

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 Molly Morphew)
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 Plaintiff,)
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 vs.)
)
 Stephen Dudek, Doreen Cross, David)
 Collins, Allison Williams, First Federal,)
 Michael Scarafile, Susan Nicholson,)
 Carolina One Real Estate, Carrie Boyer,)
 Woody Law Firm,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 Civil Action No. 2016-CP-18-01706

**ORDER GRANTING
 DEFENDANTS WOODY LAW
 FIRM AND CARRIE BOYER'S
 MOTION FOR SUMMARY JUDGMENT**

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 SC Court of Appeals

This matter is before the court on the Motion for Summary Judgment of Defendants Woody Law Firm and Carrie Boyer (collectively "Defendants"). For the reasons set forth herein, the Court **GRANTS** Defendants' Motion for Summary Judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

According to Plaintiff, the present litigation arises out of fraud perpetrated by the Defendants, all of whom were involved in some way in a prior real estate transaction. In 2012, Defendants Dudek and Cross had a real estate contract for property located in Summerville, South Carolina. Shortly after, Plaintiff entered into a back-up contract for the same piece of property, contingent upon the termination of the Dudek and Cross contract. Defendants Woody Law Firm and Carrie Boyer, a paralegal at Woody Law Firm, performed real estate closing services for Defendants Dudek and Cross. Defendant Carolina One Real Estate was the real estate agent for Defendants Dudek and Cross, and Defendants Michael Scarafile and Susan Nicholson, as employees of Carolina One Real Estate, performed related activities. Likewise,

Defendant David Collins was employed as Defendants Dudek and Cross's attorney for the purpose of performing certain legal functions related to the purchase of this property. Lastly, Defendants First Federal and Allison Williams, an employee of First Federal, acted as the lender for Defendants Dudek and Cross.

Plaintiff previously sought enforcement of the contract for the purchase of the property located in Summerville, SC. The Honorable James E. Chellis, Master-in-Equity, Dorchester County, issued an order finding that while Plaintiff had an enforceable contract, it was conditional on the termination of Defendants Dudek and Cross's contract, which the court determined was entitled to specific performance. Plaintiff commenced this litigation on September 8, 2016, alleging that shortly before and during trial, all of the Defendants perpetrated fraud on both her and the court both by making fraudulent misrepresentations and failing to disclose material facts and documents.

In January of 2017, the Honorable Deadra Jefferson dismissed several of Plaintiff's claims pursuant to Rule 12(b)(6), SCRPC. The following claims remain pending as to Defendants: (1) Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;" (2) Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" (3) Plaintiff's Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and (4) Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interference with Existing Contractual Relations."

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file,

together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56, SCRPC. Furthermore, when an party moves for summary judgment, an adverse party is not allowed to simply rest upon the allegations of his pleadings and, instead, “must set forth specific facts showing that there is a genuine issue for trial.” Rule 59(e), SCRPC. “[O]n a defendant’s motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after *only* finding that genuine issue of material fact exists as to *one* element of the plaintiff’s claim; rather, under *Baughman*, the court must determine that a genuine issue of material fact exists for *each* essential element of the plaintiff’s claim. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (emphasis added).

ANALYSIS

I. Plaintiff’s First Cause of Action, identified as “Fraud, Extrinsic Fraud, and Fraud on the Court”

Under South Carolina law, fraud on the court has been defined as “the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Chewing v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). However, to prevail on a theory of fraud on the court, one must allege extrinsic fraud, meaning “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.” *Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Noting the high threshold for establishing fraud on the court, the Supreme Court noted

“[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.” *Chewning*, 354 S.C. at 78-79, 579 S.E.2d at 608. Lastly, successfully pleading fraud upon the court requires a showing of intent. In fact, the Supreme Court held “when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for ‘fraud on the court.’” *Id.* (quoting *U.S. v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)).

To sustain her cause of action for fraud on the court, the only evidence presented by Plaintiff is four electronic communications between Defendant Boyer and either the Sellers of the Property or the real estate agents of the Buyers. Not only has Plaintiff failed to make a showing sufficient to establish whether Defendants had the requisite intent, but Plaintiff has also failed to show the existence of any representations made to any court by Defendants either orally or through documentary evidence, both of which are essential elements for fraud on the court. For this reasons, Defendants’ Motion for Summary Judgment as to Plaintiff’s cause of action for fraud on the court is granted.

II. Plaintiff’s Seventh Cause of Action, identified as “Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud”

While unclear from the pleadings, in the light most favorable to the Plaintiff, her pleadings could raise causes of action for (1) bad faith; (2) breach of duty of good faith and fair dealing; or (3) breach of contract accompanied by a fraudulent act; or (4) civil conspiracy. In

South Carolina, the tort action for bad faith has only been recognized in the context of an and insured-insurer relationship, which is not present or even alleged. *See Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship, which is also not present here or even alleged. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004); see also *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986).

On the other hand, a civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose on injuring the plaintiff, (3) which cause him special damage. *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). “[T]o be actionable, therefore, a conspiracy’s *primary* purpose or object must be to injure the plaintiff.” *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 10 344 S.E.2d 379, 382 (Ct. App. 1986) (emphasis added). The South Carolina Court of Appeals held “[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

As mentioned above, in support of this claim, Plaintiff has presented only correspondence between Defendant Boyer and co-Defendants in which various aspects of closing on the property were discussed. In addition, Plaintiff has failed to present any evidence that Defendants were aware of Plaintiff’s back-up contract for the property or that their conduct was for the primary purpose of injuring the Plaintiff, as opposed to engaging in the ordinary course of business. In fact, at her deposition, Plaintiff admitted that she has no evidence that these communications

were made for any other purpose but preparing for a real estate closing. Pltf's Depo., pg. 22, lns. 8-12. Despite all of this, Plaintiff fails to establish, or even allege, special damages. For these reasons, the Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for "bad faith and unfair dealings and/or accompanied by a fraudulent act; conspiracy to defraud is granted.

III. Plaintiff's Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress"

To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The conduct complained of must be "so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society." *Gattison v. S.C. State College*, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The question of whether the conduct arose to the level of "extreme and outrageous" is a question of law reserved for the court. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

Plaintiff has not only failed to present any evidence of "extreme and outrageous" conduct but failed to present any evidence of any conduct which was directed at her. Instead, as with the other causes of action against these Defendants, Plaintiff relies on a few communications between Defendant Boyer and co-Defendants which discuss preparing for a real estate closing, a common business activity that is not only tolerated but encouraged in a civilized society. In addition, Plaintiff has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe. *See Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 ("[i]t is for the court to determine whether on the evidence severe emotional distress can be found . . ."). Instead,

Plaintiff has relied solely on mere bald assertions of distress, providing not even a mere scintilla of evidence from a third-party witness or any other corroborating evidence to show severe emotional distress. *Id.* (“[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, “I suffered emotional distress” would be irreconcilable with this Court’s development of the law in this area.”). In particular, Plaintiff attempts to establish severe emotional distress solely based on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve years ago, well before the conduct complained of in this litigation. Plt’s Depo., pgs. 229 -233. For these reasons, Defendants’ Motion for Summary Judgment as to Plaintiff’s cause of action for Intentional Infliction of Emotional Distress is granted.

IV. Plaintiff’s Eighteenth Cause of Action, identified as “Tortious Interference with Existing Contractual Relations”

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract’s breach; (4) absence of justification; and (5) resulting damages. *Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008).

Intentional procurement requires intentional interference for an improper purpose or by improper methods, so “[g]enerally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party.” *Edelco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994)). Lastly, and rather obvious, “where there is no breach of contract there can be no

recovery.” *Id.*

Plaintiff has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff’s case. As discussed above, while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract. Since specific performance was ordered on the Dudek and Cross contract, Plaintiff’s contract was not enforceable and thus could not have been, and was not, breached. Furthermore, like the causes of action mentioned above, Plaintiff presents as evidence only communications between the Defendant and co-Defendants which related to preparing for a real estate closing, communications which took place before Plaintiff entered into a back-up contract for purchase of the property at issue.

Despite all of this, Plaintiff has also failed to produce evidence to establish either the third or fourth element, intentional procurement or absence of justification. The communications upon which Plaintiff bases this and all other causes of action against these Defendants cannot be considered improper under South Carolina law. In fact, Plaintiff, in her deposition, admits she has no other evidence that these communications were sent for any other purpose but preparing for a real estate closing. Pltf’s Depo., pg. 22, lns. 8-12. For the same reason, Plaintiff has also failed to show a genuine issue of material fact with respect to absence of justification. Thus, Defendants’ Motion for Summary Judgment as to Plaintiff’s cause of action for Tortious Interference with Existing Contractual Relations is granted.

CONCLUSION

Based on the aforementioned reasons, the Court hereby **GRANTS** Defendants’ Motion for Summary Judgment as to all remaining causes of action.



Dorchester Common Pleas

Case Caption: Molly M Morpew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166

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Molly M Morpew
PLAINTIFF(S)

Stephen Dudek et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the court on Plaintiff's 2nd Motion for Entry of Default Against Defendant David Collins. Plaintiff's Motion is hereby DENIED, since Defendant David Collins timely filed a Motion to Dismiss on September 20, 2016

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/12/2018 .

David Collins for David Collins
 David Collins for David Collins
 Molly M Morpew for Molly M Morpew
 Molly M Morpew for Molly M Morpew

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NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: Molly M Morpew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166