

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Abdellah El Farissi,)

Plaintiff,)

vs.)

Newberry College,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2024-CP-36-00087

ORDER GRANTING DEFENDANT'S

MOTION TO DISMISS
RECEIVED

AUG 15 2024

SC Court of Appeals

BEFORE THE COURT is Defendant Newberry College's ("Defendant") Motion to Dismiss Plaintiff Abdellah El Farissi's ("Plaintiff") Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing on this matter was held in Newberry County, South Carolina on July 8, 2024. At the hearing, Plaintiff appeared *pro se*. Defendant was represented by Sheila Abron, Fisher & Phillips, LLP. After fully considering Defendant's Motion and the arguments and authorities of all Parties, the Court issues this Order granting Defendant's Motion to Dismiss and dismissing Plaintiff's Complaint, with prejudice.

I. FACTS AND PROCEDURAL HISTORY

On February 8, 2024, Plaintiff filed his *pro se* Complaint against Defendant. The Complaint consisted of a series of allegations relating to Plaintiff's former employment with Defendant. Defendant timely filed a Motion to Dismiss the Complaint on March 7, 2024, on the grounds that Plaintiff failed to state a claim. Plaintiff filed a response in opposition on March 15, 2024.

The Complaint's key focus is an alleged recording taken by a former Newberry College student-athlete. Plaintiff alleges the recording was shared with other parties in "a clear violation

of [Plaintiff's] privacy rights.” *Compl.* Plaintiff alleges the recording was specifically shared with Defendant’s Athletic Department personnel, which subsequently resulted in Plaintiff’s termination. *See id.* Plaintiff alleges that the recording violated his privacy rights, *see id.*, and that the recording was made in violation of the Federal Wiretap Act of 1968 and S.C. Code Ann. §§ 17-30-20 and 17-30-135 (2002). *See Pl.’s Opp’n to Mot. to Dismiss.*

II. LEGAL STANDARD

A complaint must contain “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 8(a), SCRCP. Therefore, under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a complaint is subject to dismissal when it “fail[s] to state facts sufficient to constitute a cause of action.” Rule 12(b)(6), SCRCP.

“In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint.” *Cole Vision Corp. v. Hobbs*, 714 S.E.2d 537, 539 (S.C. 2011) (citing *Doe v. Marion*, 645 S.E.2d 245 (S.C. 2007)). Therefore, dismissal under Rule 12(b)(6) is appropriate if the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory. *See Stiles v. Onorato*, 457 S.E.2d 601, 602-03 (S.C. 1995) (citing *Toussaint v. Ham*, 357 S.E.2d 8 (S.C. 1987)).

III. LEGAL ANALYSIS

As a threshold matter, it is unclear what cause of action Plaintiff’s Complaint purports to allege against Defendant. Plaintiff’s Complaint begins by stating that “South Carolina is a One Party Consent State.” *Compl.* Plaintiff then alleges that he was improperly recorded, called into a meeting, and terminated. However, none of these statements or allegations indicate a cause of action against Defendant, even construed liberally.

I. Plaintiff has failed to state a claim against Defendant because Plaintiff has not alleged any unlawful act.

Plaintiff's Opposition to Defendant's Motion to Dismiss provides a clue to Plaintiff's legal goals, in which he cites to the Federal Wiretap Act of 1968 and S.C. Code Ann. §§ 17-30-20 and 17-30-135. Plaintiff's reliance on these laws is misplaced. The federal law states "[i]t shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication." 18 U.S.C. § 2511(d) (2018). South Carolina law maintains almost identical language, stating:

"It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception."

S.C. Code Ann. § 17-30-30(C). Because the former student-athlete of Defendant was a party to the allegedly recorded conversation, her alleged action was not unlawful. Not only did Plaintiff fail to allege facts sufficient to demonstrate that any party created a cause of action, but liberally construing the Complaint, the laws upon which Plaintiff relies explicitly allow for the type of conduct Plaintiff alleges occurred. Stated differently, Plaintiff has not alleged a *violation of any law*—federal or state.

II. Even if Plaintiff alleged unlawful conduct, Plaintiff has failed to state a claim against Defendant.

To the extent that Plaintiff attempts to raise a claim for wrongful termination, his Complaint fails to properly state that claim. South Carolina has long recognized the doctrine of employment at-will. *See Lawson v. S.C. Dep't of Corr.*, 532 S.E.2d 259, 260 (S.C. 2000). "At-will employment is generally terminable by either party at any time, for any reason or for no reason at all." *Prescott v. Farmers Tel. Co-op., Inc.*, 516 S.E.2d 923, 925 (S.C. 1999). Absent the creation of a specific contract of employment, employment is presumed to be at-will. *See Mathis v. Brown & Brown of*

S.C., Inc., 698 S.E.2d 773, 778 (S.C. 2010). Plaintiff has not put forth any indicia he was not an at-will employee, so the common law presumption applies that his employment with Defendant was at-will.

Here, Plaintiff has failed to state any causes of action against Defendant. Plaintiff alleges a violation of his privacy rights but implicates *the student-athlete* for recording the conversation, not Defendant. Plaintiff also alleges that the reason for his termination was “[n]o [r]eason.” The Supreme Court of South Carolina has held that “[a]t-will employment is generally terminable by either party at any time, for any reason or for no reason at all.” *Prescott v. Farmers Tel. Co-op., Inc.*, 516 S.E.2d 923, 925 (S.C. 1999). Because Plaintiff was an at-will employee of Defendant, his termination occurring for “no reason” is entirely lawful.

Notably, South Carolina courts offer very limited exceptions to the at-will doctrine. Specifically, where “the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises.” *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E.2d 213, 216 (S.C. 1985). It is the burden of the plaintiff to establish that a clear mandate of public policy was violated due to the discharge. *See id.* at 223. The Court finds that Plaintiff has not pled any clear mandate of public policy at issue here. In fact, there is no allegation that any public policy was violated, or facts that would lead to a cognizable cause of action.

Therefore, viewing the facts alleged and inferences reasonably deductible therefrom in the light most favorable to Plaintiff, Plaintiff is not entitled to relief on any theory.

NOW, THEREFORE, based on the foregoing, the Court hereby **GRANTS** Defendant’s Motion to Dismiss and dismisses Plaintiff’s Complaint, with prejudice.

[Signature page to follow]

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Newberry County, South Carolina

_____, 2024
Newberry, South Carolina



Newberry Common Pleas

Case Caption: Abdellah El Farissi VS Newberry College

Case Number: 2024CP3600087

Type: Order/Dismissal

It is so ordered

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