

IN THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James Anthony Primus, #252315,
Plaintiff,

v.

Cheron Hess, Michael Stobbe, and Bryan
Stirling,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-40-0074

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SC Court of Appeals

ORDER

This matter came before this Court on April 21, 2016, upon Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC, and Plaintiff's Motion for Appointment of Counsel. James Anthony Primus, #252315, appeared *pro se*. Charles A. Kinney, Esquire, appeared for the Defendants.

In the interest of efficiency, Defendants' Motion was heard first, as it being a dispositive motion would make Plaintiff's motion moot if it were granted. After hearing arguments from both sides, and reviewing the pleadings on file, Defendants' Motion for Summary Judgment is hereby GRANTED for the reasons set forth below. Additionally, as the granting of Defendants' motion is dispositive of this action, Plaintiff's Motion for Appointment of Counsel is deemed moot.

FINDINGS OF FACT

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CIR. CLERK

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Kidnapping, Assault and Battery of a High and Aggravated Nature (ABHAN), and possession of crack cocaine. Plaintiff received sentences of 30 years for Kidnapping, 10 years for ABHAN, to run consecutive, and 1 year for possession of crack, to run concurrent.

Based upon the Administrative Law Court decision attached to Plaintiff's Complaint, it appears that Plaintiff's sentencing sheet for Indictment No. 97-GS-18-1045, Warrant No. E091998, incorrectly indicated that Plaintiff had pled guilty to the ABHAN charge. This was corrected by the Dorchester County Clerk of Court's Office to reflect that Plaintiff had, in fact, pled not guilty to the ABHAN charge, but he was ultimately convicted by jury trial. This information was then sent to the South Carolina Department of Corrections.

In his Complaint, Plaintiff alleges that Defendant Stobbe "updated Plaintiff record on January 14, 2015, by changing the plea from guilty to not guilty the Indictment No. 97-GS-18-1045, Warrant No. E091998" (errors in original). Defendants agree that Defendant Stobbe made this correction in the SCDC records system, but also point out there was no change to Plaintiff's actual sentence or his convictions by the Dorchester Clerk's Office. Plaintiff brought causes of action for a violation of the separation of powers doctrine, breach of fiduciary duty, and negligence. Plaintiff seeks money damages.

Defendants filed a Motion to Dismiss on March 18, 2016, wherein they contend Plaintiff brought this action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §§15-78-10,

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MOTION TO DISMISS STANDARD

“A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed ‘to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” Williams v. Condon, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (citing Rule 12(b)(6), SCRPC); Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)).

“The trial court’s ruling on a Rule 12(b)(6) motions must be bottomed and premised solely upon the allegations set forth by the plaintiff.” Williams, 347 S.C. at 233, 553 S.E.2d at 499. “The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief.” Id.

Rule 8(a)(2), SCRPC, provides that a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although the court must liberally construe a *pro se* pleading, the United States Supreme Court has made clear that a plaintiff must do more than make conclusory statements to state a claim. See Ashcroft v. Iqbal, 556 U.S. 662, 677-78, 129 S.Ct. 1937, 1943 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964 (2007). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include

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accept as true the pleading's factual allegations, not its legal conclusions. Ashcroft, 556 U.S. at 678-79, 129 S.Ct. at 1944. Further, allegations that are no more than conclusions are not entitled to the assumption of truth. Id. at 681, 129 S.Ct. at 1951.

CONCLUSIONS OF LAW

Separation of Powers Claim

Plaintiff first brought a cause of action for a violation of the separation of powers doctrine under the South Carolina Constitution. The South Carolina Constitution, art. I, § 8, states, "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." Under the separation of powers, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws. S.C. Public Interest Foundation v. S.C. Transp. Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013).

There is no private cause of action for a violation of the separation of powers doctrine under South Carolina law. A private right of action may be created by statute or by implication if the legislation was enacted for the special benefit of a private party. See Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 28, 416 S.E.2d 641, 645 (1992). Here, Plaintiff seeks

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There is no similar statute in South Carolina to this Court's knowledge, and Plaintiff has offered none in his pleadings or argument.

Further, Plaintiff does not allege any challenge to a statute, ordinance, or other law as unconstitutional pursuant to a violation of the separation of powers. Plaintiff has failed to state a claim for a violation of S.C. Const., art. I, § 8 as there is no private right of action to be brought. Therefore, his claim is dismissed.

Breach of Fiduciary Duty Claim

Next, Plaintiff brought a breach of fiduciary duty cause of action. To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of the defendant. RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). "A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467, 472 (Ct. App. 2004). Further, a fiduciary relationship involves financial relationships and duties of candor and good faith. See Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91, 93 (Ct.App.1988). The existence of a fiduciary duty is a question of law for the court. Clearwater Trust v. Bunting, 367 S.C. 340, 346, 626 S.E.2d 334, 337 (2006).

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resulting from any breach of that duty. Plaintiff simply makes a conclusory legal statement that Defendant breached a fiduciary duty without any factual support of any kind. A plaintiff must do more than make conclusory statements to state a claim. See Ashcroft, 556 U.S. at 677-78, 129 S.Ct. at 1943. Plaintiff's claim is dismissed.

Negligence Claims

Plaintiff's final cause of action is one for negligence. To sustain a negligence action under South Carolina law, a plaintiff must plead facts plausibly suggesting that: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) that the plaintiff suffered an injury or damage. Andrade v. Johnson, 356 S.C. 238, 244, 588 S.E.2d 588, 592 (2003).

Just as with Plaintiff's breach of fiduciary duty claim, Plaintiff's negligence claim fails because he has not alleged any duty owed by Defendants to Plaintiff, a breach of any duty, or injury or damage therefrom. Plaintiff's claim is dismissed.

Remaining Defenses are Moot

Defendants also alleged immunity from suit and other defenses under the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. §§ 15-78-10, et seq. As Plaintiff's claims have all been disposed of, this Court considers these arguments moot and does not rule on any immunity

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CONCLUSION

For the reasons stated above, Defendants' Motion to Dismiss is hereby GRANTED as to all causes of action, and Plaintiff's claims are dismissed with prejudice. Additionally, Plaintiff's Motion for Appointment of Counsel is deemed moot.

IT IS SO ORDERED

April 25, 2016
Columbia, South Carolina
Mand. s. Comey

R. Markley Dennis, Jr.
R. Markley Dennis, Jr.
Presiding Circuit Court Judge

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