noting that the "SCTCA specifically defines Clemson (and all other state-supported colleges and universities) as the 'State' and a 'state agency'").

With this understanding, the Court turns to each of the CCU Defendants' four (4) arguments:

(1) Rule 12(b)(5)

CCU Defendants argue that neither of them has been properly served under Rule 4(d), SCRCP. The Court agrees.

First, as a state agency, CCU must be served under Rule 4(d)(5), SCRCP ("State Officer or Agency"). Rule 4(d)(5) requires "delivering a copy of the summons and complaint to such officer or agency and . . . sending a copy . . . by registered or certified mail to the Attorney General at Columbia." Defendants contend that Plaintiff did not deliver a copy of the Summons and Complaint to CCU. In response, Plaintiff points to his Proof of Service, filed September 16, 2025.

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The Proof of Service states that Plaintiff sent a copy of the Summons and Complaint to CCU by certified mail. It does not show delivery to CCU by process server or otherwise. Rule 4(d)(8), SCRCP, which permits service by certified mail, extends to those defendants covered by Rules 4(d)(1) (competent individuals) and 4(d)(3) (corporations and partnerships); it does not extend to defendants covered by Rule 4(d)(5) (state agencies). Even if it did, Rule 4(d)(8) states service is effective "upon the date of delivery as shown on the return receipt." Plaintiff has not filed any return receipt. Accordingly, Plaintiff has not shown proper service on CCU.

Second, as to Defendant Winebrake, Plaintiff must either show (a) personal service as required by Rule 4(d)(1), SCRCP, or (b) service by certified mail as required by Rule 4(d)(8), SCRCP. Plaintiff acknowledges that he has not attempted personal service on Defendant Winebrake. Service by certified mail requires that it be sent "return receipt requested and delivery restricted to the addressee." Rule 4(d)(8). Plaintiff's Proof of Service does not state that his certified mailing was sent in the prescribed manner. Even if it was, the record contains no return receipt establishing service. Accordingly, Plaintiff has not shown proper service on Defendant Winebrake.

For these reasons, the Complaint is subject to dismissal under Rule 12(b)(5), SCRCP, for insufficiency of service of process.

(2) Rule 12(b)(6)

Rule 8(a)(2), SCRCP, requires a plaintiff to set forth, in his pleading, a "short and plain statement showing that [he is] entitled to relief." Rule 8, SCRCP, has been interpreted to require that pleadings include "ultimate facts" rather than "evidentiary facts" to state a cause of action. *See Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). "Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal

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conclusions.'" *Id*. "The purpose of a pleading is fair notice to the opponent and the court." *Id*. (citing James F. Flanagan, *South Carolina Civil Procedure* 59 (2d ed. 1996)). In this case, the Complaint does not state the elements of a discernable cause of action against the CCU Defendants. Instead, Plaintiff makes scattershot factual allegations and legal conclusions. To the extent Plaintiff intends to assert a tort claim for negligence, Plaintiff must establish the following elements: "(1) that defendant owed a plaintiff a duty of care; (2) that by some act or omission, defendant breached that duty; and (3) that as a proximate result of the breach, the plaintiff suffered damage." *Oulla v. Velazques*, 427 S.C. 428, 439, 831 S.E.2d 450, 455 (Ct. App. 2019). Plaintiff has not stated these elements in a manner showing he is entitled to any relief.

"The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Id*.; *see also Hendricks v. Clemson Univ*., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) ("The determination of the existence of a duty is solely the responsibility of the court"). Here, Plaintiff has not alleged the existence of a duty of care. At the hearing on this matter, Plaintiff argued that CCU Defendants had a duty to permit him to enroll in CCU. Plaintiff has not cited any legal authority for his position, and the Court finds no such duty has been recognized at common law. Further, Plaintiff does not have a "right" to free and unfettered collegiate education that would give rise to a tort action against the CCU Defendants. Accordingly, Plaintiff has not stated a cognizable cause of action against the CCU Defendants, and the Complaint should be dismissed under Rule 12(b)(6), SCRCP.

Plaintiff has not articulated any other or additional allegations that would justify permitting the amendment of the Complaint, and accordingly, the Court holds any amendment would be futile. *See, e.g., Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006) (holding the

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circuit court's dismissal of a plaintiff's complaint with prejudice pursuant to Rule 12(b)(6), SCRCP was proper where the plaintiff "failed to present any additional factual allegations or a different theory of recovery which may give rise to a cause of action upon which relief may be granted. . ."). Therefore, dismissal of the Complaint with prejudice is warranted in this instance.

Defendant Winebrake is additionally entitled to dismissal because the SCTCA expressly bars claims against employees of governmental entities. Under the SCTCA, a plaintiff shall name "only the agency or political subdivision for which the employee was acting." S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also S*.C. Code Ann. § 15-78-70(a) ("An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable . . ."). Here, Plaintiff's claim against Defendant Winebrake centers on the allegation that he was "negligent in his duties and responsibilities" as the president of CCU. (*See* Compl., (II) ¶ 2). Indeed, the Complaint names Winebrake only because he is the current president of CCU. (*Id*., (I) ¶ 5). Plaintiff's vague and conclusory statement that Defendant Winebrake "assumed the position of his individual capacity" does not change the nature of the claims against him. Therefore, President Winebrake is not a proper party defendant and should be dismissed with prejudice. *See Flateau v. Harrelson*, 355 S.C. 197, 204-06, 584 S.E.2d 413, 417 (Ct. App. 2003) ("The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee").

(3) Rule 12(b)(8)

Rule 12(b)(8), SCRCP, provides a basis for dismissal when "another action is pending between the same parties for the same claim." "To prevail on a motion to dismiss pursuant to Rule 12(b)(8), the movant must show that the actions in question are between the same parties in their same capacities." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 322, 701 S.E.2d 39, 44

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(Ct. App. 2010). Here, the public record establishes that *Grate I* is between Plaintiff and CCU in their same capacities as in the present case. Plaintiff also named the new president in the instant action and the prior president in *Grate I* (along with other employees), but the individuals are improper defendants under the SCTCA. This leaves the question of whether the two cases cover the "same claim." *Grate I* and the instant case were filed within three months of each other, and both include allegations regarding Plaintiff's purported issues with enrollment, registration, and financial status. At the hearing on this matter, the Court gave Plaintiff numerous opportunities to opine as to any specific differences between the claims in the two cases. In response, Plaintiff merely stated that the cases are different and objected to the Court's consideration of *Grate I* in any way. Plaintiff relied upon this objection to the exclusion of identifying any specific way in which *Grate I* does not encompass the claims from the instant case. The Court finds that Plaintiff's objection is ill-founded. First, by its very existence, Rule 12(b)(8), SCRCP contemplates the consideration of other actions to determine whether one is pending "between the same parties for the same claim." Secondly, this Court may take judicial notice of the filings in *Grate I*, which was also filed in a circuit court within the Fifteenth Judicial Circuit. *See Freeman v. McBee,* 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) ("A court can take judicial notice of its own records, files and proceedings for all proper purposes . . . "). Thus, the Court finds that the instant case is subject to dismissal under Rule 12(b)(8), SCRCP, because Plaintiff has already initiated a separate action against CCU encompassing the same claim.

(4) Punitive Damages

The CCU Defendants argue that Plaintiff's claims for punitive damages and interest should be stricken as improper as under Rule 12(f), SCRCP, and/or dismissed under Rule 12(b)(6), SCRCP, because such claims barred as a matter of law under the SCTCA. Pursuant to S.C. Code

Ann. § 15-78-120(b), "No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." In response, Plaintiff argues that the SCTCA does not apply to this action. For the reasons noted above, this Court has determined that the SCTCA does apply to Plaintiff's claims against the CCU Defendants. Accordingly, the CCU Defendants' motion to dismiss is granted on this additional basis.

For all of the foregoing reasons, the Court GRANTS the Motion to Dismiss on behalf of the CCU Defendants.

B. <u>PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</u>

Plaintiff has filed a motion seeking affirmative summary judgment in this case. As noted above, however, Plaintiff has not stated a cognizable cause of action. Accordingly, Plaintiff's motion for summary judgment is subject to denial as moot.

Regardless, Plaintiff has not come forward with admissible evidence to establish each of the elements of any cause action – much less in a manner that leaves no genuine issue of any material fact. Accordingly, Plaintiff has no viable claim on which to obtain summary judgment.

Additionally, Plaintiff purported to support his motion by attaching a copy of certain email correspondence between Plaintiff and Defendant Anderson. Plaintiff appears to have written directly to the email address of the president of CCU stating, among other things, that he had "initiate[d] legal action against your Community." (*See* 8/8/2025 email, attached as Ex. B to Plaintiff's motion). Plaintiff also includes a responsive email from Defendant Anderson, in which Defendant Anderson states he is counsel for record for CCU and insists that communications with the University go through him. (See 9/11/2024 email, attached as Ex. C to Plaintiff's motion). These communications merely reflect an attorney acting as counsel for his client and do not provide any basis for granting summary judgment in favor of Plaintiff.

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Finally, the crux of Plaintiff's argument appears to be his objection to CCU's claim that he has an account deficit of more than $4,000.00. (Compl., (I), ¶ 13). Plaintiff acknowledges that CCU maintains that he has a balance due. Plaintiff disputes this claim and argues that he does not owe any amount to CCU. Accordingly, the Court finds that Plaintiff cannot establish the absence of a material factual dispute for purposes of his motion. For all of these reasons, the Court denies Plaintiff's Motion for Summary Judgment.

C. **DEFENDANT ANDERSON'S MOTION TO DISMISS**

At the hearing, Defendant Anderson's counsel argued that the present cause of action stems from a separate lawsuit filed by Pro-Se Plaintiff Grate on May 27, 2025, against Coastal Carolina University, former President Michael T. Benson of Coastal Carolina University, and other staff and representatives of the University (*i.e. Grate I*). Defendant David A. Anderson was retained by Coastal Carolina University to represent Coastal Carolina University in that matter. Defendant Anderson is an attorney admitted to practice law before both the state and federal courts in the State of South Carolina. In *Grate I*, Defendant Anderson filed a Motion to Dismiss which was ultimately granted. Pro-Se Plaintiff has appealed that ruling, and Plaintiff's appeal is still pending. Fifteen days after the entering of the Order granting CCU's Motion to Dismiss in the other lawsuit, Plaintiff filed the current matter against CCU, their current President and included David A. Anderson as a Defendant.

Defendant Anderson's Counsel argued that David A. Anderson's entire connection to these proceedings arises from his representation of the CCU Defendants in the other lawsuit brought by Plaintiff. Plaintiff's Complaint does not supply facts in support of his contention that Defendant Anderson has conducted any acts outside of those which he was retained to perform as legal counsel for the CCU Defendants. Plaintiff's cause of action rests entirely on Defendant Anderson's

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role as an attorney for CCU. Defendant's Counsel argued that "in his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional duties." *Gaar v. North Mrytle Beach Realty Co*., 287 S.C. 525, 528-529 339 S.E.2d 887, 889 (Ct. App. 1986). For these reasons, it is therefore, ORDERED that Defendant Anderson's Motion to Dismiss be GRANTED with prejudice.

CONCLUSION

For all of the foregoing reasons, the Court hereby:

(A) GRANTS the Motion to Dismiss filed by the CCU Defendants;

(B) DENIES the Motion for Summary Judgment filed by Plaintiff; and

(C) GRANTS the Motion to Dismiss filed by Defendant Anderson.

It is, therefore, ORDERED that this action should be, and hereby is, DISMISSED with prejudice.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE APPEARS ON FOLLOWING PAGE]

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Horry Common Pleas

Case Caption: Joseph N Grate VS David A Aderson , defendant, et al

Case Number: 2025CP2606721

Type: Order/Dismissal

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2026-02-10 15:58:30

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