

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No. 2016-CP-18-1706

CHERYL S. WILLIAMS
CLERK OF COURT
DORCHESTER COUNTY

Molly Morphew,
Plaintiff,

vs.

Stephen Dudek, Doreen Cross, David
Collins, Allison Williams, First Federal,
Michael Scarafile, Susan Nicholson,
Carolina One Real Estate, Carrie Boyer,
Woody Law Firm,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
MICHAEL SCARAFILE, SUSAN
NICHOLSON, CAROLINA ONE REAL
ESTATE AND DAVID COLLINS' MOTION
TO DISMISS**

Defendants.

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SC Court of Appeals

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, <i>Pro Se</i>
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Woody Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins' (collectively, the "Defendants") Motion to Dismiss, filed September 20, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.¹ Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins, Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Woody Law Firm and Carrie Boyer. For the reasons stated herein,

¹ Ms. Morphew was accompanied by a next of friend that assisted her throughout the proceedings but did not speak on the record.

Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins' Motion is granted in part and denied in part.

FINDINGS OF FACT

This case revolves around Plaintiff's attempt to purchase a property located in Summerville, South Carolina (the "Subject Property") and a resulting consolidated civil actions, that was recently affirmed by the South Carolina Court of Appeals by Order dated January 11, 2016 ("the underlying suit").² All of the Defendants named in the present action are in some way related to the subject matter of the underlying suit. In the present action, Plaintiff claims she was "ultimately wronged by failing to be awarded specific performance to purchase [the subject property]" (Complaint, ¶ 5).

Defendants Dudek and Cross were competing buyers of the subject property, on which Plaintiff, Molly Morphew, admittedly had a "back-up contract." (*Id.* at ¶ 39). Because of the competing contracts, litigation ensued between the Buyers, Sellers, and Plaintiff. (Complaint, ¶ 48-55). The Plaintiff filed her initial complaint on January 31, 2013, alleging that the Buyers had breached their contract with Sellers by failing to submit proof of financing within the prescribed time period. The January 2013 Complaint asked the court to find that the Buyers' contract was thus breached and requested that Plaintiff's contract with Sellers be specifically performed. (Complaint, ¶ 55). The prior litigation resulted in an opinion issued by the Master in Equity granting the Dudek and Cross contract priority over the Plaintiff's contract. (Complaint, ¶ 64).

² The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

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Defendants Dudek and Cross were represented in the previous litigation by Defendant David Collins. Defendant Susan Nicholson, an agent with Carolina One Real Estate, was the agent for Buyers Dudek and Cross and did not represent the Plaintiff at any time. Defendant Michael Scarafile is the President and General Counsel for Carolina One Real Estate. While the Defendants were not a party to the prior suit, Defendants Susan Nicholson and Carolina One Real Estate were served with a subpoena for documents and Defendant Susan Nicholson testified at the trial of the matter. The Defendants' role in the underlying real estate transaction and the Defendants' role in the prior litigation underlies Plaintiff's entire complaint.

STANDARD OF REVIEW

Pursuant to SCRPC Rule 8(a), “[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . .” See South Carolina Nat’l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) (“[T]he principal purpose of pleadings is to inform the pleader’s adversary of legal and factual positions which he will be required to meet on trial.”). Rule 8(a), “requires a litigant to plead the ultimate facts which will be proved at trial.” Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) (“Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of ‘legal conclusions.’”). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint based upon “failure to state sufficient facts to constitute a cause of action.” Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O’Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d

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689, 691 (Ct. App. 1998). A trial judge 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, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

“The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint.” Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

PROCEDURAL BACKGROUND

The Plaintiff's sixty four (64) page Complaint enumerates eighteen (18) causes of action against Defendants for monetary damages due to the real estate transaction described above and for alleged perjury and discovery issues occurring during the previous litigation as follows:

Plaintiff's Causes of Action as to all Defendants are as follows: **First Cause of Action** – Fraud, Extrinsic Fraud – Fraud on the Court; **Second Cause of Action** – Perjury; **Seventh Cause of Action** – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud; **Twelfth Cause of Action** – Fraud – Untrue assertion of fact [or equivalent]; Assertion

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made with knowledge of falsity and intent to deceive; **Sixteenth Cause of Action** – Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d); **Seventeenth Cause of Action** – Intentional Infliction of Emotional Distress; and **Eighteenth Cause of Action** – Tortious Interference with Existing Contractual Relations.

Plaintiff's Causes of Action as to Defendant Collins are as follows: **Third Cause of Action** – Violation of South Carolina Frivolous Civil Proceedings Sanctions Act; **Fourth Cause of Action** – Violation of ABA Rules of Professional Conduct, Rule 3.3; and **Thirteenth Cause of Action** – Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal.

Plaintiff's Causes of Action as to Defendant Collins and Defendant Scarafile are as follows: **Fifth Cause of Action** – Violation of Federal Rules of Civil Procedure; **Eighth Cause of Action** – Slander of Title; and as to Defendant Scarafile: **Sixth Cause of Action** – Violation of ABA Rules of Professional Conduct, Rule 4.1.

Plaintiff's Causes of Action as to Defendants Nicholson, Collins and Scarafile are as follows: **Tenth Cause of Action** – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of full disclosure/Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct; **Eleventh Cause of Action** – Violation of the Real Estate Code of Conduct.

Finally, Plaintiff's Causes of Action as to Defendants Nicholson and Collins are as follows: **Fourteenth Cause of Action** – Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d).

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, “the [sole] question is whether, in the light most favorable to the plaintiff, and with every

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doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

(A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five (5) years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

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As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Defendants' Motion to Dismiss Plaintiff's claims for perjury and obstruction of justice is granted.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then

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dismissal is improper. Id. “The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants' Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

D. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Cause of Action plead by Plaintiff asserts that, through testimony and discovery, the Defendants deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is granted. See supra Part B.

E. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, “the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. “The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be

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improper. Accordingly, Defendants' Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

F. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, “the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. “The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants' Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

G. Defendants' Motion to Dismiss Plaintiff's Third Cause of Action – Violation of South Carolina Frivolous Civil Proceedings Sanctions Act is heard and granted.

The Plaintiff's third cause of action alleges that Defendant Collins, the attorney for Defendants Cross and Dudek in the prior action, violated Section 15-36-10, of the South Carolina Frivolous Civil Proceedings Sanctions Act through his filing of the prior Civil Action seeking Specific Performance of the Cross/Dudek contract to purchase the Subject Property.

S.C. Code Ann. § 15-36-10(C)(1) provides that a party “at the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a

directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.”

The Plaintiff’s claim is not appropriate as a cause of action in a separate action or as filed against the attorney that represented the other party, but could have only been made as a motion in the prior action against the party represented by Defendant Collins. However, even if made in the appropriate case or at the appropriate time, Mr. Collins prevailed on the claim for Specific Performance filed on behalf of his clients and such was the relief ordered by the Court. As a matter of law, the Plaintiff could not prevail on a claim for a frivolous proceeding that was in fact successful in recovering 100% of the remedy sought. Accordingly, Defendants’ Motion to Dismiss Plaintiff’s Third Cause of Action is granted.

H. Defendants’ Motion to Dismiss Plaintiffs Fourth Cause of Action – Violation of ABA Rules of Professional Conduct, Rule 3.3 and Plaintiff’s Sixth Cause of Action Sixth Cause of Action – Violation of ABA Rules of Professional Conduct, Rule 4.1 is heard and granted.

The Plaintiff asserts several causes of action based on violation of various, none statutory, codes of conduct, professional standards and even alleged violations of the Federal Rules of Civil Procedure, none of which state a valid cause of action. The Plaintiff’s Fourth and Sixth Causes of Action allege violations of Rules 3.3 and 4.1 and of the American Bar Association Rules of Professional Conduct (“ABA Rules”).³ Her Fifth Cause of Action alleges a violation of the Federal Rules of Civil Procedure, her Sixteenth Cause of Action alleges the violation of Rules 1.4 and 3.4 of the South Carolina Rules of Professional Conduct and the Eleventh Cause of Action asserts a violation of the Real Estate Code of Conduct.

³ South Carolina has not adopted the ABA Rules. Instead, South Carolina attorneys are bound by the S.C. Rules of Professional Conduct. However, Rules 4.1 and 5.3 of the ABA Rules are identical to Rules 4.1 and 5.3 of the South Carolina Rules of Professional Conduct. Therefore, the Court will address Plaintiff’s claim as though she cited the applicable rules.

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Plaintiff's claims for violations of the ABA and South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Defendants' Motion to Dismiss on these grounds is granted.

I. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action – Declaratory Judgment that No Contract Exists is barred by res judicata and therefore granted.

Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment. Aaron v. Mahl, 381 S.C. 381, 593, 674 S.E.2d 482, 486 (2009); Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46. Specifically, the doctrine of res judicata prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Serv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997)).

The doctrine of claim preclusion bars claims that were asserted in the previous suit as well as those that could have been asserted but were not. The following four tests are used by South Carolina courts to determine whether claim preclusion applies: (1) when the identity of the subject matter is the same; (2) when the cases involves the same primary right by plaintiff and primary wrong committed by defendant; (3) when there is the same evidence in both cases; and

(4) when claims arise out of the same transaction or occurrence. James F. Flanagan, South Carolina Civil Procedure 671 (3d ed. 2010) (citing cases).

Here, all of the issues raised in Plaintiff's Complaint arose during the course of the underlying suit and were either asserted, or could have been asserted during the previous lawsuit. Accordingly, her claims are barred by the doctrines of res judicata and issue preclusion. Moreover, to the extent that any of the alleged actions by Defendants were newly-discovered evidence uncovered during the course of the underlying suit, any claims related to this information should have been brought before the trial or appellate court pursuant to Rules 59 and 60(b) of the South Carolina Rules of Civil Procedure. See also Gray v. Bryant, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989) (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence.). Accordingly, because Plaintiff's claims are barred by res judicata and issue preclusion, she has failed to state a claim upon which relief can be granted and Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action is granted.

J. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar is heard and granted.

In Plaintiff's Fifth Cause of Action, she alleges that Defendants Collins and Scarafile violated the Federal Rules of Civil Procedure (FRCP) Rule 26 (Duty to Disclose) and Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery) as well as violations of South Carolina Rules of Professional Conduct, Rule 8.4(c) (lawyer misconduct by committing a criminal act involving moral turpitude).

Plaintiff's claims for violations of the Federal Rules of Civil Procedure and the South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that a violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C.

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Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules “are not designed to be a basis for civil liability.” S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) (“A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation.”). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff’s claims grounded on such violations are dismissed.

Finally, the Plaintiff has failed to state a claim for Violations of the Federal Rules of Civil Procedure which is not a recognized or cognizable claim for relief in South Carolina. In South Carolina Courts, the South Carolina Rules of Civil Procedure govern. “These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity.” SCRCP 1. As such, even if Plaintiff pled a violation of the South Carolina Rules of Civil Procedure her claim would still fail because a violation of the rules is not a recognized or cognizable claim for relief in South Carolina. Accordingly, Defendants’ Motion to Dismiss the Plaintiff’s Fifth Cause of Action is granted.

K. Defendants’ Motion to Dismiss Plaintiff’s Eighth Cause of Action – Slander of Title is heard and granted.

Plaintiff’s Eighth Cause of Action, for “Slander of Title,” alleges damages as a result of the Dudeks filing a Lis Pendens in the Prior Civil Actions, followed by their filing of a suit to enforce their contract for the real estate in question. (Compl. ¶¶ 213-217). “[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff’s title and (5) causes special damages (6) as a result of

diminished value of the property in the eyes of third parties." Huff v. Jennings, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App.1995).

At no point in her Complaint does Plaintiff claim that she holds title to the property alleged to have been slandered. (Compl. ¶¶ 213-217). In fact, who should hold title, was precisely the purpose of the Prior Civil Action. It must be noted that Plaintiff herself filed a Lis Pendens and suit over the same property. As such, Plaintiff is claiming that the Dudeks slandered a title by virtue of the exact same actions that she also took. Plaintiff does not and has never held title to the property that she alleges has been slandered. Nor does she allege that she holds or has held this title. Under no set of facts could she meet the fourth element necessary to prevail under a slander of title claim. Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action is granted.

L. Defendants' Motion to Dismiss Plaintiff's Tenth Cause of Action; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct is heard and granted.

The Restatement Second of Torts recognizes that one "who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act." Restatement 2nd Torts § 874 cmt. (C) (1979). South Carolina cases have considered breaches of fiduciary duty as the basis for contractual and tort actions. See e.g., Corley v. Ott, 326 S.C. 89, 485 S.E.2d 91 (1997)(dissolution of partnership based on breach of fiduciary duty); Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967)(holding an accounting in equity could be had in tort case where the complaint charged fraud involving a fiduciary and trust relationship); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991)(finding constructive fraud arising out of breach of fiduciary duty); Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995) (breach of fiduciary duty and breach of partnership contract as basis of rescission of sale of

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partnership assets); Loftis v. Eck, 288 S.C. 154, 341 S.E.2d 641 (Ct. App. 1986)(construing complaint to allege breach of fiduciary duty to affirm setting aside deed).

“A confidential or 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.” Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). A relationship must be more than casual to equal a fiduciary relationship. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). “Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring.” Island Car Wash, Inc., 292 S.C. at 599, 358 S.E.2d at 152; see Burwell v. South Carolina Nat’l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) (“As a general rule, mere respect for another’s judgment or trust in his character is usually not sufficient to establish such a [fiduciary] relationship. The facts and circumstances must indicate that one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party”).

In the present case, the Plaintiff was not a party to contract between Collins, Nicholson, Scarfile, or the Buyers Dudek and Cross. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between Carolina One, its agents or employees and the Plaintiff. As such, the Plaintiff’s Tenth Cause of Action fails and Defendants Motion to Dismiss as to Plaintiff’s Tenth Cause of Action is granted.

M. Defendants' Motion to Dismiss Plaintiff's Eleventh Cause of Action – Violation of the Real Estate Code of Conduct is heard and granted.

The Plaintiff's Eleventh Cause of Action alleges "violation of the Real Estate Code of Conduct Section 40-57-137 Real estate brokerage company duties to client; agency relationship; applicability of common law: (H)(4), (H)(6)(b), (H)(6)(c); (K), (O)(2)(e), (O)(4); Section 40-57-140(B); Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct." S.C. Code Ann. § 48-1-250.

In determining whether a statute creates a private cause of action, the main factor is legislative intent:

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

Dorman v. Aiken Communications, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting Whitworth v. Fast Fare Markets of South Carolina, Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). "When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." Doe v. Marion, 373 S.C. 390, 396-97, 645 S.E.2d 245, 248 (2007) (citing Citizens of Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992)). As there is no indication that the statutes cited by Plaintiff give rise a cause of action, Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action is granted.

N. Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action –Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) is heard and granted.

These two causes of action, for "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)," is brought under the South Carolina Rules of Professional Conduct. "A review of the Scope of Rule 407, SCACR [i.e., the Rules

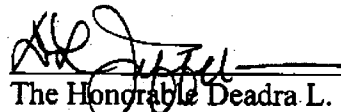
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of Professional Conduct] clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation.” Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011). Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct. As such, Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action is granted.

CONCLUSION

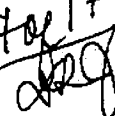
NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Michael Scarafile, Susan Nicholson Carolina One Real Estate and David Collins' Motion to Dismiss Plaintiff's Complaint is granted in part and denied in part.

IT IS SO ORDERED.



The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 26, 2017
Charleston, South Carolina
At Chambers

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1/31/17

For Clerk of Court Office Use Only

1/31/17

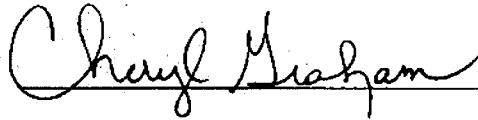
This judgment was entered on 1/31/17 and a copy mailed first class or placed in the appropriate attorney's box on 1/31/17 to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morpew 788 E. Butternut Road Summerville, SC 29483

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

