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JAN 17 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN )

SECOND JUDICIAL CIRCUIT

Moore, Taylor, & Thomas, P.A., )

Civil Action No. 2013-CP-02-02032

Plaintiff, )

vs. )

Marsha Banks and Mary Guynn, )

Defendants. )

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
documents which have been filed in my office this

ORDER

DEC 19 2013

*Liz Godard*  
C.C.C.P. & G. A., Aiken County, S.C.

*Wade Brown*  
Deputy Clerk

This matter appeared before the Court on a Rule 12(b)(6) Motion to Dismiss filed by Defendant Mary Guynn, Esquire, seeking dismissal of the claims asserted against her by Plaintiff Moore, Taylor, & Thomas, P.A. For the reasons that follow, this Motion is GRANTED.

**ALLEGED FACTS**

The underlying dispute involves Plaintiff's former client, Susan Cain, who failed to pay Plaintiff a disputed legal fee. (Complaint ¶¶ 18-20). The Complaint alleges that Defendant Banks initially represented Cain in the underlying suit but "contacted Plaintiff to retain Plaintiff for representation of Ms. Cain." (Complaint, ¶¶ 4, 6) Plaintiff then undertook the representation of Ms. Cain and represented her until the case settled. (Complaint, ¶¶ 9-13). Throughout the time Plaintiff represented Cain, she did not pay Plaintiff even though Plaintiff billed Cain on a monthly basis (Complaint, ¶ 11).

Following settlement, "property in dispute in the case was sold with the proceeds from the sale of the property to be divided between Cain and the opposing party. (Complaint, ¶ 14). Defendant Mary Guynn was the closing attorney (Complaint, ¶ 15).

Plaintiff requested that Cain pay her attorney's fees from the proceeds of the sale, but

FILED 12.19.13

*Liz Godard*  
C.C.C.P. & G.S.

*Wade Brown*  
Deputy Clerk

*Wade Brown*  
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Cain disputed the fees that Plaintiff claimed and refused to pay. (Complaint, ¶ 18). As a result, Guynn did not withhold the fees requested by Plaintiff from the proceeds of the sale. (Complaint ¶ 21).

Plaintiff Moore, Taylor, & Thomas, P.A brought this action as a legal malpractice claim against Mary Guynn and Marsha Banks.<sup>1</sup> Cain is not named in this suit. The only allegations directed to Mary Guynn are that she “refused to recognize Plaintiff’s interest in the closing” (Complaint, ¶ 21) and did not “protect Plaintiff’s interest in the proceeds of the closing.” (Complaint, ¶ 28).

Other facts are either undisputed or not alleged: (1) Guynn did not have an attorney-client relationship with Plaintiff; (2) Plaintiff did not have a secured interest in the property that was the subject of the closing, (3) there is no assignment made by Cain to Plaintiff from the proceeds of the sale of property, and (4) Cain disputes the attorney’s fee she allegedly owes Plaintiff. There is no allegation that the underlying settlement contemplated attorney’s fees from the proceeds or that the Court directed the parties in any way on the issue of attorney’s fees.

#### STANDARD

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would not entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is proper. *Id.*

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<sup>1</sup> Plaintiff also asserted a claim for misrepresentation against Marsha Banks, but these claims are not at issue in this Motion.

*John*  
#2

### LEGAL CONCLUSION

The cause of action against Defendant Mary Guynn was originally brought as a legal malpractice case. At the hearing, however, Plaintiff's counsel acknowledged that the cause of action asserted against Defendant Guynn is not a legal malpractice claim. Regardless, the Complaint does not allege that Plaintiff and Guynn ever had an attorney-client relationship.<sup>2</sup> The lack of an attorney-client relationship is fatal to the cause of action for legal malpractice, and Plaintiff cannot correct this fatality by amending the Complaint. *See Rydde v. Morris*, 381 S.C. 643, 675 S.E.2d 431 (2009) ("Before a claim for malpractice may be asserted, there must exist an attorney-client relationship."). Therefore, to the extent the cause of action against Guynn is a legal malpractice claim, it is defective and must be dismissed.

While not alleged, Plaintiff argued at the hearing that Guynn breached a duty to Plaintiff as escrow agent in the real estate transaction by failing to withhold attorneys' fees from the sale proceeds. However, there is no allegation in the Complaint that Plaintiff had any written assignment rights or security interest in the sale proceeds. Thus, the statute of frauds may be implicated in a matter involving the sale of lands. Pursuant to S.C. Code Ann. § 32-3-10, "to charge any person upon any contract or sale of lands" (such as the interest asserted by the Plaintiff) "or any interest in or concerning them," the agreement must be in writing and signed by the party against whom it is seeking to be enforced.

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<sup>2</sup> A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. *Ryddle v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).

*WME*  
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Plaintiff claims that it is entitled to a portion of the proceeds of sale of the property to pay the disputed legal fees; however, the Plaintiff's only proof of such entitlement is Plaintiff's oral assertion of this interest. Cain, as the party against whom the claim was asserted, disputes the claim and did not sign any documents verifying the claim or validating it as a lien against the property. This problem illustrates one of the reasons that Guynn's duty as a real estate lawyer is to satisfy recognized liens in writing which properly secure the property at issue. This Court is simply not aware of any South Carolina statutory or case law that requires Guynn to withhold a disputed and unsecured debt that is, at most, based solely on an oral representation.<sup>3</sup>

While the Complaint alleges that such a duty exists, the mere allegation is not sufficient when such a duty does not exist. Instead, 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." *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Because no such duty exists in South Carolina, however, the Complaint cannot state a valid claim for relief.

The authority Plaintiff points to is *Moore v. Weinberg*, 383 S.C. 583, 681 S.E.2d 875 (2009), but the facts of *Weinberg* are very different. There, Weinberg represented Clarence Wheeler in a lawsuit. Weinberg settled the lawsuit for \$100,000 and the settlement funds were deposited in Weinberg's trust account. Wheeler then borrowed money from Moore on the condition that the loan from Moore was secured by the

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<sup>3</sup>If this were the law, closing attorneys would be placed in an impossible position of determining the existence, extent, and validity of a seller's unsecured and disputed oral debts.

*MAC*  
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\$100,000 settlement funds held by Weinberg in his trust account. Moore's loan to Wheeler was secured by a written assignment which stated:

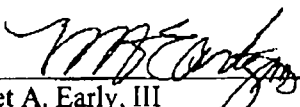
Clarence Wheeler does by this instrument assign to Joseph Moore so much of any recovery that he may make from the debt owed to him by [the music business] and the escrow account, which is pending as a result of said litigation, unto Joseph Moore.

Weinberg, however, overlooked the written assignment and disbursed the settlement funds to Wheeler in violation of the written assignment. Given the written assignment, the Court found that Weinberg owed a duty to Moore as escrow agent but "independent of an attorney's status as a lawyer and distinct from duties that arise out of the attorney/client relationship."

In this case, however, there is no written assignment, no secured interest, and the seller (Plaintiff's former client, Cain) disputes the amount Plaintiff claims it is owed in attorney's fees. Furthermore, Plaintiff does not allege that the Court in the underlying case made any findings or instructions related to attorney's fees. *Moore v. Weinberg* addresses facts which simply do not exist in this case.

For these reasons, the Motion to Dismiss filed by Defendant Mary Guynn, Esquire, seeking dismissal of the claims asserted against her by Plaintiff Moore, Taylor, & Thomas, P.A. is GRANTED.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Chief Administrative Judge, Second Judicial Circuit

December 18, 2013

Bamberg, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP0202032

Moore Taylor & Thomas  
 Pa

Marsha Banks

Mary Guynn

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (**CHECK REASON**):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (**CHECK REASON**):  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

12/19/2013

Date

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JAN 17 2014

SC Court of Appeals

**For Clerk of Court Office Use Only**

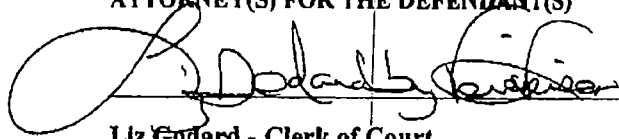
This judgment was entered on **December 19, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **December 19, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**Peter Demos Protopapas** PO Box 5640 Columbia, SC 29250

**J. Calhoun Watson** PO Box 11449 Columbia, SC 29211

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**



\_\_\_\_\_  
**Court Reporter**

**Liz Godard - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-02-02032

Moore, Taylor & Thomas, P.A.

Marsha Banks and Mary Guynn

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: Motion to Reconsider, Alter, or Amend Order Granting Defendant Guynn's Motion to Dismiss is DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

*1.10.14*  
*Lisa Anderson*  
*SCCP AGS.*  
*Arctic Smith* 30  
Deputy Clerk

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]* 0136 1/9/14  
Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Jan, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Jan, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Peter Protopapas

J. Cathoun Watson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)  
S. Soderaki  
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.