

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-4112

CHRIS KHAMNEI,

Plaintiff,

v.

COLUMBUS STREET HOLDINGS, LLC;
ROY T. WILLEY, IV; and ERIC M.
POULIN,

Defendants.

**ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL DISMISSAL IN PART**

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FEB 16 2018

SC Court of Appeals

FILED
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JULIE J. PARSONS
CLERK OF COURT

This matter came before this Court by way of Defendants' Motion for Partial Dismissal.

Having thoroughly considered the motion, supporting, and opposing materials and arguments, and based on the same the Court grants Defendants' Motion in part as follows:

SUMMARY OF FACTS

Defendant Columbus Street Holdings, LLC ("LLC") is a duly registered South Carolina Limited Liability Company. Roy T. Willey and Eric M. Poulin are members of the LLC. The LLC contracted to purchase a piece of real property from the Plaintiff. However, the property was encumbered by a *lis pendens* and occupied by several squatters. An agreement was made where once the *lis pendens* was resolved and the squatters evicted, \$50,000 held in escrow would be released to Plaintiff. Plaintiff did eventually get the *lis pendens* dissolved. After doing so, Plaintiff demanded the escrow money be released. However, the LLC refused because not all of the squatters had been evicted. When the LLC refused to release the escrow money, Plaintiff filed this action, alleging breach of contract for failure to release the funds. Conversely, the LLC believes that the Plaintiff breached the contract by failing and refusing to evict the squatters and, as such, the LLC alleges it was legally justified in not releasing the escrow funds.

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Plaintiff's Amended Complaint alleged two causes of action. Count one is a breach of contract cause of action and is alleged against the LLC only. Count two is a breach of contract accompanied by a fraudulent act cause of action and is alleged against the LLC and both Mr. Willey and Mr. Poulin. Defendants moved to have the second cause of action dismissed in its entirety, or in the alternative dismiss Mr. Willey and Mr. Poulin. This Court grants Defendants' Motion in part, dismissing Mr. Willey and Mr. Poulin based on the following:

LEGAL ANALYSIS

In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). There mere violation of a contract will not support an allegation of fraud, even where it is proven that a defendant breached the contract willfully. See, Calder v. Commercial Casualty Ins. Co., 182 S.C. 240 (1936); Vann v. Nationwide Ins. Co., 257 S.C. 217 (1971). Instead, "[i]t has been consistently held that where a complaint states a cause of action for breach of contract, allegations charging the defendant with fraudulent intent or purpose in breaching the contract do not give rise to a right to recover punitive damages; that such damages are recoverable **only** where, in addition to or independently of the fraudulent intent that brought about the breach there was some fraudulent act on the part of defendant accompanying the breach." Welborn v. Dixon, 70 S.C. 108 (1904).

It is also generally recognized that "the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. S.C. Code Ann. §33-44-303(a). A member or manager is not

personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager. Id. Thus, the actions of a principal's agent are afforded a qualified privilege from liability in the absence of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment. See Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979); CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc., 357 F.3d 375, 385 (3d Cir. 2004) | see also 3A William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations, Chapter 11, XXVIII, § 1117 (West 2012) ("[A] director is not personally liable for the corporation's contractual breaches unless he or she assumed personal liability, acted in bad faith, or committed a tort in connection with the performance of the contract."). "Scope of authority" is defined as "[t]he range of reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." Black's Law Dictionary (9th ed. 2009).

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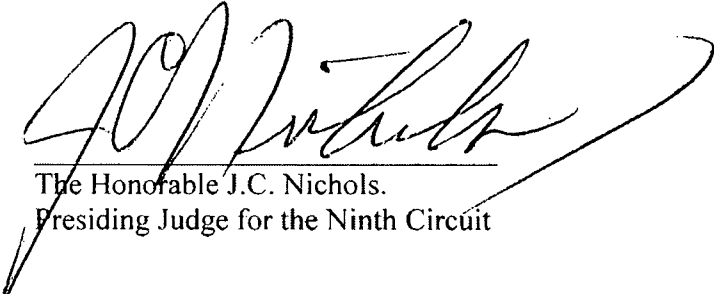
In the case at hand, Plaintiff failed to plead facts sufficient to show that Mr. Willey and/or Mr. Poulin acted outside of the scope of their authority, and that they breached the contract accompanied by a fraudulent act. As an initial matter, the contract is between the Plaintiff and LLC, and neither Mr. Poulin nor Mr. Willey are parties to the contract. There was also no showing that the Mr. Willey and/or Mr. Poulin were acting outside the scope of their authority and not on behalf of the corporation. Finally, Plaintiff failed to show that Mr. Willey or Mr. Poulin committed fraudulent intent relating to the breach of the contract and a fraudulent act accompanied that breach. Harpe, 290 S.C. at 112, 348 S.E.2d at 374. Therefore, based on those reasons this Court dismisses Mr. Willey and Mr. Poulin.

IT IS, THEREFORE, ORDERED that Eric M. Poulin and Roy T. Willey, IV, are dismissed without prejudice.

The parties and the Clerk of Court are directed to amend the caption to reflect this dismissal by removing the individuals as named Defendants.

IT IS SO ORDERED!

This ¹⁴ of ^{DEC}, 20¹⁷
CHARLESTON, South Carolina



The Honorable J.C. Nichols.
Presiding Judge for the Ninth Circuit