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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2025-002188
Court of Appeals Appellate Case No. 2023-001779

Andrew Pampu, Amanda Pampu, and John Pampu, Petitioners-Respondents,

v.

Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., Esq., Christina
R. Fargnoli, Esq., Barrett R. Brewer, Esq., and Brewer Law Firm,
LLC, Respondents-Petitioners.

**RESPONDENTS-PETITIONERS'
RESPONSE BRIEF**

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Statement of the Questions Presented

1. Did the trial court and the Court of Appeals properly analyze Petitioners-Respondents' breach of fiduciary duty claim and conclude the claim for breach of fiduciary duty failed as a matter of law?

2. Did the trial court and the Court of Appeals properly determine Petitioners-Respondents John Pampu and Amanda Pampu lack standing?

3. Did the trial court and the Court of Appeals properly hold that Petitioners-Respondents failed to state a claim for breach of contract?

Statement of the Case

Andrew Pampu, John Pampu, and Amanda Pampu (Petitioners-Respondents) initiated this action on March 19, 2021, asserting causes of action for professional negligence, breach of fiduciary duty, and breach of contract related to legal services Respondents provided in two underlying lawsuits. [See Complaint, R. at 39, *et seq.*] Petitioners-Respondents amended their Complaint on April 30, 2021, and included an affidavit from Justin Dillon, Esq. [See Amended Complaint, R. at 57, *et seq.*; and Expert Affidavit by Justin Dillon, Esq., R. at 79-85]. On May 9, 2021, and May 10, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents filed motions to dismiss, asking the trial court to dismiss Petitioners-Respondents' Amended Complaint in its entirety. [See Clawson Fagnoli Motion to Dismiss Amended Complaint, R. at 88, *et seq.*; and Brewer Motion to Dismiss Amended Complaint, R. at 95, *et seq.*].

In response to Respondents' motions to dismiss, Petitioners-Respondents amended their complaint again on June 16, 2021. [See 2d Am. Compl., R. at 109 *et seq.*] Petitioners-Respondents' Second Amended Complaint remains the operative pleading in this action.

On June 28, 2021, and June 30, 2021, respectively, the Clawson Fagnoli Respondents and the Brewer Respondents answered the Second Amended Complaint and asserted counterclaims against Petitioners-Respondents for breach of contract and unjust enrichment related to fees owed to them for their work on the Federal Case. [See Clawson Fagnoli Answer to 2d Am. Compl. and Counterclaims, R. at 142, *et seq.*; and Brewer Answer to 2d Am. Compl. and Counterclaims, R. at 176, *et seq.*] On those same dates, Respondents filed motions to dismiss, asking the trial court to dismiss Petitioners-Respondents' Second Amended Complaint in its entirety. [See Brewer Motion to Dismiss

2d Am. Compl., R. at 194, *et seq.*; and Clawson Fagnoli Motion to Dismiss 2d Am. Compl., R. at 169, *et seq.*]. On October 22, 2021, Respondents jointly submitted a memorandum in support of their motions to dismiss. [See Respondents' Joint Memorandum in Support of Motion to Dismiss 2d Am. Compl., R. at 226, *et seq.*]. On December 15, 2021, Petitioners-Respondents submitted a response in opposition to Respondents' memorandum. [See Combined Memorandum in Opposition to Motions to Dismiss 2d Am. Compl., R. at 264, *et seq.*].

On March 2, 2022, the trial court conducted a virtual hearing on Respondents' motions to dismiss. [See Transcript, R. at 285-337]. On June 23, 2022, the trial court issued separate orders granting Respondents' respective motions to dismiss and dismissing Petitioners-Respondents' Second Amended Complaint in its entirety. [See Order Granting Brewer Motion to Dismiss, R. at 6-18; and Order Granting Clawson Fagnoli Motion to Dismiss, R. at 19-31]. Thereafter, on July 5, 2022, Petitioners-Respondents filed a Motion for Reconsideration and to Alter or Amend the Orders Granting Defendants' Motions to Dismiss [See R. at 277, *et seq.*]. On October 23, 2023, the trial court denied the motion. [See Order Denying Motion for Reconsideration, R. at 1-3].

Petitioners-Respondents appealed the trial court's Orders to the South Carolina Court of Appeals. In an unpublished decision, the Court of Appeals reversed the trial court on the professional negligence cause of action and affirmed the trial court on the dismissal of the breach of fiduciary duty and breach of contract claim. Following denial of cross-petitions for rehearing, the parties each filed petitions for writ of certiorari. This Court granted the petitions by Order dated March 11, 2026 pursuant to SCACR 242(i).

Standard of Review

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP.” *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Doe v. Marion*, 373 S.C. 390, 393, 645 S.E.2d 245, 246 (2007)). “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.* (citing *Plyler v. Burns*, 373 S.C. 637, 643, 647 S.E.2d 188, 191 (2007)). “The trial court’s grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* (citing *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277, 648 S.E.2d 295, 297 (Ct. App. 2007)).

Argument

The South Carolina Court of Appeals considered the three issues set forth above. In affirming the trial court's order of dismissal, the Court of Appeals provided concise reasoning and correctly applied the law and precedent of this State. This Court should similarly affirm the dismissal of the breach of fiduciary claim. Also, this Court should affirm the Court of Appeals finding John Pampu and Linda Pampu lack standing. Finally, this Court should affirm the dismissal of the breach of contract cause of action.

I. The Court of Appeals properly affirmed dismissal of the breach of fiduciary duty claim.

The Court of Appeals affirmed dismissal of Andrew Pampu's cause of action for fiduciary duty because the same was "duplicative and arises from the same set of facts as their claim for legal malpractice...." Opinion at 3. Citing *RFT Mgmt. Co.*, 399 S.C. at 335–37, 732 S.E.2d at 173 (2012), the Court reasoned the breach of fiduciary duty failed as a matter of law. *Id.* In doing so, the Court of Appeals correctly stated the law of South Carolina and properly applied it to Pampu's cause of action for breach of fiduciary duty.

Petitioners-Respondents argue that Respondents-Petitioners breached the fiduciary duties of confidentiality and loyalty. [2d Am. Compl., R. at 126-128]. As the Court of Appeals held, those duties are inherent in the attorney client relationship. *Spence v. Wingate*, 395 S.C. 148, 159, 716 S.E.2d 920, 926 (2011). Moreover, Petitioners-Respondents' breach of fiduciary duty claim is premised on the same factual allegations as their legal malpractice claim. [See 2d Am. Compl., ¶¶ 79-96, R. at 125-128]. Therefore, Petitioners-Respondents' claim for legal malpractice necessarily encompasses an alleged breach of the fiduciary duty that attorneys have to their clients. See *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173; and *Gibson*, 426 S.C. at 353, 827 S.E.2d at

182. Therefore, Petitioners-Respondents' breach of fiduciary duty claim is duplicative, and the trial court correctly applied *RFT Management* and *Gibson*.

In *RFT Management Co.*, RFT sued its former attorney and his law firm based on their representation of RFT Management in a transaction involving two real estate investment properties. 399 S.C. at 327, 732 S.E.2d at 168. RFT alleged multiple claims against the respondents, including legal malpractice and breach of fiduciary duty. *Id.* At trial, at the close of evidence, the trial court merged RFT's breach of fiduciary duty claim into its legal malpractice claim and granted the respondents' motion for a directed verdict as to RFT's other claims; therefore, only the legal malpractice claim went to the jury. *Id.* at 330, 732 S.E.2d at 170. The jury returned a verdict in favor of the lawyers, and the trial court denied RFT's post-trial motions. *Id.* On appeal, RFT argued, in part, that the trial court erred in "failing to charge the jury on breach of fiduciary duty and merging this cause of action with its first cause of action for legal malpractice." *Id.* In affirming the trial court's decision to merge the two causes of action, this Court explained:

A claim for breach of fiduciary duty, as a general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship.... In the current matter, however, RFT's claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations. Thus, RFT's claim for legal malpractice necessarily encompassed a breach of the fiduciary duty an attorney has to his or her client.... Although RFT now argues a breach of fiduciary claim *could* be distinguishable from legal malpractice, RFT does not set forth any specific facts that demonstrate its breach of fiduciary duty claim *is* distinguishable because it arises out of a duty *other than* one created by the attorney-client relationship or because it is based on different material facts. Consequently, we hold the breach of fiduciary duty claim is duplicative.

Id. at 336–37, 732 S.E.2d at 173 (internal citation omitted) (emphasis in original).

In *Gibson v. Epting*, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019), a client and her companies sued her lawyers and asserted several claims, including legal malpractice and breach of fiduciary duty, related to their lawyers' representation of them in a real estate matter. 426 S.C. at 350, 827 S.E.2d at 180. The trial court granted summary judgment in favor of the respondents. *Id.* In affirming the trial court's decision, the Court of Appeals noted, "[Appellant] asserts Respondents breached their fiduciary duty to her in numerous ways, all of which duplicate her legal malpractice claim because the duties arose out of the attorney-client relationship and she alleges the same facts as to both claims.... Accordingly, we only address [Appellant's] claim for legal malpractice." *Id.*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *RFT Mgmt. Co.*, 399 S.C. at 336–37, 732 S.E.2d at 173). Like the allegations in *Gibson*, Petitioners-Respondents' claims are the same and the trial court and Court of Appeals properly dismissed the duplicative breach of fiduciary duty claim.

Petitioners-Respondents' attempt to add a temporal element (alleged breaches after termination of the client-lawyer relationship) does not save their claim from dismissal. (Brief at 6). As this Court has held, "[i]t is undisputed that attorneys owe fiduciary duties to existing clients. In addition, *fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended.*" *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 927 (2011)(emphasis added). Therefore, Petitioners-Respondents do not create a non-duplicative cause of action merely by alleging facts said to have occurred after the end of the formal representation.

In sum, the trial court correctly dismissed Petitioners-Respondents' breach of fiduciary duty claim, and the Court of Appeals correctly affirmed that decision.

Accordingly, this Court should affirm the Court of Appeals' dismissal of Petitioners-Respondents' breach of fiduciary duty claim.

In their brief, Petitioners-Respondents misapprehend *RFT Management* and *Gibson*. They contend South Carolina Rules of Civil Procedure allow for alternative pleading in this instance. The trial court in *RFT Management* merged the two causes of action into the professional negligence claim. *RFT Mgmt. Co.*, 399 S.C. at 330, 732 S.E.2d at 170. The Court of Appeals affirmed this action. *Id.* at 337, 732 S.E.2d at 173. Similarly, in *Gibson*, the trial court granted summary judgment to Defendants on fiduciary duty and negligence claims. The Court of Appeals noted that under those circumstances, "the claim for breach of fiduciary duty is duplicative of and encompassed by the claim for legal malpractice". *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (explaining the holding of *RFT Mgmt. Co.*). In both cases, the breach of fiduciary duty was indistinguishable from the professional negligence claim, such that it could not be pled in the alternative. Duplicative claims are identical claims. See, e.g., Black's Law Dictionary 503 (6th ed. 1990) (defining "duplicate" as a verb meaning to "reproduce exactly"). As a result, a party cannot allege an alternative, identical claim. That would be tantamount to allowing the Petitioners-Respondents to allege a legal malpractice claim and, alternatively, a legal malpractice claim, creating a logical fallacy. This Court cannot contend such a result under the facts of this case.

Additionally, Petitioners-Respondents contend that the trial court should not have dismissed the fiduciary duty claim at the Rule 12(b)(6) stage. Brief at 8. However, as the Court of Appeals found, the breach of fiduciary duty claim failed as a matter of law. Opinion at 3. To the extent Petitioners-Respondents rely on a Georgia opinion, such is

inapposite to the precedent established by the appellate courts of this State. Quoting *Titshaw v. Geer*, 907 S.E.2d 835 (Ga. 2024), Petitioners-Respondents argue “plaintiffs are not prohibited from simultaneously pursuing different causes of action with different elements simply because the claims involve the same underlying conduct, the same damages, and duties deriving from the same source.” Brief at 9. That rationale was soundly rejected by both the Court in *RFT Mgmt* and the Court of Appeals in *Gibson*. In *RFT Mgmt*, this Court held a breach of fiduciary duty is duplicative unless it arises out of “a duty *other than* one created by the attorney-client relationship or because it is based on different material facts” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. at 336, 732 S.E.2d at 173 (emphasis added). Petitioners-Respondents have not articulated a theory that distinguishes their claim for breach of fiduciary duty from that of professional negligence. Like this Court’s finding in *Hood v. United Servs. Auto Ass’n*, “all these arguments ... lead to one viable tort claim” if any: professional negligence and only professional negligence. 445 S.C. 1, 11, 910 S.E.2d 767, 772 (2025).

The courts of this State have consistently rejected duplicative claims. In *Hood*, this Court held that a negligence claim would be “entirely duplicative” of a bad faith claim and failed as a matter of law. *Id.* at 11, 910 S.E.2d at 772. Duplicate claims fail as a matter of law. So dismissal of a duplicative cause of action is the appropriate remedy here. This Court should affirm the Court of Appeals and the trial court.

II. The Court of Appeals properly affirmed the trial court’s holding Amanda and John Pampu lack standing.

The trial court properly ruled that Petitioner-Respondents Amanda and John Pampu lack standing. In affirming this ruling, the Court of Appeals properly considered the arguments of the parties. The trial court held that “because Andrew Pampu was the

only named party in either lawsuit and the only party to sign the settlement agreement, only he has standing to assert the alleged claims.” [Order Granting Brewer Motion to Dismiss, R. at 11; Order Granting Clawson Fagnoli Motion to Dismiss, R. at 24]. The Court of Appeals also held “[o]nly Andrew was named as a party and signed the settlement agreement, thus, we find only Andrew can bring a claim against Respondents for any actions arising out of the federal or state lawsuit.” Opinion at 2-3.

Neither John Pampu nor Amanda Pampu was a party to the litigation brought by Plaintiff Andrew Pampu. [R. at 114, ¶¶26, 122, ¶¶63-65]. Andrew Pampu was the sole plaintiff in both the action filed in the U.S. District Court for the District of South Carolina, and the state court litigation. [*Id.*] Further, neither Amanda nor John Pampu signed the memorandum of understanding generated at the mediation in the federal litigation that serves as the primary basis for the claims asserted by Plaintiffs in this matter. [R. at 118, ¶¶39]. Of course, they did not sign that memorandum of understanding because they were not parties to that litigation.

The Pampus argue the trial court ignored allegations in the Complaint establishing a client-lawyer relationship between the Pampu Parents and Respondents in both the Federal Case and the State Case. [Brief, pp. 10-11]. Specifically, Petitioners-Respondents point to several paragraphs in their Second Amended Complaint generally alleging that Respondents represented the Pampus in the Federal Case and caused financial losses to the Pampus. [Brief, p. 11]. Those allegations do not get to the heart of the matter and do not provide standing to Amanda and John Pampu.

Because Amanda and John Pampu were not parties to either action and had no legal interest in either action, they cannot claim that they were somehow damaged by any

loss of settlement value in the Federal Case or a disadvantaged position in the State Case. The Court of Appeals cited *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) in support of its affirmance. *Sloan* considered the plaintiff's taxpayer standing to challenge Greenville County's award of certain contracts. The Court of Appeals in *Sloan* held that "[t]o have standing, one must have a personal stake in the subject matter of the lawsuit." *Id.* at 547, 590 S.E.2d at 347. John and Amanda do not have a personal stake in the subject matter of the lawsuit. And Petitioners-Respondents' briefing on this subject have failed to show any personal stake in these actions.

"Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims. It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013). In this case, Andrew Pampu is the only real party in interest in the outcome of this litigation. "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999). Amanda and John Pampu have only a nominal or technical interest in this litigation.

Moreover, Amanda and John Pampu had no interest in the subject matter of either the Federal Action or the State Case. The concept of standing contains three elements:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the

independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008). John and Amanda have failed to satisfy these elements, and the trial court and Court of Appeals properly dismissed their claims because of this failure.

Petitioners-Respondents contend the Court of Appeals’ reasoning was too narrow. (Brief at 12). However, Petitioners-Respondents cannot articulate how the alleged acts or omissions of the Respondents-Petitioners affected John or Amanda Pampu. All their claimed damages are derived from the alleged negligence in representing Andrew Pampu in the State Case and settling the Federal Case. First, Petitioners-Respondents allege Petitioners-Respondents allowed Andrew Pampu to settle the Federal Case (R. at 112-113, 123). Second, Petitioners Respondents failed to explain to Andrew Pampu “the full implication of this handwritten settlement agreement...” R. at 113. Third, Petitioners-Respondents ***should have known how valuable Andrew Pampu’s claims were*** against the various State and Federal defendants. App. 118-119. Fourth, Petitioners-Respondents “interfered with the mediation process, disrupting and negotiations and ***disadvantaging [Andrew Pampu’s] position...***” R. at 124 (emphasis added). In fact, the damages specifically alleged in the Second Amended Complaint are damages related to Andrew Pampu’s claims in the State and Federal Cases. R. at 125. As a result, the Court of Appeals’ opinion properly focused on that harm in determining Amanda and John Pampu, who had no claims in the State Case or Federal Case, lacked standing. See *Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm’n*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999)(“A real party in interest is one who has a real, material, or

substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.”).

III. The Court of Appeals properly affirmed the dismissal of the breach of contract claim.

The Court of Appeals affirmed the dismissal of the breach of contract claim. Opinion at 4. In doing so, the Court held “the circuit court did not err in dismissing [Pampus’] breach of contract claim. Petitioners-Respondents’ complaint fails to allege how Respondents breached any agreement. The complaint only states that Respondents ‘fail[ed] to provide such services.’” *Id.* In so holding, the Court of Appeals properly affirmed the dismissal of the breach of contract claim.

“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.” *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019) (*quoting Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015)). Citing the 2d Am. Compl., the Court of Appeals held that Petitioners-Respondents merely alleged Respondents-Petitioners “fail[ed] to provide such services.” *Op. at 4.* The 2d Am. Compl. “fails to allege how Respondents-Petitioners breached any agreement.” *Id.* In short, these conclusory allegations are insufficient as a matter of law. *See, e.g., Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct.App. 1986) (providing conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings). Further, Petitioners-Respondents’ argument that factual allegations of “a distinct contractual undertaking by the law firms to represent the Pampus in federal and state cases and related claims, asserting a breach by failing to provide promised services, including securing material settlement terms and handling discovery and file” (see Brief, p. 13) support their breach of contract claim is

without merit, as a review of the specific allegations cited (¶¶ 27-29, 36, 38, 40-42) confirms the Court of Appeals' holding that they fail to allege how Respondents-Petitioners breached any agreement. This is the critical issue to Petitioners-Respondents' case – a wholesale failure to allege the necessary elements to their claim.

Conclusion

The Court can see that the Court of Appeals, affirming the dismissal of the breach of fiduciary duty claim, acted appropriately and applied the correct law. Similarly, the Court of Appeals properly held John and Amanda Pampu lack standing to sue the Petitioners-Respondents. Finally, the Court of Appeals properly affirmed the dismissal of the breach of contract action. For these reasons, this Court should affirm the Court of Appeals on these three issues.