ELECTRONICALLY FILED - 2026 Jan 22 3:13 PM - JASPER - COMMON PLEAS - CASE#2025CP270385

STATE OF SOUTH CAROLINA COUNTY OF JASPER Tony Williams, Plaintiff, vs. Hearthstone Lakes POA, John T. Budrow, Kevan Shepps, McAngus, Goudelock & Courie, LLC, and Mutterer Law Firm, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2025-CP-27-00385 **ORDER GRANTING MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FILED BY DEFENDANT MUTTERER LAW FIRM, LLC**

THIS MATTER came before the Court by Defendant Mutterer Law Firm, LLC's ("Defendant"), Motion to Dismiss Plaintiff Tony Williams's Amended Complaint pursuant to Rule 12(b)(5), and (6) of the South Carolina Rules of Civil Procedure.

FACTUAL BACKGROUND

Plaintiff originally filed his complaint of three causes of action (breach of contract, violation of South Carolina Homeowners Act, and harassment and retaliation) on July 1, 2025, listing the Hearthstone Lake HOA, John Budrow, and Kevan Shepps ("HOA") as defendants in that action. Defendant along with McAngus, Goudelock, & Courie, LLC filed an answer and counterclaim on behalf of the HOA for breach of contract regarding Plaintiff's delinquent HOA account on August 7, 2025. In response to the counterclaims, Plaintiff filed an Amended Complaint on August 12, 2025, and added the attorneys for defendant Hearthstone Lake HOA, Mutterer Law Firm, LLC and McAngus Goudelock & Courie, LLC as defendants to this case and added five additional causes of action (fraud and deceit, abuse of process, fraud on the court, unfair or deceptive trade practices, and lack of authority). Plaintiff filed his Amended Complaint after the HOA filed their answer and counterclaim and did not file a motion for leave of this Court to file

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the amended pleading or for leave to name additional parties. Further, Plaintiff failed to serve the Defendant pursuant to Rule 4, SCRCP, and also failed to file a proof of service of the Amended Complaint on the Defendant.

LIMITED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds that the Defendant's motion to dismiss should be granted pursuant to Rule 12(b)(5) and Rule 12(b)(6), SCRCP and will address both grounds independently.

I. Rule 12(b)(5)

Plaintiff filed an Amended Complaint after the original HOA defendants had filed their answer and counterclaim. The time period for amendment by right expired when the original defendants filed their answer and counterclaim. Rule 15(a), SCRCP. Plaintiff did not seek the Court's leave to amend his complaint under Rule 15, SCRCP, and he also did not seek an order of the Court to add new parties to the litigation under Rule 19, SCRCP. Upon adding Defendant, Plaintiff failed to serve the complaint pursuant to Rule 5, SCRCP, and he has failed to file a proof of service with the Court showing Defendant was properly served with the Amended Complaint.

Since the Plaintiff did not seek leave of the Court pursuant to Rule 15 and Rule 19, SCRCP, and the Plaintiff has failed to properly serve the Amended Complaint, this Court must dismiss the complaint on insufficient service of process pursuant to Rule 12(b)(5). *Christian v. Healy*, 435 S.C. 507, 511, 868 S.E.2d 403, 405 (Ct. App. 2021) ("We therefore conclude the circuit court did not err in dismissing the complaint based on insufficient service of process pursuant to Rule 12(b)(5).").

II. Rule 12(b)(6)

When considering a motion to dismiss, a court "must base its ruling solely upon allegations set forth on the face of the complaint," viewed "in the light most favorable to" the nonmoving

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party. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148–49, 714 S.E.2d 537, 539 (2011). In other words, the Court must "decide only whether the pleading states a claim." *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019).

Plaintiff's complaint fails to allege state a claim against the Defendant for their representation of the HOA in this lawsuit. The common law attorney immunity doctrine bars the Plaintiff's claims against the Defendant. *See Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528 (Ct. App. 1986) ("[A]n attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of the client."). Plaintiff makes claims of abuse of process (improperly using the legal system by filing a counterclaim supported by inconsistent and misleading documents, ¶15), lack of authority (lacked authority to impose the fines and place a lien on the Plaintiff's property, ¶18), unfair or deceptive trade practices (engaged in abusive and deceptive debt collection practices, ¶17) that are directly tied to Defendant's position as counsel for the original defendant HOA and individual board members. The filing of the answer and counterclaim was in the scope of representation by the Defendant and the attorney immunity doctrine applies in this case baring Plaintiff's claims against Defendant.

The remaining causes of action are allegations against the actions of the HOA and/or by the agents and board members of the HOA. The proper party to sue for the breach of contract, violations of the South Carolina Homeowners Act, and harassment and retaliation is "the party to the original action, not the attorney[s] representing him." *Gaar*, 287 S.C. at 529, 339 S.E.2d at 889. Plaintiff had originally sued the correct party for his dispute until the Defendant acted in their capacity as counsel of record and filed an answer and counterclaim, which triggered the Plaintiff

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to attempt to add the two law firms representing the HOA as party defendants in the Amended Complaint.

The complaint also fails to meet the heightened pleading standard for Rule 9(b), SCRCP, for the causes of action of fraud and deceit and fraud on the court. The allegations of the Amended Complaint fail to identify particular facts to support the misrepresentation of the nature and the amount of the debt, that the exhibits on Defendants answer and counterclaim were "intended to mislead the Court and Plaintiff as to the true composition of the alleged debt," Amended Complaint ¶13, or how the "submissions of these inconsistent and misleading documents constitutes a fraud on the court, intended to deceive the Court and prejudice the Plaintiff's case." *Id.* ¶16. Further, Amended Complaint ¶10 appears to argue that the HOA and the board members are vicariously liable for the actions of their agents and attorneys who he claims were acting on behalf of the HOA. Plaintiff fails to state any facts that show the attorneys were aware that the HOA was submitting, in Plaintiff's allegations, falsified documents. Plaintiff fails to allege facts with particularity to plead the elements of fraud sufficiently.[1] Plaintiff's claims of fraud are more accurately characterized as a general denial of liability for the fines and that he believes the HOA failed completed the required steps to file a lien for nonpayment. The Court does not address the allegations made against the HOA and its officers in this order, only against those of the Defendant who filed this motion.

Finally, Plaintiff's Amended Complaint fails to allege any facts to support the causes of action plead against Defendant. The factual basis of the Amended Complaint is a dispute over fines

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[1] The elements of a cause of action for fraud requires "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010).

for violations of the HOA's covenants and restrictions. Those fines Plaintiff alleges are excessive and the HOA disagrees. The Amended Complaint fails to allege facts that would support any claims by the Plaintiff against the attorneys of the association from acting in their representation of their client responding to Plaintiff's complaint.

THEREFORE, for the reasons described above, Plaintiff has failed to state claims upon which relief can be granted and failed sufficiently serve process of the Amended Complaint on Defendant. The Motion to Dismiss filed by Defendant Mutterer Law Firm, LLC is GRANTED, and all causes of action against Defendant Mutterer Law Firm, LLC in the Amended Complaint are hereby DISMISSED.

AND IT IS SO ORDERED.

Robert J. Bonds
Jasper County Court of Common Pleas

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Jasper Common Pleas

Case Caption: Tony Williams VS Hearthstone Lakes Hoa , defendant, et al

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Type: Order/Dismissal

So Ordered

s/ Robert Bonds, 2770