

ELECTRONICALLY FILED - 2017 Oct 25 10:56 AM - SUMTER - COMMON PLEAS - CASE#2017CP4300960

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
Case No.: 2017-CP-43-00960

William S. Anderson,

Plaintiff,

**ORDER DISMISSING COMPLAINT
(CORRECTIVE)**

vs.

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Richard K. Anderson, Jr. and Elizabeth
Anderson,

Defendants.

MAR 19 2018
SC Court of Appeals

The Plaintiff in his Complaint seeks to collect on a promissory note pursuant to a written agreement as well as in Quantum Meruit. The Defendants have moved to grant the Honorable R. Ferrell Cothran, Jr. exclusive jurisdiction over all matters pertaining to this action, and they have moved, pursuant to the terms and provisions of Rule 12, to dismiss all causes of action set forth in the Complaint. I have heard argument of counsel, have reviewed the pleadings submitted to me, and have reviewed the case and statutory law of South Carolina relative to the issues presented. Based upon the foregoing, I hereby make the following:

FINDINGS OF SALIENT FACT AND CONCLUSIONS OF LAW

1. I deny the Motion of the Defendants to grant exclusive jurisdiction over all matters pertaining to this action. After reviewing the issues raised in the pleadings, the case and statutory law, I find that there is no justification for granting exclusive jurisdiction to the Honorable R. Ferrell Cothran, Jr. The issues raised are not novel, and are clearly stated in the pleadings, and the

argument of counsel. Further, the case law and the statutory law address specifically the facts and circumstances before me.

2. The Plaintiff has not presented any statutory or contractual provision providing for recovery of attorney's fees by the Plaintiff. "A party cannot recover attorney's fees unless authorized by contract or statute." Cullen v. McNeal, 390 S.C. 470, 491, 702 S.E.2d 378, 389 (Ct.App.2010). Spriggs Grp., P.C. v. Silvka, 402 S.C. 42, 738 S.E.2d 495 (S.C. App., 2013). Therefore, I grant the Motion of the Defendants to strike those allegations of the complaint seeking attorney's fees set forth in paragraph 2 of the prayer for relief of the Complaint pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure.

3. Mere breach of contract does not justify an award of punitive damages. Pinckney v. Orkin Exterminating Co., 268 S.C. 430, 234 S.E.2d 654 (1977); Roberts v. Fore, 231 S.C. 311, 98 S.E.2d 766 (1957). Freeman Dodge, Inc. v. MCC Financial Services, Inc., 249 S.E.2d 897, 272 S.C. 164 (S.C., 1978). Therefore I grant the Motion of the Defendants to strike the allegations set forth in paragraph 1 of prayer for relief of the complaint requesting punitive damages because of the alleged breach of contract cause of action, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure.

4. I grant the Motion of the Defendants to dismiss all causes of action set forth in the Complaint pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that the causes of action set forth in the Complaint are barred by the doctrine of *res judicata* because all the issues raised in this Complaint and this action were adjudicated after trial by jury in case number 2013-CP-43-809. Indeed, the allegations set forth in the Complaint in this law suit are almost, if not exactly, identical to those pled and litigated in the above, prior action before this court. Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30,

34, 512 S.E.2d 106, 109 (1999) (quoting Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). "The doctrine requires three essential elements: (1) [357 S.C. 494] the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action." Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct.App.1995). Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 593 S.E.2d 480 (S.C. App., 2003).

5. I grant the motion of the Defendants to dismiss all causes of action set forth in the Complaint pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that the causes of action set forth in the Complaint are barred by the doctrine of collateral estoppel and because the issues were actually litigated in the first suit in case number 2013-CP-43-809. In that case privity exists, and the Defendants assert this doctrine defensively, and Plaintiff had a full and fair opportunity to litigate, and did, in fact, litigate the relevant issues presented in this case effectively in the prior action. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct.App.1997). The Defendants, the party asserting collateral estoppel, have presented court documents proving that the issue was actually litigated and directly determined in the prior action and that the matters and facts directly in issue were necessary to support the first judgment. Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct.App.2001); Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984). Here, the Plaintiff was a party to the prior action and thus is precluded from relitigating an issue on the basis of offensive collateral estoppel. Carrigg, 347 S.C. at 80, 552 S.E.2d at 770. Nelson v. QHG OF SOUTH CAROLINA INC., 354 S.C. 290, 580 S.E.2d 171 (S.C. App., 2003).

6. I grant the motion of the Defendants to dismiss the causes of action set forth in the Complaint pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that the instrument sought to be enforced is a negotiable instrument

and therefore is subject to the provisions of Title 36, the Uniform Commercial Code, Chapter 3, Negotiable Instruments which provides in SC Code 36-3-304(c): "Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal." There is no default in principal, and therefore, there is no default in interest. Therefore, the Complaint should and must be dismissed.

7. I hereby grant the Motion of the Defendants to dismiss the cause of action for Quantum Meruit pursuant to Rule 12(b)(6) of the South Carolina Rule of Civil Procedure for failure to state facts sufficient to allege a cause of action for Quantum Meruit. "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." Stanley Smlth & Sons v. Limestone College, 283 S.C. 430, 433, 322 S.E.2d 474, 477 (Ct. App. 1984). Rose Elec., Inc. v. Cooler Erectors of Atl., Inc., 418 S.C. 424, 794 S.E.2d 382 (S.C. App., 2016). In the prior action, and then again in this action, the Plaintiff relies upon the express and written contract by and between the parties to this action. The Plaintiff cannot in this action brought on an express or special contract recover or introduce evidence on an implied contract or quantum meruit. Riddle v. George, 181 SC 360, 187 S.E.2d 524 (1936); Howard & Foster Co. v. Citizens' National Bank, 133 S.C. 202, 130 S.E. 758 (1925); Hutson v. Stone, 119 S.C. 259, 112 S.E. 39 (1922) ; Birlant v. Cleckley, 48 S.C. 298, 26 S.E. 600 (1897); Hursey v. Surles, 91 S.C. 284, 74 S.E. 618 (1912). Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (S.C., 1942). As stated above, the provisions of Title 36, the Uniform Commercial Code, Chapter 3, Negotiable instruments provides in SC Code 36-3-304(c): "Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal." Under the express terms of the written contract between the parties, there is no default in principal, and therefore, there is no default in interest. Viewing the facts in the light most favorable to the Plaintiff, he fails to state facts sufficient to constitute a cause of action for Quantum Meruit.

NOW THEREFORE, based upon the foregoing Findings of Salient Fact and Conclusions of Law, it is hereby:

1. **ORDERED** that the Defendants' Motion to grant the Honorable R. Ferrell Cothran, Jr. exclusive jurisdiction over the motions before this court is denied.
2. **ORDERED** that the Defendants' Motion to strike the prayer for attorney fees and punitive damages is granted, and the Plaintiff's prayers for attorney fee and punitive damages are dismissed with prejudice.
2. **ORDERED** that the causes of action set forth in the Complaint are hereby dismissed with prejudice.

AND IT IS SO ORDERED

George M. McFaddin, Jr.
Circuit Court Judge

Sumter, South Carolina

Date: _____



Sumter Common Pleas

Case Caption: William S. Anderson VS Richard K. Anderson , defendant, et al
Case Number: 2017CP4300960
Type: Order/Amend

So Ordered

S/George M. McFaddin, Jr., #2759

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March 19, 2018

South Carolina Court of Appeals
ATTN: Jenny Abbott Kitchings
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: *William S. Anderson vs. Richard K. Anderson, Jr. and Elizabeth Anderson*
Docket No.: 2017-CP-43-00960

Dear Ms. Kitchings,

Enclosed herewith you will please find the Order and Motion for Reconsideration that are being challenged in this appeal. I have also sent hard copies of these documents through the mail.

I have also enclosed the letter showing I have ordered the transcript from Ms. Frances Ray, the court reporter at this hearing.

Upon receipt of this letter if you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards, I am

Sincerely yours,

JOHN S. KEFFER

JSKack
Enclosure

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KEFFER LAW FIRM

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FAX

To: SC Court of Appeals

From: John S. Keffer

Fax No.: 803-734-1839

Pages: 12 including coversheet

Re: Anderson vs.

cc: _____

Anderson

Urgent

For Review

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