

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Rene S. Wells and Wilson Shealy, Jr. as)
 Co-Personal Representatives of)
 Wilson Shealy, Sr.,)
)
 Plaintiff,)
)
 v.)
)
 David Shealy,)
)
 Defendants.)
)
 _____)
 David Shealy,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Renee Shealy Wells, Wilson Shealy, Jr.,)
 and Mimi Shealy,)
)
 Third-Party Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-32-00633

**ORDER GRANTING SUMMARY
 JUDGMENT IN FAVOR OF
 PLAINTIFF AND THIRD-PARTY
 DEFENDANTS**

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 SC Court of Appeals

This matter is before the Court upon both Plaintiff’s and Third-Party Defendant’s respective Motions for Summary Judgement (“Motions”). A hearing was convened on this matter on August 4, 2022 via the WebEx Virtual Courtroom. Rick Gleisner, Esquire appeared for the Plaintiff, Eric Bland, Esquire appeared for the Third Party Defendants, and Derrick Jackson, Esquire appeared for Defendant and Third Party Plaintiff David Shealy (“Defendant” or “Third Party Plaintiff”). The procedural and factual history in this case warrant summarization as the totality of events all play a part in this Court’s ruling.

As there are no genuine issues of material fact and the motion may be decided as a matter of law, this Court grants Plaintiff's Motion for Summary Judgment and dismisses the Defendant's Counterclaims in this matter. Further, Third Party Defendant's Motion for Summary Judgment is granted as well.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Wilson Shealy, Sr. ("Father") operated a crop dusting and aviation parts business for many years on their family's property. As the years passed, he placed more trust into his son Defendant David Shealy. Father initiated this lawsuit against his son on March 13, 2018, in civil action number 2018-CP-32-00913 (the "2018 Action"). In the 2018 Action, Father alleged that the Defendant (a) breached his fiduciary duty, (b) engaged in a defalcation of trust, (c) converted his Father's funds, (d) sought the imposition of a constructive trust and resulting trust on any property purchased using Father's funds, and (e) sought the sale of personal property for the purpose of paying storage fees. A primary allegation levied against Defendant was his improper use of Father's joint checking account for his own personal expenses. In addition, Wilson, Sr. alleged that Defendant signed a loan in his name without his authorization. The alleged amount involved in both the joint account and executed loan exceeded \$600,000.00.

On July 23, 2018, the parties filed a Consent Order for Restraining Order and Preliminary Injunction, which prohibited Defendant from trespassing on Father's property, or otherwise contacting or being within 500 feet of Father. The Consent Order further allowed Defendant to submit a list of claimed property, which was filed with the Clerk of Court on July 25, 2018.

After an Order of Default was set aside, the Defendant Answered, Counterclaimed, and brought a third-party complaint against Renee Shealy Wells, Wilson Shealy, Jr. and Mimi Shealy ("Third Party Defendants") on October 2, 2018 ("Original Answer"). In Paragraph 11 of the

Original Answer, Defendant alleges that a portion of the personal property stored on the real property occupied by Father was his and includes as Exhibit A the list of personal property (the “Original List of Personal Property”). Defendant included a single counterclaim and cause of action in the third-party complaint for “Conversion.” In the prayer for relief, Defendant sought only a monetary judgment. The parties mediated this case on November 13, 2019 without success.

After the Third-Party Defendants filed a Motion to Dismiss, the Defendant was given the opportunity to amend the Original Answer. Defendant filed an Amended Answer, Counterclaim and Third-Party Complaint on February 19, 2020 (the “Amended Answer”). While the allegations of Paragraph 11 remained the same, there was no Exhibit A and there did not appear to be a claim for the Original List of Personal Property. Instead, there were four causes of action for (a) conversion, (b) civil conspiracy, (c) breach of fiduciary duty, and (d) negligence. Again, the prayer for relief included only the requests for monetary damages; there was no request for the turnover of personal property, no replevin action, and no action for claim and delivery.

While some written discovery was exchanged between the parties, there were no depositions taken in this case prior to it being placed on the March 2, 2020 jury trial roster. The 2018 Action was dismissed by Consent Order on February 28, 2020 pursuant to Rule 40(j), SCRCP. The Consent Order language stated “Strike the Complaint, all counterclaims and third party complaint from the docket . . .” Wilson Shealy, Sr. died on December 30, 2020, and his Estate was subsequently opened on January 15, 2021 (2021-ES-32-00073).

On February 25, 2021, the case was restored to the active docket as provided for by Rule 40(j), SCRCP, and the Clerk of Court assigned the matter a new case number, 2021-CP-32-00633 (the “2021 Action”). On April 7, 2021, counsel for Defendant sought to withdraw from the 2021

Action; his continued representation was not resolved until March of 2022, when an order substituting Defendant's current counsel was entered.

The Estate of Wilson Shealy, Sr. filed a Motion for Summary Judgment on March 21, 2022, while Third Party Defendants subsequently filed their own Motion for Summary Judgment on April 18, 2022. Defendant filed responses in opposition along with a sworn affidavit on August 1, 2022. Plaintiff filed a Reply Memorandum on August 3, 2022, and this matter came to a hearing on August 4, 2022.

THE UNDISPUTED FACTS

The primary legal issue between the parties for this motion is whether the death of Wilson Shealy, Sr. during the period his case was stricken from the active docket activates the "nonclaim" statute found in the S.C. Probate Code. The undisputed facts, as relevant to this Order, are as follows:

1. The death of Wilson Shealy, Sr. and the opening of his Estate occurred on December 30, 2020, during the period the 2018 Action was stricken from the docket pursuant to Rule 40(j), SCRPC.
2. Probate estate 2021-ES-32-00073 was opened on January 15, 2021 (the "Probate Estate").
3. Renee Shealy Wells and Wilson Shealy, Jr. were appointed Co-Personal Representatives.
4. On the date of his death, a great deal of personal property (the "Personal Property") existed on the Real Property (the "Real Property") that the Father leased from South Carolina Electric and Gas, now known as Dominion Energy ("Dominion").
5. On the date of his death, pursuant to his Will, all personal property passed into a Trust.
6. The Probate Estate remained open for the mandatory one year following the Father's passing.

7. No claims against the estate were made by the Defendant or any other potential creditor.
8. At the time of the August 4, 2022 hearing on these Motions, no witness depositions had ever been taken by Defendant and Third Party Plaintiff David Shealy, although there has been more than four (4) years to do so.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRPC. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860 (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Id.* at 330–31, 673 S.E.2d at 803. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004). “[S]ummary

judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)

ANALYSIS

I. Plaintiff’s Motion for Summary Judgment on Defendant’s Counterclaims

A. Whether the “Nonclaim” Statute Applies to Defendant’s Counterclaims

In this case, Plaintiff argues that the passing of Decedent Wilson Shealy, Sr., and the creation of the Probate Estate during the time when the case was dismissed, results in the South Carolina Probate Code (the “Probate Code”) and timelines provided for by the Probate Code to be followed. As such, Plaintiff contends that claims against the estate must be filed within one year of the decedent’s death, pursuant to Section 62-3-803(a)(1), which states:

All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following: (1) one year after the decedent's death . . .

The parties agree that this section is referred to as a “nonclaim” statute.

Prior to this Court’s hearing on the instant Motion for Summary Judgment, Defendant withdrew his counterclaim and third party cause of action for breach of fiduciary duty, leaving only causes of action for (a) conversion, (b) civil conspiracy, and (c) negligence; all of Defendant’s remaining counterclaims sound in tort.

In defining “claims” under the aforementioned nonclaim statute, the South Carolina Supreme Court in *Beach First Nat’l Bank v. Gurnham (In re Estate of Hover)*, held as follows:

Pursuant to the general statutory scheme of the Probate Code, all claims against a decedent's estate and his successors must be presented after a personal representative is appointed and within the time limits prescribed by section 62-3-803, which our appellate courts have designated as a "nonclaim statute." . . . "Broadly speaking, all claims against the decedent should be presented for allowance, and the word 'claims' includes such debts or demands as existed against the decedent in his or her lifetime and that might have been enforced against him or her by personal actions for the recovery of money." 34 C.J.S. *Executors & Administrators* § 548 (Supp. 2013) (footnotes omitted). "Stated another way, the term includes every species of liability that the personal representative can be called on to pay out of the general funds of the estate." *Id.*

407 S.C. 194, 203-204, 754 S.E.2d 875, 879-880, (2014). The *Gurham* court was dealing with a deficiency judgment from a foreclosure of real property. The secured creditor did not file a claim with the probate court seeking to preserve the deficiency judgment until past the one-year provision but did file the claim as soon as the property was sold and the deficiency was determined. The court held that "noncompliance eliminates a claimant's right of action against a decedent's estate and, in turn, deprives the court of the power to adjudicate the claim." *Id.* at 208, 754 S.E. 2d at 882 (citation omitted). Put simply, the court in *Gurham* held that the nonclaim statute barred a deficiency claim.

Here, Defendant does not seem to contest the effect of the nonclaim statute. Instead, Defendant makes two arguments as to why this section of the code should not bar the counterclaims. First, Defendant argues that his claims were still pending at the time of Father's passing and, therefore, do not fall within the scope of the nonclaim statute. Second, Defendant argues that his claims challenge the titles to properties within the probate estate and, as such, are not "claims" as defined by the Probate Code.

B. Whether Defendant's Claims Were 'Pending' at the Time of Father's Death

As it relates to the first argument, Defendant cites Section 62-3-804(4), which provides:

Notwithstanding any other provision of this section, no presentation of a claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death.

SC Code Ann. §62-3-804(4) (Law. Co-op. 1976). This section requires that there be a proceeding “pending at the time of the decedent’s death.” The Defendant argues that the 2018 Action was still pending although it had been stricken pursuant to Rule 40(j). If, however, the Rule 40(j) Order is equivalent to a dismissal, the 2018 Action was not pending, and Defendant’s claims cannot be heard by this Court.

The Plaintiff, on the other hand, relies upon the case of *Goodwin v. Landquest Dev., LLC*, which provides “there is a basis in our law for considering a case stricken pursuant to this rule as equivalent of dismissed.” 414 S.C. 623, 630-632, 779 S.E.2d 826, 830-831 (2015). In discussing the effect of Rule 40(j), the South Carolina Court of Appeals in *Goodwin* reasoned that “the tolling period would not be necessary if striking the case pursuant to Rule 40(j) were not the equivalent of a dismissal.” *Id.* (citations omitted).

In reaching this conclusion, the *Goodwin* Court discussed the historical foundation of Rule 40(j) by considering the Notes to 1994 Amendments and the South Carolina Supreme Court’s interpretation therein:

In the notes to the 1994 amendments to the South Carolina Rules of Civil Procedure, Rule 40(j) is described as “substantially revis[ing] the procedure for *dismissing* a case previously found in Rule 40(c)(3).” Rule 40, SCRCP Notes to 1994 Amendments (emphasis added). The notes go on to state, “Rule 40(j) now requires all adverse parties to consent to the *dismissal* in writing, but, the consent also operates to toll the statute of limitations for one year after the case is stricken. . . .” *Id.*; see also *Maxwell*, 356 S.C. at 621, 591 S.E.2d at 28 (relying on the notes in interpreting Rule 40(j)).

414 S.C. 623, 631, 779 S.E.2d 826, 830–31 (Ct. App. 2015). In sum, the Court of Appeals in *Goodwin* supports the contention that an Order under Rule 40(j) is, in fact, equivalent to a dismissal.

As such, once the Rule 40(j) Order was entered in the present case, the 2018 Action was dismissed and not pending upon the death of the Father. The Defendant’s argument that the 2018 Action was still pending, therefore, must fail. Further, because the 2018 Action was not pending at the time of Father’s death, the nonclaim statute controls, and the Plaintiff Estate is entitled to relief on Defendant’s counterclaims pursuant to the nonclaim statute.

C. Whether Defendant’s Counterclaims Constitute Disputes Regarding Title

Defendant’s second argument is that his claims against Father’s estate are “demands or disputes regarding title ... to specific assets alleged to be included in the estate.” Defendant’s Return and Brief in Opposition to Plaintiff’s Motion for Summary Judgment, p. 5-6. The Defendant cites Section 62-1-201(4) for the proposition that the definition of claims “does not include ... disputes regarding title of a decedent ... to specific assets alleged to be included in the estate.” S.C. Code Ann. §62-1-201(4).

Defendant’s counterclaims, however, do not constitute disputes regarding title to specific assets; rather, they are clearly causes of action for conversion, civil conspiracy, and negligence, which is further supported by Defendant’s repeated assertions for relief in the form of monetary tort damages. It is clear that Defendant’s counterclaims seek to prosecute claims that are barred by the nonclaim statute, rather than disputing ownership or title of specific assets. *See* S.C. Code Ann. §62-3-803-(a)(1). As such, Defendant’s counterclaims against Plaintiff Father fail as a matter of law.

II. Third Party Defendants' Motion for Summary Judgment on Third Party Plaintiff's Claims

As mentioned above, Defendant and Third Party Plaintiff David Shealy withdrew his claim for a breach of fiduciary duty at the August 4, 2022 hearing on these Motions; thus, Defendant's remaining third party claims are for (a) conversion, (b) civil conspiracy, and (c) negligence. Of note, Defendant has been aware of this dispute since its original filing on March 13, 2018; 1,670 days have passed between the date of original filing and the date of this order.

Although application of the nonclaim statute appears dispositive of all Defendant David Shealy's counterclaims and claims, the Court holds that summary judgment is also appropriate in favor of Third Party Defendants for the following reasons.

First, with respect to all Defendant's third party claims, each claim could have and should have been filed with the Estate of Wilson Shealy, Sr., as discussed at length above. Even if, however, the nonclaim statute did not control, Defendant David Shealy has had more than ample opportunity to prosecute his claims against the Third Party Defendants; yet, he has failed to do so. In fact, other than the allegations of Defendant's own third party complaint and a self-serving affidavit provided to the Court on August 1, 2022 ahead of the hearing on these Motions, the record in this action lacks any evidence supporting Defendant's allegations against the Third Party Defendants.

Second, with respect to Defendant's third party claim for conversion, Defendant must show the unauthorized assumption and exercise of the right and ownership over the goods or personal chattels of another, to the alteration of the condition or the exclusion of the owner's rights without permission or cause. See *Weinberg v. Wallace*, 314 S.C. 183, 442 S.E.2d 211 (Ct.App. 1994). This case is over four years old and the Defendant and Third-Party Plaintiff cannot reliably

articulate specifically what has been converted. Outside of the allegations contained in Defendant's self-serving affidavit and the allegations of his third party complaint, the record is devoid of even a scintilla of evidence as to what was taken, when, by whom, or any damage the Defendant has suffered from the alleged conversion. As such, there is no genuine dispute of material fact regarding Defendant's third party claim for conversion, and therefore, the claim must fail as a matter of law.

Third, with respect to Defendant's third party claim for civil conspiracy, Defendant must show (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 from such a conspiracy. See *Paradis v. Charleston County School District*, 433 S.C. 562, 861 S.E.2d 774 (2021). Defendant has produced no evidence beyond a self-serving affidavit and allegations contained in the pleadings that can be construed to assert a combination or agreement between two or more persons for the purpose of injuring Defendant, nor has he produced any evidence that such an undertaking was accomplished by an unlawful act or unlawful means. As such, there is no genuine dispute of material fact regarding Defendant's third party claim for civil conspiracy, and therefore, the claim must fail as a matter of law.

Finally, with respect to Defendant's third party claim for negligence, Defendant must show (1) a duty of care owed to him by the Third-Party Defendants, (2) a breach of that duty by a negligent act or omission, and (3) damages proximately resulting from that breach. See *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (2002). Third Party Defendants owed no duty to Defendant by law or by agreement to maintain or safeguard Defendant's property. Further, even if Third Party Defendants owed a duty, Defendant has produced no evidence of breach other than

a self-serving affidavit and the allegations of his pleadings. As such, there is no genuine dispute of material fact regarding Defendant's third party claim for negligence, and therefore, the claim must fail as a matter of law.

CONCLUSION

For the reasons stated above, Plaintiff's Motion for Summary Judgment as to Defendant's Counterclaims is hereby **GRANTED**. Further, Third Party Defendant's Motion for Summary Judgment as to Defendant's third party claims is hereby **GRANTED**. Defendant's counterclaims and third party claims, therefore, are hereby **DISMISSED**. Plaintiff Estate's claims set forth in the pleadings remain and will proceed forward.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]



Lexington Common Pleas

Case Caption: Renee Shealy Wells & Wilson Shealy, Jr. as P. R. of Wilson Shealy, Sr.
, plaintiff, et al VS David Shealy , defendant, et al

Case Number: 2021CP3200633

Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod