

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
Benita Dinkins-Robinson,)
)
Plaintiff,)
)
Vs.)
)
Alan Ratner,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case Number: 2018-CP-31-00053

ORDER DISMISSING COMPLAINT

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SC Court of Appeals

The Parties appeared before the Court on August 1, 2018 upon the Defendant's Notice of Motion and Motion to Dismiss Amended Complaint filed on July 25, 2018 with this Court.

The Plaintiff appeared *pro se* but subsequently retained Johnny E. Watson as her attorney. The Defendant was represented by S. Bryan Doby of Jennings and Jennings, P.A.

The Plaintiff filed an Amended Complaint and Petition for Negligence, Malicious Prosecution, Breach of Contract, Breach of Trust, and Unlawful Eviction on July 2, 2018 wherein she alleges Causes of Action against the Defendant for Malicious Prosecution, Breach of Contract and Negligence and seeks an award for punitive damages. The Defendant filed a Notice of Motion and Motion to Dismiss Amended Complaint on July 25, 2018.

A review of the file reflects that the pleadings are in order. This Court has subject matter jurisdiction and personal jurisdiction to hear this matter.

The Court has reviewed the Amended Complaint along with other pleadings and motions filed in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to the allegations of malicious prosecution, the Plaintiff alleged the Defendant falsified information that resulted in the Plaintiff being falsely convicted. In order to maintain an action for malicious prosecution the Plaintiff must show 1) that there was an institution of original judicial proceedings 2) by, or at the instance, of the Defendant 3) termination of proceedings in favor of the Plaintiff 4) malice in instituting such proceedings 5) lack of probable cause; and 6) resulting in injury or damages. Eavers v. Broad River Electric, 277 S.C. 475, 289 S.E.2d 414 (1982).

The Plaintiff has not alleged any of the elements required to prove malicious prosecution in the Complaint and therefore the Cause of Action for malicious prosecution should be dismissed under Rule 12 (b)(6) for failure to state facts sufficient to constitute a Cause of Action as none of the allegations alleged by the Plaintiff entitled the Plaintiff to any recovery.

THEREFORE, the First Cause of Action entitled Malicious Prosecution is dismissed.

As to the Second, Third and Fourth Causes of Action as alleged by the Plaintiff for Breach of Contract, Breach of Trust and Unlawful Eviction, the Court would note that there was a previous foreclosure action brought by the Defendant against the Plaintiff filed under Lee County Case Number: 2014-CP-31-253 and an Order of Foreclosure was entered on June 4, 2014 Ordering Foreclosure of a Mortgage recorded at Mortgage Book 309-272 as shown by the file located at the Clerk of Court's Office for Lee County. A foreclosure sale occurred December 7, 2015 concerning property previously owned by the Plaintiff and foreclosed upon by the Defendant wherein the Plaintiff then lost title to the subject real estate.

The Plaintiffs had a lawyer representing them at the foreclosure proceeding, Johnny E. Watson, the same attorney representing the Plaintiff in this action.

The allegations of Breach of Contract, Breach of Trust and Unlawful Eviction all concern allegations which would have been properly raised and decided by the Court hearing the foreclosure under the previous case.

THEREFORE, the Causes of Action for Breach of Contract, Breach of Trust and Unlawful Eviction are barred by the doctrine of res judicata preventing the Plaintiff from relitigating these issues if they have previously been decided by a Court of competent jurisdiction.

THEREFORE the allegations of Breach of Contract, Breach of Trust and Unlawful Eviction nominated as Causes of Action Two, Three, and Four are hereby dismissed as being barred by the doctrine of res judicata.

The Fifth Cause of Action, nominally captioned as the Third Cause of Action, is for Negligence of the Defendant. The Plaintiff has failed to allege allegations which would rise to the level of a valid complaint for negligence. Specifically, the Plaintiff has failed to allege any allegations of duty on behalf of the Defendant but appears to allege certain allegations pertaining to the foreclosure previously litigated between the parties. In addition, the Plaintiff makes allegations that the Defendant instituted some criminal proceedings in Federal Court which would not be properly alleged under allegations of negligence.

As to the allegations of negligence, the Plaintiff has failed to state a Cause of Action on which relief may be granted; therefore, this portion of the Complaint is dismissed under 12 (b)(6) for failure to state facts sufficient to constitute a Cause of Action.

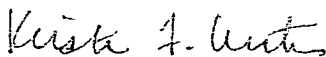
The Sixth Cause of Action, nominally titled the Fifth Cause of Action, for Punitive Damages appears to be alleging a separate Cause of Action for punitive damages which is not appropriate and fails to state facts sufficient to constitute a Cause of Action.

THEREFORE, the allegations of the Sixth Cause of Action, nominally titled the Fifth Cause of Action, for Punitive Damages hereby is dismissed under Rule 12 (b)(6), SCRPC, for failure to state facts sufficient to constitute a Cause of Action.

THEREFORE, having found that each of the Causes of Action by the Plaintiff fail for various reasons, the Court dismisses the Complaint of the Plaintiff.

AND IT IS SO ORDERED.

November 13, 2018
Sumter, South Carolina



THE HONORABLE KRISTI F. CURTIS
PRESIDING CIRCUIT COURT JUDGE
THIRD JUDICIAL CIRCUIT

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