

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Alliance Biomedical Research, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Judith H. Parham, Personal)
 Representative of the Estate of David)
 Michael Parham, deceased and Parham &)
 Smith, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 C/A No.: 2014-CP-39-350

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 SC Court of Appeals
 ORDER

This matter came before the Court on the Defendants' Motion for Summary Judgment and Request for Sanctions¹ pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. A hearing was held on June 6, 2016 at the Pickens County Courthouse. Jeff Bogdan was present and argued on behalf of the Defendants. Milton Mann was present and argued on behalf of the Plaintiff. For the reasons set forth below, Defendants' Motion is GRANTED.

BACKGROUND

Plaintiff, Alliance Biomedical Research, LLC (hereinafter "Alliance") stated in its Second Amended Complaint that this case "arises out of alleged conduct by [Defendants] as the representing firm" in an underlying medical malpractice action wherein Defendants represented John and Marilyn Bruce as the plaintiffs against Alliance and Greenville Pharmaceutical Research as the defendants (hereinafter the "Bruce Litigation"). After being dismissed from the Bruce Litigation with prejudice and without making any settlement payments, Alliance now

¹ While Defendants included the Request for Sanctions under Rule 11 and the South Carolina Frivolous Civil Proceedings Act, S.C. Code § 15-36-10, the claim for sanctions was not the focus of the hearing, as the summary judgment arguments were extensive. The Court will forego ruling on Defendants' request for sanctions at this time, and will allow Defendants to renew its request for sanctions, should it decide to continue its pursuit of the same.

claims that Defendants are liable to it for Abuse of Process and Malicious Prosecution because Defendants named them as Defendants to the Bruce Litigation without any reasonable basis. Alliance relies on Mr. Bruce's deposition testimony from the Bruce Litigation, where Alliance claims that he testified that "he had never spoken with anyone from [Alliance]; did not know of any meetings with anyone from [Alliance]; and never had any contact with anyone from [Alliance]." The crux of Alliance's claims is its allegation that Defendants did no internal investigation prior to naming Alliance in the Bruce Litigation and that, if they had, they would have learned that Alliance was not a proper party.

Defendants filed this Motion for Summary Judgment, arguing that Plaintiff does not have and never has had any evidence to carry its threshold burden in this case of proving that Defendants were acting out of personal motives, as opposed to acting solely on behalf of their clients – the Bruces. Plaintiff did not present any evidence in response, and instead continued to rely solely on Mr. Bruce's testimony from the Bruce Litigation.

STANDARD

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). SCRPC 56(e).

LAW/ANALYSIS

Generally, in South Carolina a third party may not sue a lawyer for acts and omissions done while acting as counsel for his/her client. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). An attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution. Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). The South Carolina Supreme Court has held that an 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 his client. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

In Gaar, the Court further noted:

The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable ... for injury allegedly arising out of the performance of his professional activities.... *Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim.*

Gaar, 287 S.C. at 528-29, 339 S.E.2d at 889 (emphasis added).

The South Carolina Supreme Court has expressed this legal maxim very clearly in Stiles, finding that an attorney is immune from liability for actions that were taken in the attorney's professional capacity of representing a client, but is not immune for actions the attorney takes outside of the scope of the professional representation. Stiles, 318 S.C. at 299, 457 S.E.2d at 602.

Here, Plaintiff has not presented any evidence to show that the Defendant attorneys acted out of personal or malicious motives. Defendants' numerous discovery requests, which include

one set of requests for production, one set of requests for admission, and two sets of interrogatories, asked Alliance specifically and repeatedly to identify and produce evidence that Defendants acted outside of their professional representation of the Bruces in bringing Alliance into the Bruce Litigation. Alliance also authorized Dr. Feldman to speak for it at his deposition. Alliance has not identified or produced one piece of evidence to show that Defendants were acting outside of the scope of their professional representation of the Bruces. Dr. Feldman testified that Alliance has no such evidence, and was hoping to find some in discovery. Discovery is now closed and Alliance did not even attempt to uncover any evidence.

Alliance seems to rely on Mr. Bruce's deposition testimony in the Bruce Litigation as evidence to prove that Defendants were acting outside of the scope of their professional representation of the Bruces. Alliance appears to be relying entirely on the following excerpt from Mr. Bruce's deposition transcript to support this case:

Q: Now, there's a company called Alliance Biomedical Group. Do you recall ever talking with anyone from a group named Alliance Biomedical Group?

A: No, sir.

Q: If you met somebody that worked with that group, you don't know it, do you?

A: No, sir, I don't.

Mr. Bruce's deposition testimony from the Bruce Litigation is a far cry from evidence that Defendants were acting outside of the scope of their representation of the Bruces when they included Alliance as a Defendant in the Bruce Litigation. Aside from this deposition excerpt, Plaintiff simply pointed to allegations it made in its Complaint in an effort to defeat Defendants' Motion for Summary Judgment, which is inappropriate. Blumenthal Mills, Inc., 365 S.C. at 220, 616 S.E.2d at 730. As such, Plaintiff has not advanced any evidence to show that Defendants were doing anything other than attempting to gain leverage for a larger settlement for the Bruces

and, even if Defendants did not have probable cause to assert claims against Alliance in the Bruce Litigation, that is not a basis for Alliance's current claim under the Gaar analysis. Further, Plaintiff admitted at the hearing that, while Alliance and Greenville Pharmaceutical Research were not connected to each other, there was common ownership between Alliance and Greenville Pharmaceutical Research.

Finally, as stated in Gaar, there were other remedies available to Alliance, such as seeking sanctions against Defendants under Rule 11 of the South Carolina Rules of Civil Procedure or the South Carolina Frivolous Civil Proceedings Act, neither of which Alliance pursued.

Accordingly, Defendants are not liable to Alliance under causes of action for Malicious Prosecution or Abuse of Process and Defendants are entitled to summary judgment.

IT IS HEREBY ORDERED THAT:

Defendants' Motion for Summary Judgment is GRANTED

Perry H. Gravely
Presiding Judge

June __, 2016



Pickens Common Pleas

Case Caption: Alliance Biomedical Research LLC VS Judith H (Per Rep) Parham ,
defendant, et al
Case Number: 2014CP3900350
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Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

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