

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) Civil Action No. 2014-CP-07-01811
 Daniel T. Bryan, Lisa D. Bryan, and Beach)
 Deli Enterprises d/b/a Munchies,)
)
 Plaintiff,)
)
 vs.)
)
 Dr. Marnix Snijder, USA Limited)
 Partnership V, L.P., Merrelyn Rogers,)
 Renita Bryant, Dimara Atlanta Investment)
 Corp., and Superior Heating and Air, Inc.,)
)
 Defendants.)

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 DAVID RUCKENBAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

ORDER

This matter came before the Court on March 18, 2015, for a hearing on certain dispositive motions by the Defendants Marnix Snijder, USA Limited Partnership V, L.P., Merrelyn Rogers, Renita Bryant, and Dimara Atlanta Investment Corp. (collectively “Defendants”). Specifically, the Court heard the Defendants’ Motion to Dismiss and Motion for Judgment on the Pleadings. Jeffrey T. Stover of Turner, Padget, Graham and Laney, P.A. represented the Defendants at the hearing. Eric Staggs of Laughlin and Bowen, P.C. represented the Plaintiff Beach Deli Enterprises Inc. d/b/a Munchies (“Munchies”). Daniel T. Bryan and Lisa D. Bryan (collectively the “Bryans”) appeared *pro se*.¹

STATEMENT OF THE CASE

This action arises from a dispute between Munchies, a restaurant in Hilton Head, and Defendants, its commercial landlord and associated parties. The Bryans are principals and/or

¹ The Bryans had previously requested that the hearing on Defendants’ motions be continued. In making that request, the Bryans submitted a memorandum in support of the continuance to the court noting that a hearing on other motions had been held on November 7, 2014, and the presiding judge at that hearing (the Honorable Maite Murphy) had not yet filed an order. The Bryans expressed concern that proceeding with the current motions before Judge Murphy issued a ruling on the previous motions could deprive the Bryans of the ability to pursue a motion for reconsideration and/or an appeal of that ruling. Defendants opposed the requested continuance, and the Court denied it. However, the Order on the November 7, 2014 motions was filed prior to the hearing.

employees of Munchies, but they are not parties to the lease agreement and have no contractual relationship to Defendants. The Complaint does not allege facts that would establish any other type of legally-recognized relationship between the Bryans and Defendants.

Munchies alleges that Defendants undertook a series of actions that breached the lease agreement and/or harmed Munchies' business operations. Those allegations are set forth as the basis for three causes of action: (1) Breach of Contract/Breach of the Implied Covenant of Good Faith and Fair Dealing, (2) Breach of Quiet Enjoyment and (3) Discrimination. The Breach of Contract cause of action seeks damages arising from alleged losses suffered or to be suffered by Munchies allegedly resulting from Defendants' refusal to allow Munchies to install a restaurant hood in its current kitchen. The Breach of Quiet Enjoyment cause of action seeks damages arising from Defendants' alleged failure to allow Munchies to install a hood and from alleged threats of eviction by Defendants. The damages are in the form of diminished ability to grow the business of Munchies and for emotional distress and harassment. The Discrimination cause of action claims that Defendants have unfairly treated Munchies differently than other businesses located in the same complex/development. The Complaint alleges that the "discriminatory practices by Defendants have prevented Plaintiffs from growing their business and the ability for them to service their customers." As a result of these alleged acts, the Complaint seeks damages as a result of financial and emotional harm.

ARGUMENTS

Defendants asserted the following arguments: (1) the Bryans should be dismissed because they are not proper parties to this action, and (2) the claims of Munchies, as a corporation, should be dismissed until such time as the company is represented by counsel. Defendants contend that the recovery sought in the Complaint arises from alleged breaches of alleged obligations owed under a commercial lease agreement to which Munchies is party but the Bryans are not. Accordingly,

Defendants contend that the Bryans do not have standing to assert the claims set forth in the Complaint.

The Bryans submitted a memorandum in opposition to Defendants' Motions in which they argued there were two components to this case: (1) the claims asserted by Munchies, and (2) alleged discrimination and harassment against the Bryans individually. As to the second purported component, the Bryans argued that employees of Defendants were constantly harassing them and that one or more of Defendants were talking to other tenants about the Bryans, causing them to be outcasts from the Main Street Village Community.

STANDARD OF REVIEW

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRPC. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. ... On review of the motion, the court may not consider matters outside the pleadings. ... A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. ... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. ... Furthermore, 'a judgment on the pleadings is considered to be a drastic procedure by our courts.'" *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000) (internal citations omitted).

ANALYSIS

In their Motions, Defendants assert the Bryans should be dismissed because the damages sought in the Complaint are limited to compensation for alleged breaches of duties owed to Munchies, a tenant of Main Street Village, but not to the Bryans, who are not tenants. Defendants contend that

the Bryans, as non-parties to the commercial lease, lack standing to assert the claims included in this action, which involve allegedly wrongful acts committed against the tenant under the lease. Defendants argue that only Munchies, as the actual tenant, has standing to pursue to such claims. Defendants also seek dismissal of the claims of Munchies, as a corporation, until such time as Munchies is represented by counsel.

The Court has read and considered all the allegations and causes of action set forth in the Complaint. Even when liberally construing the Complaint in the Bryans' favor, the Court cannot discern any basis for a personal cause of action on behalf of the Bryans. All of the recovery Plaintiffs seek in this lawsuit arises from losses allegedly sustained by Munchies as a result of breaches of a commercial lease and/or other violations of duties owed by Defendants by virtue of Munchies status as a tenant. In short, all of the damages sought under the three causes of action stem exclusively from the landlord-tenant relationship. Thus, only the actual tenant, Munchies, may pursue those claims. The Bryans are not parties to the lease and cannot assert any claims against Defendants based upon the way Munchies has been treated. For this reason, the Bryans are not the proper parties to assert and/or pursue the causes of action set forth in the Complaint.

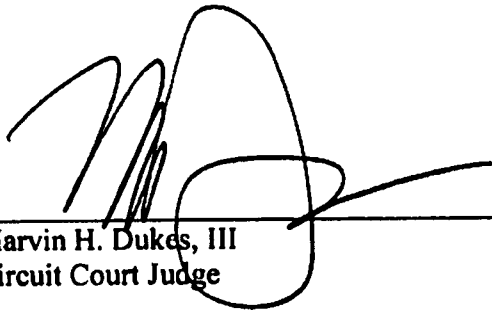
At the hearing, the Bryans argued that the Complaint alleged a defamation claim against Defendants. However, the Complaint does not set forth a claim for defamation (either by the Bryans or by Munchies), does not mention or allege the legal elements required to establish a cause of action for defamation under South Carolina law, and does not seek damages arising from defamation. This deficiency is apparent even when the Complaint is liberally construed in the Bryans' favor. Therefore, to the extent this argument was properly before the Court, it does not support the Bryans' opposition to the present motions.

For all of these reasons, the Bryans are not proper parties to this action, and they should be dismissed. The Court therefore grants Defendants' motions to the extent they seek the dismissal of the Bryans as plaintiffs.

Defendants also requested dismissal of Munchies' claims because counsel had not appeared on its behalf. *See Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) (a non-lawyer cannot represent a corporation in circuit court). Between the time Defendants filed their motion and the date of the hearing, Eric Staggs, Esq., appeared as counsel for Munchies in this matter. Accordingly, the Court denies Defendants' motions to the extent they request dismissal of Munchies' claims.

Based on the reasoning set forth above, Defendants' motions are **GRANTED** as to the Bryans, and the Bryans are hereby dismissed as plaintiffs from this action. Defendants' motions are **DENIED** as to Munchies.

AND IT IS SO ORDERED.

gpd


Marvin H. Dukes, III
Circuit Court Judge

Beaufort, South Carolina

4/27, 2015