

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 Leisel Paradis,)
)
 Plaintiff,)
)
 vs.)
)
 Charleston County School District, James)
 Island Charter High School, Robert)
 Bohnstengel and Stephanie Spann, in their)
 individual capacities,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2015-CP-10-5093

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 JULIE J. ARMSTRONG
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ORDER DISMISSING CASE
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 JUN 22 2016
 SC Court of Appeals

THIS MATTER is before the Court on the Amended Motions to Dismiss, and Alternatively, for a More Definite Statement, filed by Defendants Charleston County School District and Robert Bohnstengel on March 18, 2016, and filed by Defendants James Island Charter High School and Stephanie Spann on March 21, 2016. Plaintiff waived any objection to the timeliness of notice of the hearing on these motions. The Motions were heard on March 30, 2016. Based on the Complaint, the legal memoranda, and arguments of Counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff was a teacher at James Island Charter High School (JICHHS), which is a charter school located within the Charleston County School District (CCSD). Defendant Robert Bohnstengel was Plaintiff's Principal during a portion of the 2013-14 school year. Defendant Stephanie Spann was the Assistant Principal at JICHHS for the 2013-14 and 2014-15 school years.

Plaintiff's Complaint alleges that Defendant Bohnstengel became angry with her after she informed him that she wanted to file a police report regarding a violent and harassing assault she suffered from a student in her classroom during the 2012-13 school year. She alleges that,

shortly thereafter, she was notified by Defendant Bohnstengel that she was being placed on SAFE-T/ADEPT evaluation for the following school year in accordance with their prior meeting. Plaintiff was shocked by this notification because she had not previously met with Defendant Bohnstengel, and she had met all of her goals of her GBE (Goals Based Evaluation) for the 2012-13 school year.

Despite her efforts to reverse the decision of Defendant Bohnstengel, she was subject to evaluation for the 2013-14 school year. Defendant Bohnstengel was one of three evaluators for Plaintiff; however, he was terminated before Plaintiff's evaluation was complete. He was then replaced by Maureen Jessup for the remainder of the evaluation period. Plaintiff failed the evaluation for the 2013-14 school year and was again placed on evaluation for the 2014-15 school year.

Plaintiff was concerned that she would not be treated fairly in the second evaluation because Defendant Spann, who had been on the prior evaluation team, would again serve as one of her three evaluators. According to Plaintiff, during the second year of evaluation, Defendant Spann changed the requirements of her evaluation, causing Plaintiff to be confused. Plaintiff met with her mentor, Charity Scruggs, almost daily. Ms. Scruggs noted that Plaintiff was under strain, but that she was doing all she could to please the evaluators. Despite her efforts, Plaintiff failed the evaluation during the second year, scoring lower at the end of the year than she had at the beginning. All of Plaintiff's peers and colleagues were aware that she was being evaluated and saw the physical and emotional toll it took on Plaintiff. Plaintiff was terminated because she failed the evaluation for two consecutive years. Plaintiff, thereafter, exhausted her administrative remedies.¹


¹ The administrative remedies available to a teacher are governed by the South Carolina Teacher Dismissal Act. Specifically, a teacher who has been terminated exhausts her administrative remedies when she requests a hearing

Plaintiff's Complaint alleges a cause of action for defamation of character against Defendants CCSD and JICHS, as well as a cause of action against Defendants Bohnstengel and Spann for civil conspiracy.

CONCLUSIONS OF LAW

A. Standard of Review.

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRCP; Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). As stated in DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981):

 A [motion to dismiss] admits the facts well-pleaded in the complaint but does not admit the inferences drawn by the plaintiff from such facts. In short, a [motion to dismiss] a complaint does not admit conclusions of law pleaded therein.

274 S.E.2d at 296; Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E.2d 897, 899 (Ct. App. 1988) ("A motion under Rule 12(b)(6) . . . admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law."). An allegation of a mere legal conclusion is insufficient to state a cause of action. Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (1986); Russell v. City of Columbia, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989) ("The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.")


B. Plaintiff's Defamation Claim Is Dismissed as a Matter of Law.

Plaintiff alleges that she was slandered by allegedly false, oral and written statements

before the District Board of Trustees and receives a determination from the Board as to "whether the evidence showed good and just cause" for the dismissal. S.C. Code Ann. § 59-25-470. Furthermore, the "teacher has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present *any and all* defenses to the charges." Id. § 59-25-470 (emphasis added).

made against her by “agents and servants of Defendant District and Defendant JICHS acting in the course and scope of their employment.” Plaintiff’s allegations fail as a matter of law and are subject to dismissal because: (1) Defendants CCSD and JICHS are entitled to sovereign immunity; (2) Plaintiff’s claim for defamation is barred by the applicable statute of limitations; and (3) Plaintiff’s claim fails to state facts sufficient to constitute a cause of action for defamation.

1. Defendants CCSD and JICHS are entitled to a dismissal of Plaintiff’s claim for defamation because it is subject to sovereign immunity.



Plaintiff’s claim for defamation is subject to the South Carolina Tort Claims Act (SCTCA), which provides the sole remedy available to a plaintiff for civil wrongs alleged to have been committed by a government agency. Hawkins v. City of Greenville, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). CCSD and JICHS are each a governmental entity subject to the protections of the SCTCA. S.C. Code Ann. § 15-78-30(d). Although the SCTCA waived absolute immunity for torts committed by government actors, it limited liability under certain circumstances. S.C. Code Ann. § 15-78-40 (Supp. 2003). Specifically, in adopting the SCTCA, the General Assembly continued the grant of immunity to the political subdivisions of the State and their employees “while acting within the scope of official duty” S.C. Code Ann. § 15-78-20(b). When examining a provision which potentially limits the liability of a government agency, the Court should liberally construe the portion of the Act in favor of the government defendant. Hawkins, 358 S.C. at 292, 594 S.E.2d at 563. School officials are not liable for allegedly defamatory conduct performed in the discharge of their official duties. De Levay v. Richmond Cty. Sch. Bd., 284 F.2d 340, 340 (4th Cir. 1960). Where a government official is entitled to immunity, the defense is available, regardless of his rank or his motives, and

even when his conduct is within the “outer perimeter of his line of duty.” Green v. Cauthen, 379 F. Supp. 361, 374 (D.S.C. 1974).

Plaintiff’s claim for defamation appears to be based on the allegations that “[a]ll of the Plaintiff’s peers and colleagues knew she was undergoing the evaluation process” and that “[b]y virtue of placing and holding Plaintiff on the evaluation process for two years – which was widely known at JICHS – Plaintiff’s credibility as a teacher was greatly diminished.” Compl., ¶¶ 21, 28. Thus, the gravamen of Plaintiff’s cause of action is that CCSD and JISCHS defamed her when they placed her on formal evaluation for two consecutive school years.

However, CCSD and JICHS are entitled to absolute immunity for placing Plaintiff on formal evaluation because assessing teacher competence is a statutory duty of all school districts in South Carolina. See S.C. Code Ann. § 59-26-40 (“A teacher employed under a continuing contract must be evaluated on a continuous basis. At the discretion of the local district and based on an individual teacher’s needs and past performance, the evaluation may be formal or informal.”). By placing Plaintiff on formal evaluation, CCSD and JICHS were each clearly acting within the scope of its official, statutorily-mandated duties, such that there is no liability under the SCTCA. Even Plaintiff acknowledges in her Complaint that the allegedly false statements and actions were made by agents of the CCSD and JICHS “while acting within the course and scope of their employment.” Compl., ¶¶ 29, 31.

2. Plaintiff’s claim for defamation is barred by the applicable statute of limitations and is hereby dismissed.

A cause of action for defamation must be brought within two years of the time the claim arose. Jones v. City of Folly Beach, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) (citing S.C. Code Ann. § 15-3-550 (Supp. 1995)). Plaintiff alleges Defendants CCSD and JICHS defamed her “[b]y virtue of *placing* and holding Plaintiff on the evaluation process for two years

....” Compl., ¶ 28 (emphasis added). According to her Complaint, Plaintiff was notified that she was being placed on formal evaluation shortly after her meeting with Richard Glickman in March of 2013, and she was, in fact, subject to evaluation beginning with the 2013-14 school year. Compl., ¶¶ 11, 12, 14. Thus, Plaintiff’s cause of action for defamation arose as early as March of 2013, or as late as August 2013, when the 2013-14 school year began. However, Plaintiff did not commence this litigation until September 22, 2015, after the expiration of the two-year statute of limitations for defamation claims. Therefore, her claim for defamation is time-barred.

3. Because Plaintiff does not state a claim for defamation, her cause of action for defamation is dismissed pursuant to SCRPC 12(b)(6).

Even if CCSD and JICHS were subject to liability, Plaintiff’s claim for defamation is still subject to dismissal against both Defendants because her complaint fails to state facts sufficient to constitute a cause of action for defamation. See Rule 12(b)(6), SCRPC.

To establish a cause of action for defamation, the Plaintiff must show: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

In Pagano v. Martin, 397 F.2d 620 (4th Cir. 1968), the Fourth Circuit Court of Appeals addressed a similar situation, in which the alleged defamatory statements occurred in connection with a report that was issued pursuant to an employer’s authorized duties. In that case, the alleged libel appeared in a performance evaluation report issued by the defendants, who were the plaintiff’s superior officers on the USS Robert A. Owens, a naval destroyer ship. Pagano, 397 F.2d at 620. The court acknowledged that the evaluation report “downgraded [the plaintiff]

sharply and recommended he not be re-enlisted in the future.” Id. In affirming the district court’s dismissal of the libel claim on the defendants’ motion for summary judgment, the Court of Appeals noted: “The report authorized by the Bureau of Naval Personnel Manual, was made by the defendant officers *as part of their official duties*. With the trial court, we think the suit, as a matter of law, cannot be maintained.” Id. (emphasis added).

Here, the Complaint is devoid of factual allegations that actually support Plaintiff’s contention that there was an unprivileged, defamatory communication made to a third party. The alleged defamatory material is nothing more than a negative evaluation of Plaintiff’s professional performance, and Defendants CCSD and JICHHS are not only authorized, but mandated by law, to perform teacher evaluations, some of which, by their very nature, will result in substandard reviews. Furthermore, Plaintiff has failed to identify who actually published or made the alleged defamatory statements, and to whom such statements were made. Without those facts to support Plaintiff’s allegations, her claim must fail.

C. Plaintiff’s Civil Conspiracy Claim Is Hereby Dismissed as a Matter of Law.

Plaintiff’s Complaint alleges that Defendants Bohnstengel and Spann conspired against her and targeted her for an “unwarranted and invasive evaluation,” and that as a result, Plaintiff suffered special damages in the form of “being blacklisted and ostracized from the profession of education.” Compl. ¶¶ 35-36. However, Plaintiff’s claim for civil conspiracy fails as a matter of law and is subject to dismissal because: (1) Plaintiff fails to sufficiently and/or specifically state any special damages beyond those alleged in her other cause(s) of action; and (2) the actions of Defendants Bohnstengel and Spann that form the apparent basis of Plaintiff’s conspiracy claim were all done within the course and scope of their employment, such that no actionable conspiracy exists.

1. **Plaintiff fails to state with specificity the special damages she sustained as a result of Defendants' alleged conspiracy.**

“A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing *special damage* to the plaintiff.” Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 324, 701 S.E.2d 39, 46 (Ct. App. 2010) (quoting McMillan v. Oconee Mem’l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006) (emphasis added)). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). “The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design.” Cricket Cove Ventures, 390 S.C. at 324, 701 S.E.2d at 46. To establish a conspiracy, “evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005) (citation omitted).


Rule 9(g) provides that “[w]hen items of special damage are claimed, they shall be specifically stated.” Rule 9(g), SCRPC.

This rule is based upon the distinction between general and special damages. General damages are inferred by the law itself, as they are the immediate, direct, and proximate result of the act complained of. In contrast, special damages are not implied by law because they are the natural, but not the necessary or usual, consequence of the defendant’s conduct. Thus, special damages must “be specifically stated” to avoid surprise to the other party.

Benedict Coll. v. Nat’l Credit Sys., Inc., 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) (citations omitted). Where a party alleges the same damages under a conspiracy claim as they do under the other causes of action, such allegations are insufficient to establish special damages. Gordon, 397 S.C. at 136, 723 S.E.2d at 831-32 (Ct. App. 2012); Hackworth v. Greywood at

Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) (“If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.”).

The only mention of special damages in Plaintiff’s Complaint, beyond the conclusory statement that she has sustained them generally, is that she has been ostracized or blacklisted from the profession of education and that she incurred legal fees to pursue the claims set forth in her Complaint. Yet, Plaintiff fails to plead any specific facts to support such an assertion, such as an inability to obtain other employment in the education profession. Furthermore, the alleged damages of being blacklisted and ostracized are simply a re-wording of the “injur[y] to her professional reputation” that are the claimed damages under her defamation cause of action. See Compl. ¶¶ 30-32.

 Additionally, Plaintiff’s claim for costs and attorneys’ fees in her Complaint does not constitute special damages related to her civil conspiracy claim. In this instance, Plaintiff is the “plaintiff,” not a “defendant,” and she “has not demonstrated how these attorney’s fees are any different” than the fees “any other litigant incurs.” Killian v. City of Abbeville, No. 8:14-1078-TMC, 2015 WL 1011339, *5 (D.S.C. March 6, 2015)(slip copy)(rejecting plaintiff’s contention that his attorney’s fees and costs constituted special damages in regard to his civil conspiracy claim). See also AJH Holdings, LLC v. Dunn, 392 S.C. 160, 168, 708 S.E.2d 218, 223 (Ct. App. 2011)(“Every litigant represented by a lawyer incurs attorney’s fees and costs.”)

Therefore, Plaintiff’s Complaint fails to “specifically state” any special damages beyond those damages alleged under other causes of action, such that her conspiracy claim fails as matter of law.

- 2. Plaintiff’s civil conspiracy claim fails because the conduct alleged of Defendants Bohnstengel and Spann was done in the scope of their employment.**

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A corporation or municipal entity can act only through its directors, officers, agents, and employees. See Anvar v. Greenville Hosp. Sys., No. 2007-UP-004, 2007 WL 8324255, at *5 (S.C. Ct. App. Jan. 10, 2007). Thus, where the actions of an entity's agents and employees were all performed while acting within the course and scope of their authority, a conspiracy claim is barred by the intracorporate conspiracy doctrine. See id. (citing McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564-65, 626 S.E.2d 884, 886-87 (2006) (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own)); see also Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y.2003) (stating "[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate *or municipal entity*, each acting within the scope of his or her employment, legally are incapable of conspiring together"). "[J]ust as it is not legally possible for an individual to conspire with himself, it is not possible for a single legal entity consisting of the corporation and its agents to conspire with itself." McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000).

In Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010), the South Carolina Court of Appeals stated:

In McMillan, our Supreme Court limited this "intracorporate conspiracy" doctrine to persons acting within the scope of their employment, 367 S.C. at 564-65, 626 S.E.2d at 887. Other jurisdictions have similarly limited the doctrine. See ePlus Tech., Inc. v. Aboud, 313 F.3d 166, 179 (4th Cir. 2002) ("[T]he intracorporate immunity doctrine does not apply where a corporate 'officer has an independent personal stake in achieving the corporation's illegal objectives.'" (quoting Greenville Pub. Co. v. Daily Reflector, Inc., 496 F.2d 391, 399 (4th Cir. 1974))); McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036 (11th Cir. 2000) ("Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, *when acting in the scope of their employment*, cannot conspire among themselves.") (emphasis added); Garza v. City of Omaha, 814 F.2d 553, 556 (8th Cir. 1987) ("While it is true that a corporation cannot conspire with itself, an intracorporate conspiracy may be established where

individual defendants are also named and those defendants act outside the scope of their employment for personal reasons.”).

Cricket Cove Ventures, 390 S.C. at 325-26, 701 S.E.2d at 46-47.

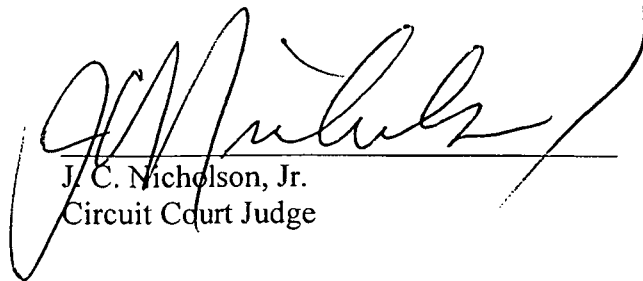
Plaintiff’s allegations against Defendants Bohnstengel and Spann all relate to conduct that occurred while they were acting within the course and scope of their employment as administrators at James Island Charter High School. Plaintiff’s bald allegations in the Civil Conspiracy section of her Complaint that Defendants “were able to specially inflict their evil agenda upon the Plaintiff and did so *outside of the scope of their own employment*”, Compl. ¶ 35 (emphasis added), are thinly-veiled and disingenuous assertions given the assertion on the preceding page that the exact same conduct and actions were “made against Plaintiff by agents and servants of Defendant District and Defendant JICHS *acting in the course and scope of their employment.*” Compl. ¶ 29 (emphasis added). At all times relevant to the allegations of the Complaint, the individual Defendants were acting as agents and employees of Defendants CCSD and JICHS, and Plaintiff fails to allege any facts to support a conclusion to the contrary. Thus, Plaintiff’s civil conspiracy cause of action is dismissed.

CONCLUSION

For the foregoing reasons, Plaintiffs claims for defamation and civil conspiracy fail as a matter of law, and Defendants’ Amended Motions to Dismiss are granted.

IT IS THEREFORE ORDERED that Plaintiff’s Complaint is DISMISSED.

AND IT IS SO ORDERED!



J. C. Nicholson, Jr.
Circuit Court Judge

April 14, 2016
Charleston, South Carolina