

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

KENN ZOU,

Plaintiff,

vs.

MENGJIA XIA, MICHAEL S. COLE,
AND REALTYONE GROUP
DOCKSIDE,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NUMBER: 2025CP2601804
)
)
)

**ORDER DENYING PLAINTIFF'S
RUL 59(e) MOTION TO ALTER OR
AMEND JUDGMENT**

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SC Court of Appeals

Plaintiff Kenn Zou moves under Rule 59(e), SCRCP, to alter or amend the Court's June 16, 2026 Order that granted Defendants' Rule 12(b)(6) motion to dismiss, denied Plaintiff's motion for alternative service/service by publication, denied Plaintiff's motion for leave to amend, and declared Defendants' motion to enlarge time moot. For the reasons below, the Plaintiff's Motion to Alter or Amend is respectfully DENIED.

PROCEDURAL HISTORY

Plaintiff filed this civil action on March 5, 2025, arising from alleged events in 2019 related to attempted real estate transactions and brokerage supervision. Plaintiff filed an Amended Complaint on April 7, 2025.

On December 10, 2025, Defendants filed their Motion to Dismiss and Supporting Memorandum pursuant to Rule 12(b)(6), SCRCP, contending the claims are time-barred and otherwise fail to state claims for fraudulent misrepresentation, negligent supervision, breach of fiduciary duty, and any putative tortious interference theory. On December 12, 2025, Plaintiff filed a Response in Opposition to Defendants' Motion to Dismiss. On February 27, 2026, Plaintiff filed

a Motion for Leave to File Second Amended Complaint, attaching a proposed Second Amended Complaint and proposed order. The proposed Second Amended Complaint asserted the same causes of action—fraudulent misrepresentation, negligent supervision, and breach of fiduciary duty—arising from 2019 transactions, and added allegations regarding delayed discovery, continuing concealment, and Plaintiff's diligence.

On May 5, 2026, the Court issued a Form 4 stating that Defendants' Motion to Dismiss, Plaintiff's Motion for Alternative Service and/or Service by Publication, Defendants' Motion to Enlarge Time, and Plaintiff's Motion for Leave to Amend were under advisement; the Form 4 reflects electronic entry on May 5, 2026. On June 16, 2026, the Court entered an order granting Defendants' Motion to Dismiss, denying Plaintiff's Motion for Alternative Service and/or Service by Publication, denying Plaintiff's Motion for Leave to Amend, and declaring Defendants' Motion to Enlarge Time moot. On June 17, 2026, Plaintiff filed a Rule 59(e) Motion to Alter or Amend Judgment seeking reconsideration and requesting findings on the dismissal and the denial of his motions.

FACTUAL ALLEGATIONS

Plaintiff alleges that in March 2019 he attempted to purchase 549 Carnaby Loop for approximately \$275,000, engaged Defendant Xia as his agent, paid \$14,500 in earnest money, and when the transaction failed, Xia refused to assist in recovering the deposit or provide contractual advice; Plaintiff further alleges Xia misrepresented her authorization or qualifications and caused the earnest money loss.

Plaintiff alleges that in July 2019 he attempted to purchase 8112 Wacabee Drive, listed at \$695,000, instructed Xia not to interfere with commission negotiations, and that Xia contacted the

seller's agent regarding a commission, allegedly collapsing negotiations and causing a missed investment opportunity.

Plaintiff alleges negligent supervision by Defendants Cole and Realty ONE Group Dockside regarding Xia's licensing and conduct, and that all Defendants breached fiduciary duties owed to Plaintiff.

STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6), SCRCp, must be based solely on the allegations set forth on the face of the complaint. *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426 (2005). When reviewing such a motion, the court accepts the complaint's allegations as true. *Clearwater Trust v. Bunting*, 367 S.C. 340 (2006). Dismissal is appropriate where the complaint, even taken as true, fails to state facts sufficient to constitute a cause of action or reveals on its face that the claim is time-barred.

ANALYSIS

I. Statute of Limitations

The Amended Complaint, on its face, alleges conduct occurring in 2019 and was filed in 2025, beyond three years. Defendants contend the allegations show the asserted injuries were or should have been apparent at or shortly after the alleged occurrences in 2019, rendering the claims time-barred. Plaintiff generally asserts later discovery and references fraudulent concealment but does not plead specific facts as to when discovery occurred or facts that would toll limitations.

Accepting the well-pleaded factual allegations as true, the Amended Complaint does not allege facts that plausibly bring the claims within the discovery rule or any tolling doctrine. The pleading identifies no date of discovery, no concealed facts preventing earlier discovery, and no diligence undertaken. Where the complaint itself shows that the statute has run and fails to allege

facts supporting delayed accrual or tolling, dismissal is appropriate. On this record and at the Rule 12(b)(6) stage confined to the pleadings, the Court concludes the claims are time-barred.

Accordingly, the motion to dismiss was properly granted on statute-of-limitations grounds.

II. Alternative Grounds

Although unnecessary to the result, the Court addresses Defendants' alternative arguments as additional, independent bases for dismissal.

A. Fraudulent misrepresentation

To state fraud, a plaintiff must allege nine elements, including a specific false representation, knowledge or recklessness, intent, right to rely, reliance, and resulting damages, and omission of any element is fatal. The Amended Complaint does not identify the particular representation made by Xia that was false, when and where it was made, or facts supporting knowledge, intent, right to rely, and reliance with the particularity Rule 9(b) requires. Defendants further argue Plaintiff's theory appears to rest on Xia's licensure status, which, they contend, was valid during the relevant period. Regardless of extrinsic materials, the pleading deficiencies independently warrant dismissal of the fraud claim.

B. Tortious interference with contract

Defendants contend that, to the extent the Amended Complaint can be read to allege tortious interference, it fails to allege the existence of a valid contract, Xia's knowledge thereof, intentional procurement of a breach, or that any underlying contract was breached. The Court agrees that the Amended Complaint does not plead the essential elements; dismissal is warranted on this alternative ground.

C. Negligent supervision

Defendants argue the Amended Complaint does not allege facts satisfying the elements of negligent supervision, including intentional harm by the employee under circumstances triggering the employer's duty to control, or knowledge giving rise to a necessity and opportunity to exercise control. On the face of the pleading, the elements are not adequately alleged. Dismissal is warranted on this alternative ground.

D. Breach of fiduciary duty

Defendants assert Plaintiff fails to allege facts establishing the existence and scope of any fiduciary relationship, a specific breach, and proximate damages independent of conclusory assertions. The Court finds the pleading insufficient to state a claim for breach of fiduciary duty as an alternative basis for dismissal.

CONCLUSION

Plaintiff Kenn Zou motion under Rule 59(e), SCRCP, to alter or amend the Court's June 16, 2026, Order is respectfully DENIED.

IT IS SO ORDERED!

[Prepared for Electronic Signature]



Horry Common Pleas

Case Caption: Kenn Zou VS Mengjia Xia , defendant, et al
Case Number: 2025CP2601804
Type: Order/Other

15th Circuit Resident Judge

s/ B. Alex Hyman