

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	CASE NO. 2014-CP-1801284
)	
TONI LYNN TILLMAN)	
)	
)	
PLAINTIFF)	
)	
v.)	ORDER
)	
)	
TIMOTHY TROY TILLMAN and)	
CRYSTAL TILLMAN)	
)	
)	
DEFENDANTS)	
_____)	

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 COURT CLERK
 J. [Signature]
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This matter came before the Court on January 29, 2015 for a hearing on the Plaintiff's Motion to Dismiss the Third, Fourth, Fifth, and Sixth Causes of Action, which the Defendant Timothy Troy Tillman had asserted in his Counterclaim in this case. The Plaintiff, the Plaintiff's attorney, both of the Defendants, and the Defendants' attorney were present and participated in the hearing.

After reviewing the papers filed with the Court, hearing the arguments of counsel, and consulting relevant portions of the law, the Court enters the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

1. This case concerns title to and ownership of a residence, which is located in Dorchester County and commonly known and numbered as 526 Butternut Road a/k/a 530 West Butternut, Summerville, SC 29483 (herein "the Butternut property").

2. The Plaintiff Ms. Toni Tillman initiated this case by filing the Summons and Complaint

with this Court on July 3, 2014.

3. On August 6, 2014, the Defendant Crystal Tillman filed an Answer and Counterclaim in this case.

4. On August 7, 2014, the Plaintiff filed a Motion for Default Judgment against the Defendant Troy Tillman.

5. On August 7, 2014, the Clerk of this Court entered a Certificate of Default against the Defendant Troy Tillman.

6. On August 14, 2014, the Plaintiff filed her Motion to Strike the Answer and Counterclaim of the Defendant Crystal Tillman.

7. On August 27, 2014, the Defendant Troy Tillman filed his Motion to Set Aside Clerk's Entry of Default. On September 5, 2014, the Defendant Crystal Tillman filed her Amended Answer and Counterclaim.

8. After conducting a hearing on August 29, 2014 on the pending motions, the Court ruled from the bench that the Defendant Crystal Tillman could file her Amended Answer and Counterclaim and that the Defendant Mr. Tillman could file a response to the Complaint.

9. On September 5, 2014, the Defendant Crystal Tillman filed her Amended Answer and Counterclaim.

10. On October 20, 2014, this Court entered its written Order to permit the Defendant Crystal Tillman to file her Amended Answer and Counterclaim.

11. On November 3, 2014, this Court entered its written Order to vacate the Default against Mr. Tillman.

12. On October 17, 2014, Mr. Tillman filed his Answer and Counterclaim.

13. On November 17 2014, the Plaintiff Toni Tillman filed her Motion to Dismiss Third,

Fourth, Fifth, and Sixth Causes of Action, which the Defendant Troy Tillman had asserted in his Counterclaim.

THE DEFENDANT'S CAUSES OF ACTION

14. In his Counterclaim, the Defendant Troy Tillman asserted six claims against the Plaintiff.

15. The Plaintiff did not address the First or Second Causes of Action that Mr. Tillman asserted in his Counterclaim. The focus of the Plaintiff's Motion and this Order is, therefore, exclusively on the Third, Fourth, Fifth, and Sixth Causes of Action of Mr. Tillman's Counterclaim.

16. Mr. Tillman's Third, Fourth, Fifth, and Sixth Causes of Action rest on two fundamental premises:

- a. an assertion that the Plaintiff acted improperly in 1991 regarding the death of their Mother and the administration of the estate of their Mother in the Charleston County Probate Court; and
- b. an assertion that the Plaintiff was obligated to convey to Mr. Tillman title to the Butternut property upon Mr. Tillman and his wife, Ms. Crystal Tillman, obtaining a new mortgage loan to replace and refinance the mortgage, which the Plaintiff had obtained to permit the Plaintiff to purchase the Butternut property.

17. It is undisputed that Mr. Tillman and his wife, Ms. Crystal Tillman, never obtained a new mortgage loan to replace and refinance the mortgage, which the Plaintiff had obtained to permit the Plaintiff to purchase the Butternut property.

18. Mr. Tillman asserted a claim for "fraud and misrepresentation" as his Third Cause of Action (¶¶ 203-217). He alleged there that:

- a. (¶¶ 204-205) the Mother (Ms. Mildred Tillman) of the Plaintiff and Mr. Tillman

executed a will approximately 3 ½ months before her death on December 27, 1991 and that Ms. Mildred Tillman was incompetent at the time at which she executed the will;

- b. (¶ 206) the Plaintiff exercised undue influence over Ms. Mildred Tillman when she executed her 1991 will to exclude Mr. Tillman as a beneficiary of her estate;
- c. (¶ 207) Mr. Tillman did not receive proper and contemporaneous service of documentation relative to the probate of his Mother's estate;
- d. (¶ 208) the Plaintiff used fraudulent and dishonest means in failing to apprise the Charleston Probate Court of his address;
- e. (¶ 209) as a consequence of the Plaintiff's allegedly fraudulent and dishonest conduct, the Plaintiff excluded Mr. Tillman and his brother from receiving title to residential real property in Charleston County that is located at 1342 New Castle, Charleston, South Carolina ("the Charleston property");
- f. (¶ 210) for many years after the settlement of the estate of Ms. Mildred Tillman, the Plaintiff falsely represented to Mr. Tillman that he owned a one-fourth share in the Charleston property; and
- g. (¶¶ 211-14) the Plaintiff's representations to Mr. Tillman were false, material, made with actual knowledge of the falsity of those representations or reckless disregard for the truth, and with the intent that Mr. Tillman rely on such representations; and
- h. (¶¶ 215-17) Mr. Tillman was ignorant of the alleged falsity of the representations, reasonably relied on the representations, and suffered alleged damages as a consequence.

19. Mr. Tillman asserted a claim for “constructive trust” regarding the Charleston property as his Fourth Cause of Action (¶¶ 218-222). He alleged there that:

- a. (¶¶ 218-19) the Plaintiff made false and fraudulent misrepresentations to Mr. Tillman regarding his alleged ownership of a portion of the Charleston property;
- b. (¶ 220) the Plaintiff owed a fiduciary duty to Mr. Tillman to ensure that he received a one-fourth intestate share of the estate of Ms. Mildred Tillman and that the Plaintiff was in a confidential relationship with Ms. Mildred Tillman during a period when she was allegedly incompetent;
- c. (¶ 221) the Plaintiff allegedly acquired title to the Charleston property by means of fraud, bad faith, undue influence, abuse of confidence placed by Ms. Mildred Tillman, and violation of fiduciary duties at the expense of Mr. Tillman; and
- d. (¶ 222) a constructive trust should be imposed on the Plaintiff’s title to the Charleston property.

20. Mr. Tillman asserted a claim for “constructive trust” regarding the Butternut property as his Fifth Cause of Action (¶¶ 223-28). He alleged there that:

- a. (¶ 224) the Plaintiff made false and fraudulent representations that she would convey to him title to the Butternut property when he was “prepared to obtain a new mortgage loan and refinance” the existing loan, which was in the Plaintiff’s name;
- b. (¶ 225) the Defendant relied upon such alleged promise;
- c. (¶ 226) the Plaintiff owed Mr. Tillman a fiduciary duty to convey to him title to the Butternut property when he was “ready to refinance said property by obtaining” a new loan to satisfy the existing mortgage, which was in the

Plaintiff's name;

- d. (¶ 227) the plaintiff had acquired title to the Butternut property by means of fraud, bad faith, abuse of confidence, and violation of fiduciary duties; and
- e. (¶ 228) a constructive trust should be imposed on the Plaintiff's title to the Butternut property.

21. Mr. Tillman asserted a claim for "promissory estoppel" regarding the Butternut property as his Sixth Cause of Action (¶¶ 229-33). He alleged there that:

- a. (¶ 230) the Plaintiff promised to convey to him title to the Butternut property when Mr. Tillman and his wife "informed plaintiff that they were ready to obtain a new mortgage loan . . . and refinance [the Butternut] property to satisfy the existing loan in the plaintiff's name on said property";
- b. (¶ 231) Mr. Tillman reasonably relied upon such alleged promise to convey to him title to the Butternut property when "he and [his] wife were ready to obtain a new mortgage loan on said property";
- c. (¶ 232-33) Mr. Tillman has allegedly suffered damages as a failure of the Plaintiff's failure to convey to him title to the Butternut property and equitable enforcement of the promise to convey title is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

22. This Court lacks subject matter jurisdiction to consider the defendant's Third and Fourth Causes of Action. South Carolina's law vests exclusive subject matter jurisdiction with the probate court over "all subject matter related to (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents"

S.C. Code Ann. § 62-1-302(a) (1).

23. Since it is undisputed that the Charleston County Probate Court previously entered certain orders regarding the enforceability of the Decedent's will and the beneficiaries of the estate of the Decedent, the Charleston County Probate Court had exclusive subject matter jurisdiction regarding the Decedent's estate and has continuing exclusive subject matter jurisdiction to consider the matters raised by the Defendant's Third and Fourth Causes of Action.

24. Venue is not proper for this Court to hear the Defendant's Third and Fourth Causes of Action.

25. Mr. Tillman has failed to plead fraud with particularity in his Third Cause of Action.

26. Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

27. To satisfy the requirements of Rule 9(b), a party asserting a fraud claim must set out clearly the facts and circumstances which constitute the alleged fraud. *Bookhart et al. v. Central Electric Co-op., Inc.*, 222 S.C. 289, 72 S.E.2d 576 (1951). Cited with approval *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 463 S.E.2d 85, 320 S.C. 49 (S.C. 1994). The party must allege facts which would afford a basis upon which a jury could properly find support for each of the elements of a fraud claim. *Gordon v. Fidelity & Cas. Co. of NY*, 120 S.E.2d 509, 238 S.C.438, 444 (1961). If the party fails in the claim to allege facts to support any one of the elements of fraud, the claim is fatally defective and should be dismissed. *Able v. Equitable Life Assur. Society of United States*, 195 S.E. 652 (S.C.1938) and *Warr v. Carolina Power & Light Co.*, 115 S.E.2d 799, 802, 237 S.C. 121, 126-27 (1960).

28. The Court in *Kiriakides v. Atlas Food Systems & Serv.*, 527 S.E.2d 371, 338 S.C. 572, 586 (S.C. Ct. App. 2000) set forth the nine elements, which must be shown to establish a fraud

claim. Those elements are: “1) a representation or nondisclosure of a material fact, 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. *See Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978); *Lawson v. Citizens and Southern National Bank of South Carolina*, 259 S.C. 477, 193 S.E.2d 124 (1972); *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967); *Hurst v. Sandy*, 329 S.C. 471, 482, 494 S.E.2d 847, 853 (Ct.App.1997). The ‘[f]ailure to prove any element of fraud is fatal to the action.’ *Sorin Equipment Co. v. The Firm*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct.App.1996) (citing *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984)).”

29. In his Third Cause of Action, the Defendant failed to state with particularity the following required elements of his fraud and misrepresentation claim:

- a. The Defendant does not allege a representation or a nondisclosure of a material fact by the Plaintiff to the Defendant – the Defendant admits that he was aware of his Mother’s death in 1991 and he fails to explain how the Plaintiff’s alleged exercise of undue influence on the decedent constituted a misrepresentation or nondisclosure to him. *See Counterclaim of Timothy Troy Tillman*, ¶¶ 204-06.
- b. The Defendant does not allege that such alleged representation or nondisclosure of a material fact was false – the Defendant alleges only that the Plaintiff misrepresented his mailing address to the Probate Court and, therefore, any such Cause of Action must necessarily be heard by the Probate Court.
- c. The Defendant does not allege that such misrepresentation or nondisclosure was material -- the Defendant does not explain why any representation or nondisclosure alleged in the

Third Cause of Action was allegedly “material.”

- d. The Defendant does not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity – the Defendant does not address this matter in his Third Cause of Action.
 - e. The Defendant does not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it – the Defendant does not address this matter in his Third Cause of Action.
 - f. The Defendant does not allege that he was ignorant of the alleged misrepresentation or nondisclosure -- quite the contrary, the Defendant acknowledges in paragraph 204 his awareness of the death of his Mother in 1991, which gave him actual notice of his legal rights regarding her estate in 1991.
 - g. The Defendant does not allege in his Third Cause of Action that he relied on any representation or nondisclosure by the Plaintiff.
 - h. The Defendant does not allege in his Third Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff. Like the plaintiff in *Reid v. George Washington Life Ins. Co.*, 109 S.E.2d 577, 578, 234 S.C. 599, the Defendant failed to take advantage of the opportunity and means that he had during had 23 years after the death of his Mother to inspect public records and discover the fraud that he alleges regarding ownership of the Charleston property and the will of the Decedent.
 - i. The Defendant did not allege in his Third Cause of Action the specific damages, which he allegedly suffered as a consequence of the matters alleged in that Cause of Action.
30. Many of the necessary elements of a fraud claim are not even mentioned within the Third Cause of Action. “Where the complaint omits allegations on any element of fraud, the trial court

should grant the defendant's motion to dismiss the claim." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

31. The Defendant has failed to plead fraud with particularity in his Fourth Cause of Action. The Fourth Cause of Action is devoid of any allegations regarding the necessary elements of a fraud claim.

32. The Defendant has failed to plead fraud with particularity in his Fifth Cause of Action.

33. The Defendant did not allege the following necessary elements of this fraud-based cause of action:

- a. The Defendant did not assert that the alleged false representations were material.
- b. The Defendant did not allege that the Plaintiff made such representation or nondisclosure with a reckless disregard of its truth or falsity.
- c. The Defendant did not allege that the Plaintiff made such alleged representation or nondisclosure with the intent that the Defendant act upon it.
- d. The Defendant did not allege that he was ignorant of the alleged misrepresentation or nondisclosure.
- e. The Defendant did not allege in his Fifth Cause of Action that he had a right to rely on the alleged representation or nondisclosure by the Plaintiff.

34. Significantly, the Defendant admits in his Fifth Cause of Action that the Plaintiff was not obligated under the Defendant's theory of the claim to convey title to the Butternut property until the "defendant was prepared to obtain a new mortgage loan and refinance said property to satisfy the existing loan in the plaintiff's name on said property." Counterclaim of Timothy Troy Tillman, ¶ 224.

35. The Defendant does not allege in the Fifth Cause of Action that the Defendant was ever

prepared or able to refinance the existing loan on the Butternut property.

36. The Defendant failed to allege in his Sixth Cause of Action a necessary element of a claim for promissory estoppel. Specifically, the Defendant did not allege that Mr. Tillman and his wife had informed Plaintiff at any time that they were ready to obtain a new mortgage loan to refinance the Butternut property to satisfy the existing loan in the Plaintiff's name on the Butternut property. In the absence of such allegation, the Defendant has failed to allege performance of a condition precedent to the Plaintiff's alleged duty to convey the Butternut property to the Defendant and his wife

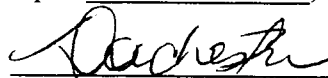
IT IS THEREFORE ORDERED AND ADJUDGED THAT:

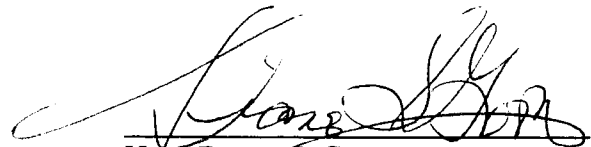
- (a) The Plaintiff's Motion to Dismiss is granted.
- (b) The Third Cause of Action of the Defendant Timothy Troy Tillman is dismissed because this Court lacks subject matter jurisdiction to consider the claim, the Charleston County Probate Court has the exclusive subject matter jurisdiction to address all matters concerning the estate of the Defendant's Mother.
- (c) The Fourth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because this Court lacks subject matter jurisdiction, the Charleston County Probate Court has the exclusive subject matter jurisdiction to address all matters concerning the estate of the Defendant's Mother and the Defendant has failed to plead fraud with sufficient particularity.
- (d) The Fifth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because there was a failure of a condition precedent (i.e., the Defendant being prepared to refinance the existing mortgage) and the Defendant has failed to plead fraud with sufficient particularity.

- (e) The Sixth Cause of Action of the Defendant Timothy Troy Tillman is dismissed because Defendant has failed to allege a necessary condition precedent to his promissory estoppel claim (i.e., the Defendant being prepared to refinance the existing mortgage).
- (f) The request of the Defendant Timothy Troy Tillman to file an amended counterclaim is denied. This Court previously vacated a default against Mr. Tillman and allowed him to answer the complaint at which time he asserted his counter claims. His pleading with regards to his counterclaims were deficient (including the failure to plead fraud with particularity), and to allow him to amend his pleadings at this late date would prejudice the Plaintiff in that matter.

IT IS SO ORDERED!

April 27, 2015.

, South Carolina



HON. DIANE S. GOODSTEIN
Judge for the First Judicial District

TONI LYNN TILLMAN

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 2015 APR 29 PM 12:32

TIMOTHY TROY TILLMAN

CRYSTAL TILLMAN

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

KENNETH 

Attorney for : Plaintiff Defendant
 or
 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.

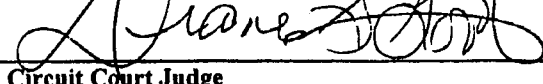
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

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

2112
 Judge Code

4-27-2015
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of April, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of April, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Kennette Eut
2040 e Wall St., Suite G
Mt. Pleasant, SC 29464
ATTORNEY(S) FOR THE PLAINTIFF(S)

William B. Jung
1156 Bowman Road, Suite 200
Mt. Pleasant, S. C. 29464
ATTORNEY(S) FOR THE DEFENDANT(S)
Meryl Mahan
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.
