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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
Case No. 2022-CP-40-1307

Kenneth B. Loveless,

Plaintiff,

vs.

Kevin Scully, Edward K. White, Flora E.
"Beth" Hutchison, and Michael
Montgomery, and Beatrice Dennis-White,

Defendants.

**ORDER PARTIALLY DISMISSING
SECOND AMENDED COMPLAINT
AND DENYING PLAINTIFF'S
MOTIONS TO DEEM REQUESTS
ADMITTED AND TAKE SECOND
DEPOSITION OF
DEFENDANT SCULLY**

This matter came before me at an in-person hearing on February 3, 2026, of several motions in the above-captioned action. This order rules on the Plaintiff's motions to deem Defendant Scully to have admitted requested matters under Rule 36, SCRCPP, and to compel a second deposition of Defendant Scully and rules on Defendant Scully's motion to dismiss or strike the second amended complaint. The Plaintiff's said motions are denied, and Defendant Scully's motion is partially granted and partially denied, all as explained below. The court has granted the other Defendants' motions to dismiss in full, and that is reflected in separate orders. What remains pending in this action after this order are two of the Plaintiff's claims against Defendant Scully: defamation and intentional infliction of emotional distress.

Motion to deem matters admitted. The Plaintiff made a motion seeking for court to deem admitted the matters requested to be admitted in Rule 36 requests the Plaintiff sent out on September 9, 2025, which sought admissions to authenticate various email messages. The Plaintiff's written motion also requests the imposition of an order directing Defendant Scully to pay attorneys' fees or otherwise be sanctioned for not serving answers to the requests to admit.

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In his memorandum opposing the motion, Defendant Scully pointed out that he simply took the most efficient path: since he admitted the authenticity of the documents subject of the requests, he elected to admit the requests by allowing his time to deny them to pass. Rule 36, SCRCP. That is allowed by the rules. Id. Nothing indicates any bad faith on Defendant Scully's part, much less a pattern of it, was involved. The court denies, without prejudice, the motion to deem the requests admitted.

Motion to compel second deposition of Defendant Scully. The Plaintiff sought to have the court compel Defendant Scully to sit for a second deposition in this case. In the subsection of the rule titled "Limitations," Rule 30 expressly limits the number of depositions to one per deponent, absent consent or the showing of good cause. "The deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown." Rule 30(a)(2), SCRCP. "Under Rule 30(a)(2), SCRCP, a witness's deposition may only be taken one time in any case 'except by agreement of the parties . . . or by order of the court for good cause shown.'" Paschal v. Causey, 306 S.C. 206, 210 n. 2, 420 S.E.2d 863, 866 n. 2 (Ct. App. 1992).

The Plaintiff has not shown he will suffer any prejudice if the court does not give him the opportunity to take a second deposition of Defendant Scully. Should any such prejudice occur down the road, that will be a result of the Plaintiff having chosen to change the issues after the Plaintiff chose to take Defendant Scully's deposition. That is not good cause to take a second deposition. The court therefore denies the Plaintiff's motion to compel Defendant Scully to sit for a second deposition.

Motion to dismiss and strike second amended complaint. As to this motion, the court grants it in part and denies it in part. For reasons discussed below, that denial is without prejudice

and does not determine any issue in this case, just as previous denials of motions to dismiss and for summary judgment in this case neither decided nor established anything.

The court grants Defendant Scully's motion with regard to the Plaintiff's civil conspiracy cause of action. First, the court notes that it has dismissed the same civil conspiracy claim as against the other Defendants, and it does not appear possible that Defendant Scully could have been in an actionable civil conspiracy with people the court has determined as a matter of law are not liable on the Plaintiff's civil conspiracy claim. Second, "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." Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774, 780 (2021). The second amended complaint fails to allege facts that support a conclusion that the claimed "conspiracy" actually damaged the Plaintiff. Accordingly, the court need not reckon with whether sufficient facts were pled to support the other elements of this claim.

In deciding a motion to dismiss under Rule 12(b)(6), a court deems all of the complaint's well-pled factual allegations as true for the purposes of deciding the motion; however, conclusions of law and other summary, conclusory allegations stated in the complaint are not considered as true for the motion's purposes. See Fields v. The Melrose Ltd. Partnership, 312 S.C. 102, 104, 439 S.E.2d 283, 284 (Ct. App. 1993); Carolina Winds Owners Ass'n. v. Joe Harden Builder, 297 S.C. 73, 76, 374 S.E.2d 897, 899 (Ct. App. 1988). "In evaluating a motion to dismiss pursuant to this rule, the circuit court must view the facts alleged in the complaint and any *reasonable* inferences to be drawn therefrom in the light most favorable to the plaintiff." Benedict Coll. v. Natl. Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012) (emphasis

added). “The motion cannot be sustained if facts alleged and inferences *reasonably deducible* therefrom would entitle the plaintiff to relief on any theory of the case.” Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995) (emphasis added).

The second amended complaint contains a conclusory allegation that the Plaintiff suffered “public ridicule” and “humiliation” as a result of a “press release” document being created, (Second Amended Complaint ¶ 114), but, with regard to damages claimed to be caused by the supposed conspiracy, that is all it states. In light of what is and is not contained in the rest of the pleading, it is not reasonable to infer there are facts to support the idea that the Plaintiff suffered damage in the form of “public ridicule” and “humiliation” because of the creation of the “press release” document. The second amended complaint alleges that the Defendants sent the press release to media outlets, but there are no allegations that any media outlet published the press release or used anything from it in any article, news story, editorial, or anything else. The press release could not have caused the Plaintiff to be ridiculed and humiliated by the public on the facts pled here, because there is nothing that would indicate the press release or content from it was disseminated to the public. The second amended complaint alleges no facts by which the public might have become aware of the press release or the statements in it with which the Plaintiff takes issue. The Plaintiff is entitled to reasonable inferences from what is alleged, but he is not entitled to unreasonable ones. See Benedict Coll., 400 S.C. at 544; Dye, 320 S.C. at 67-68.

As to Defendant Scully’s motion with regard to the Plaintiff’s other causes of action, the court sees the motion as relying too heavily on matters outside the pleadings. Accordingly, the court declines to dismiss or strike the claims for defamation and intentional infliction of emotional distress. The issues that relate to whether the Plaintiff’s claims for defamation and intentional infliction of emotional distress are sufficient are best taken up in the context of a trial or on

summary judgment. It may well be that Defendant Scully is ultimately determined to be entitled to judgment as a matter of law on those claims, but the court declines to decide those questions at this stage.

Accordingly, IT IS THEREFORE HEREBY ORDERED as follows:

- 1) The Plaintiff's motion to deem requested matters omitted is denied, without prejudice;
- 2) The Plaintiff's motion to compel a second deposition of Defendant Scully is denied;
- 3) Defendant Scully's motion to dismiss or strike the Plaintiff's second amended complaint is granted as to the conspiracy cause of action, which is hereby dismissed with prejudice; and
- 4) Defendant Scully's motion to dismiss or strike the Plaintiff's second amended complaint is denied, without prejudice, as to the Plaintiff's claims for defamation and intentional infliction of emotional distress.

And IT IS SO ORDERED.

The Honorable Daniel Coble
Circuit Judge



Richland Common Pleas

Case Caption: Kenneth B Loveless vs Kevin Scully , defendant, et al

Case Number: 2022CP4001307

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774