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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

CIVIL ACTION NO. 2025-CP-07-00718
APPELLATE CASE NO. 2025-002399

Geraldine White.....Appellant

v.

John R.C. Bowen and Kori Brett McKeithan….....Respondents

FINAL BRIEF OF RESPONDENT KORI BRETT McKEITHAN

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Part B
Statement of Issues on Appeal

1. Whether the circuit court erred in granting summary judgment to Respondent Bowen pursuant to Rule 56, SCRCP.

2. Whether the circuit court erred in applying attorney-immunity principles to Respondent Bowen.

3. Whether the circuit court mischaracterized Appellant's action as an impermissible collateral attack on a prior order.

4. Whether the circuit court erred by dismissing Respondent McKeithan under Rule 12(b)(6), SCRCP, where the complaint allegedly sought equitable and restitutionary relief arising from disbursement of $15,665.73 from sale proceeds, not merely disciplinary enforcement of Rule 8.3.

5. Whether the circuit court failed to address material record evidence concerning the absence of a perfected lien, the asserted lack of title proof of vessel ownership, and the corporate-dissolution timeline of Benny Hudson Seafood Corp.

Part C
Statement of the Case

A. The date of the commencement of the action or matter, the nature of the action or matter, and the nature of the defense or of the response

This appeal relates to an action filed by Appellant on March 24, 2025, Geraldine White v. John R.C. Bowen and Kori Brett McKeithan, 2025-CP-07-00718. (R. pp. 196, 17-31). This action sought equitable relief from the Court including an order staying enforcement of a judgment against Appellant dated August 24, 2018 (2018-CP-07-00793), a temporary restraining order preventing Respondent Bowen and Respondent McKeithan from interfering with disbursement of proceeds from the sale of property, and an order directing Respondent McKeithan to proceed with a disbursement without interference from Respondent Bowen. (R. pp. 22-23). On April 23, 2025, Respondent McKeithan filed a motion to dismiss, and Respondent Bowen filed a motion for summary judgment. (R. pp. 32-61, 88-90).

Appellant's action related back to and referenced a prior action, 2018-CP-07-00793, which was brought by Benny Hudson Seafood Corp., represented by Respondent Bowen, against Appellant and Craig White, as well as two 2025 real estate transactions involving the sale of real

estate in which Appellant was a part-owner, for which Respondent McKeithan was retained as the seller side attorney. (R. pp. 10-16, 39-61, 230-231).

The 2018 action was brought by Respondent Bowen on behalf of his client, Benny Hudson Seafood Corp., alleging gross negligence by Appellant and Craig White relating to a 35-foot wooden shrimp boat which sank during Hurricane Matthew while secured to Benny Hudson Seafood Corp.'s commercial dock. (R. p. 32, line 4 – 9). Following a hearing held on August 21, 2018, the Court, Judge Marvin Dukes presiding, issued a default judgment in the amount of $201,723.27 against Appellant and Craig White, jointly and severally. (R. pp. 10-16). On January 23, 2019, Judge Dukes denied Appellant's motion to set aside entry of the August 24, 2018, judgment. On July 10, 2019, the Court of Appeals dismissed Appellant's appeal of the August 24, 2018, judgment. (R. p. 32, line 10 – p. 33, line 2).

On October 31, 2024, Edith Moultrie signed a contract for the sale of a 0.5-acre lot along Beach City Road in Hilton Head Island for $180,000.00. (R. pp. 49-52). Respondent McKeithan was retained by Ms. Moultrie to act as the seller side attorney for such sale. Title research revealed Appellant to be a 1/13 owner of said parcel, and that Appellant's 1/13 interest was encumbered by a judgment lien from the August 24, 2018, judgment.

Following communication with Respondent Bowen regarding the release of the judgment lien, on December 11, 2024, Respondent McKeithan sent a letter to Appellant via UPS overnight delivery enclosing email correspondence from Respondent Bowen offering to release the judgment lien against the subject property only upon the payment of 100% of the sale proceeds due to Appellant. (R. p. 40-41).

On January 9, 2025, Appellant physically appeared at Respondent McKeithan's law office and signed the Settlement Statement, the Seller's Affidavit, the Deed, and the December 11, 2024,

letter from Respondent McKeithan and enclosures. (R. pp. 43, 48, 55, 64). Pursuant to same, on January 10, 2025, the purchaser's closing attorney, Robert Going, Esquire, disbursed the sale proceeds according to the signed Settlement Statement, with $15,665.73 being disbursed to Respondent Bowen for partial payment of Appellant's judgment lien as indicated on the Settlement Statement signed by Appellant. (R. p. 44, line 3).

On February 7, 2025, Respondent McKeithan was retained to act as the seller side attorney for the sale of a second parcel of real property in which Appellant was a co-owner, such being a 3.28-acre parcel along Union Cemetery Road in Hilton Head Island, for $1,070,000.00 (the "second sale"). (R. pp. 66-71). Pursuant to such contract, Appellant was to receive $130,000.00 in proceeds from such sale. (R. p. 70, line 7). Title research revealed Appellant to be a 1/10 owner of said parcel, and that Appellant's 1/10 interest was encumbered by the same August 24, 2018, judgment lien (although such judgment lien was now reduced by the prior $15,665.73 payment).

Following communication with Respondent Bowen regarding the release of the judgment lien, on March 14, 2025, Respondent McKeithan sent a letter to Appellant via UPS overnight delivery enclosing email correspondence from Respondent Bowen offering to release the judgment lien against the subject property only upon the payment of 100% of the sale proceeds due to Appellant. (R. p. 72-74).

On March 24, 2025, Appellant filed the action against Respondent McKeithan and Respondent Bowen (2025-CP-07-00718). (R. p. 17-31). Appellant's complaint included only one factual allegation against Respondent McKeithan: that she failed to report Respondent Bowen for professional misconduct. (R. p. 21, lines 1-6). Appellant's complaint also requested a temporary restraining order preventing Respondent McKeithan from interfering with the disbursement of proceeds from the second sale. (R. p. 22, line 14).

On July 25, 2025, Appellant executed and filed a quit claim deed transferring her interest in the 3.28-acre parcel along Union Cemetery Road in Hilton Head Island to Rosa White, such deed being filed with the Beaufort County Register of Deeds' Office at Book 4451, Pages 992-993. (R. pp. 86-87).

B. The action of the Lower Court, the dates of hearing, the amount involved on appeal, and the date and nature of the order, judgment or decision appealed from

Following a hearing on October 28, 2025, on November 24, 2025, the Court granted Respondent McKeithan's motion to dismiss and Respondent Bowen's motion for summary judgment. (R. pp. 1-4, 5-9).

C. The date of the service of the notice of appeal, the date of and description of such orders, judgments, decisions and proceedings of the lower court that may have affected the appeal, or may throw light upon the questions involved in the appeal

Appellant served notice of appeal in this matter on November 25, 2025. (R. pp. 196-197).

Appellant appeals the following orders and rulings of the Lower Court:

- Order Granting Defendant Kori Brett McKeithan's Motion to Dismiss, dated November 24, 2025 (R. pp. 1-4).
- Order Granting Defendant John R.C. Bowen's Motion for Summary Judgment, dated November 24, 2025 (R. pp. 5-9).

D. Any changes made in the parties by death, substitution, or otherwise

None.

Part D
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. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Generally, a ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint. Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

"Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Jarrell v. Petoseed Co., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

Part E
Argument

1. Whether the circuit court erred in granting summary judgment to Respondent Bowen pursuant to Rule 56, SCRCP.

Respondent McKeithan takes no position regarding the Court's Order Granting Respondent Bowen's Motion for Summary Judgment, dated November 24, 2025.

2. Whether the circuit court erred in applying attorney-immunity principles to Respondent Bowen.

Respondent McKeithan takes no position regarding the Court's Order Granting Respondent Bowen's Motion for Summary Judgment, dated November 24, 2025.

3. Whether the circuit court mischaracterized Appellant's action as an impermissible collateral attack on a prior order.

Respondent McKeithan takes no position regarding the Court's Order Granting Respondent Bowen's Motion for Summary Judgment, dated November 24, 2025.

4. Whether the circuit court erred by dismissing Respondent McKeithan under Rule 12(b)(6) where the complaint sought equitable and restitutionary relief arising from disbursement of $15,665.73 from sale proceeds, not merely disciplinary enforcement of Rule 8.3.

In her complaint, which was filed *pro se* on March 24, 2025, and titled as "Petition for *Ex Parte* Emergency Equitable Injunctive Relief," Appellant alleges:

> Respondent McKeithan, despite receiving documented proof of misconduct, failed in her professional duty under Rule 8.3 to report Respondent Bowen's fraudulent conduct upon receiving the attached **Formal Request to Report Professional Misconduct, Accept Appointment as Trustee ad Litem, and Facilitate Return of Unlawfully Taken Funds** dated March 19, 2025, and the attached email response from Respondent McKeithan.

Complaint, Paragraph 6. (R. p. 21, lines 1-6).

In her Motion to Dismiss filed on April 23, 2025, Respondent McKeithan requested dismissal from the lawsuit pursuant to Rule 12(b)(6), SCRCP, based upon Appellant's failure to state facts sufficient to constitute a cause of action. (R. p. 35-36).

In its Order of Dismissal dated November 24, 2025, the Court found that Appellant's claim against Respondent McKeithan stemmed solely from the assertion that Respondent McKeithan failed in an alleged duty to Appellant to report Respondent Bowen's allegedly fraudulent conduct. (R. p. 2, lines 13-15). The Court further found that Rule 8.3, South Carolina Rules of Professional

Conduct, did not create a duty between Respondent McKeithan and Appellant. (R. p. 2, lines 24-25). Accordingly, the Court found that Appellant had not stated a claim against Respondent McKeithan upon which relief may be granted and therefore dismissed Respondent McKeithan as a defendant. (R. p. 2, line 15 – p. 3, line 5).

In her brief, Appellant argues that her memorandum dated October 27, 2025, alleges causes of action against Respondent McKeithan for breach of fiduciary duty, negligence, and conversion based upon Respondent McKeithan's transfer of "$15,665.73 from sale proceeds to Respondent Bowen without a valid lien and without lawful proof that the money was subject to the old judgment." [1] (R. p. 193, line 27).

However, allegations set forth in a memorandum are not considered by the Court in a Rule 12(b)(6), SCRCP motion because they are outside of the pleadings. "The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint." Carolina Care Plan, Inc. v. United Healthcare Services, Inc., 361 S.C. 544, 606 S.E.2d 752 (2004). Accordingly, Appellant may not rely on allegations made outside of the complaint, including in a memorandum. Additionally, Appellant alleges no factual basis supporting the listed causes of action, nor does the memorandum include an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit as required by S.C. Code § 15-36-100 of the South Carolina Frivolous Civil Proceedings Sanctions Act. (R. p. 36, line 8 – p. 37, line 3).

In her brief, Appellant also argues that dismissal of Respondent McKeithan should be reversed because the complaint was broader than Rule 8.3 and sought equitable relief tied to a

[1] Appellant failed to file an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit as required pursuant to S.C. Code § 15-36-100.

specific disbursement of money. However, in her complaint Appellant failed to allege any facts sufficient to support Respondent McKeithan's inclusion as a Defendant regarding any such equitable relief tied to a disbursement of money. Appellant alleges a dispute over real estate sale-proceeds disbursed by a different attorney, Robert Going, Esquire, counsel for the real estate purchaser, pursuant to a Settlement Statement signed by Appellant, as is typical for real estate transactions. (R. p. 42, line 13). Appellant failed to allege that Respondent McKeithan committed any act or omission relating to the subject disbursement. Respondent McKeithan did not disburse the subject $15,665.73. Such amount was disbursed by buyer side attorney Robert Going, Esquire, to judgment creditor attorney Respondent Bowen, pursuant to a Settlement Statement signed by Appellant. (R. p. 42, line 13, p. 44, line 3).

Accordingly, the Court did not err by dismissing Respondent McKeithan pursuant to Rule 12(b)(6), SCRCP.

5. Whether the circuit court failed to address material record evidence concerning the absence of a perfected lien, the asserted lack of title proof of vessel ownership, and the corporate-dissolution timeline of Benny Hudson Seafood Corp

Respondent McKeithan takes no position regarding the Court's Order Granting Respondent Bowen's Motion for Summary Judgment, dated November 24, 2025.

Part E
Conclusion

Pursuant to the judgment against Appellant dated August 24, 2018 (2018-CP-07-00793), which Appellant unsuccessfully sought to alter or amend and unsuccessfully appealed, Appellant's real property was encumbered by operation of law. (R. pp. 75-81). The judgment creditor, Benny Hudson Seafood Corp., did not need to take any further action to perfect its judgment lien on

Appellant's properties located within Beaufort County. Appellant was not obligated to sell her real property, of course, but no legal maneuvering can allow Appellant to profit from the sale of her real property without resolving the outstanding judgment lien resulting from the existing judgment issued against her, affirmed by the trial court, and affirmed again by the Court of Appeals.

Based upon the foregoing, Respondent McKeithan hereby requests that that the Order of Dismissal dated November 24, 2025, be affirmed, that this appeal be dismissed, and for such other relief as may be appropriate.

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