

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Taranika Webb,

Plaintiff,

vs.

Fairview Gardens,

Defendant.

) IN COURT OF COMMON PLEAS
) TENTH JUDICIAL CIRCUIT
)

) Case No.: 2018-CP-04-01409
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) **PROPOSED ORDER GRANTING**
) **MOTION TO DISMISS**
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BEFORE THE COURT is Defendant Fairview Gardens' ("Defendant") Motion to Dismiss Plaintiff Taranika Webb's ("Plaintiff") Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing on this matter was held in Anderson County, South Carolina on March 19, 2019. Defendant was represented by counsel at the hearing, while Plaintiff represented herself pro se. After fully considering Defendant's motion and the arguments and authorities of all parties, the Court issues this Order dismissing Plaintiff's Complaint, with prejudice.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a current resident of Defendant's property located in Anderson, South Carolina. On July 19, 2018, Plaintiff filed her Summons and Complaint alleging violations of her privacy rights and breach of contract. Defendant filed a Motion to Dismiss or in the Alternative Motion for a More Definite Statement on November 6, 2018. A hearing was held on Defendant's Motion to Dismiss on January 10, 2019, before the Honorable Judge R. Scott Sprouse. Plaintiff represented herself pro se at the January 10, 2019 hearing, while Defendant was represented by counsel. At the conclusion of the January 10, 2019 hearing, Judge Sprouse instructed Plaintiff to file an Amended Complaint within thirty (30) days to address the issues raised by Defendant in its

Property

Motion to Dismiss. On January 11, 2019, Judge Sprouse issued a Form 4 Order, in which he denied Defendant's Motion to Dismiss, and instructed Plaintiff to amend her Complaint within thirty (30) days.

On January 23, 2019, Plaintiff filed her Amended Complaint alleging three causes of action: (1) breach of contract, (2) negligence, and (3) invasion of privacy. In support of these causes of action, Plaintiff alleges there is a "peeping tom" somewhere on the property owned by Defendant, that the Defendant maintained a "handbook" which promises a habitable living environment, and that on an unspecified date, Plaintiff returned to her apartment and found a set of keys hanging from her apartment door.

II. LEGAL STANDARD

"In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the [pleading]." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). If the claimants fail "to state facts sufficient to constitute a cause of action" in their pleading, the circuit court should dismiss the claims. *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

III. LEGAL ANALYSIS

1. Breach of Contract

In support of Plaintiff's first cause of action for breach of contract, Plaintiff alleges that "P.K. Management promised in their handbook to maintain a habitable pleasant living environment;" that Plaintiff complained of a "peeping tom" living in another apartment; and that Defendant did not respond to her complaints. These facts do not support a cause of action for breach of contract.

The lease

In order to state a cause of action for breach of contract, a party must plead and prove the following elements: (1) the existence of a contract, (2) its breach, and (3) damages caused by such breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting *S. Glass & Plastics Co., v. Kemper*, 399 S.C. 483, 491-91, 732 S.E.2d 205, 209 (Ct. App. 2012)). Plaintiff failed to plead these elements or any facts in support of these elements.

Plaintiff did not plead the existence of a contract. Although Plaintiff states that Defendant's "handbook" promises a "habitable pleasant living environment," this allegation is insufficient to allege the existence of a contract, as "it is essential in setting forth a breach of contract, either the substance of the instrument be averred in the pleading, or that the contract itself be set forth." *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986) (quoting 61A Am.Jur.2d Pleading Section 92 (1981)). Accordingly, Plaintiff's allegation that the "handbook" constitutes a contract, without more, is insufficient to allege the first element of a breach of contract claim. *See Jones*, 343 S.E.2d at 648 (affirming dismissal where plaintiff failed to set forth pertinent provisions of alleged contract or incorporate contract into complaint.)

Moreover, even if Plaintiff's allegation regarding a "handbook" was sufficient to allege the existence of a contract, Plaintiff fails to plead that Defendant breached this contract or that any damages were caused by Defendant's breach. Nor does she allege any facts from which such an inference could be taken. Plaintiff's breach of contract cause of action is, therefore, dismissed with prejudice.

2. Negligence

The facts in support of Plaintiff's negligence claim are that on an unspecified day she came home and there were "keys hanging from [her] door" while the "[l]easing officer [was] at lunch." These facts are insufficient to support a cause of action for negligence.

Corporate Office statements.

In order for Plaintiff to state a cause of action for negligence, she must plead and prove the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). Plaintiff's allegations do not contain facts to support any of the elements of a negligence claim. Plaintiff's allegation that she found keys in her door while the leasing officer was at lunch, even if taken as true, fails to establish a duty or liability on the part of Defendant. Further, Plaintiff does not allege any damages arising from this incident or facts that would support an inference that Plaintiff suffered any damages. Plaintiff's negligence claim is, therefore, dismissed, with prejudice.

3. Invasion of Privacy

The entirety of Plaintiff's allegations regarding her invasion of privacy claim are: "Invasion of privacy – Because of what they allowed to happen on this property with the peeping tom and refusing to take this complaint serious. When it is a crime and also against HUD rules and policy to allow such a thing as this." These allegations fail to state a claim under any of the causes of action for invasion of privacy recognized under South Carolina law.

South Carolina recognizes three distinct causes of action related to privacy rights: (1) wrongful appropriation of personality; (2) wrongful publicizing of private affairs; and (3) wrongful intrusion into private affairs. *Snakenburg v. Hartford Cas. Ins. Co., Inc.*, 299 S.C. 164, 170, 383 S.E.2d 2, 5 (Ct. App. 1989) (citing *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984); *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989)).

In order to state a cause of action for wrongful appropriation of personality, Plaintiff must plead facts that establish the intentional, unconsented use of Plaintiff's name, likeness, or identity by the Defendant for its own benefit. *Snakenburg*, 299 S.C. at 170, 383 S.E.2d at 5. The Amended Complaint does not allege Defendant used Plaintiff's name, likeness, or identity for Defendant's

benefit. Accordingly, Plaintiff fails to allege a cause of action for wrongful appropriation of personality.

Similarly, Plaintiff fails to plead a cause of action for wrongful publicizing of private affairs. This cause of action requires Plaintiff to plead facts sufficient to show that Defendant intentionally disclosed facts in which there is no legitimate public interest, and that the disclosure is such as would be offensive and likely to cause serious mental injuries to a person of ordinary sensibilities. *Snakenburg*, 299 S.C. at 170-171, 383 S.E.2d at 6. Plaintiff's Complaint is devoid of any allegations that Defendant disclosed any facts about Plaintiff and, therefore, fails to state a claim under this theory.

Finally, Plaintiff's Complaint does not state a claim for wrongful intrusion into private affairs. This cause of action requires Plaintiff to plead and prove facts sufficient to establish: (1) an intrusion, (2) into that which is private, (3) that is substantial and unreasonable enough to be legally cognizable, and (4) that Defendant's act or course of conduct was intentional. *Snakenburg*, 299 S.C. at 171-172, 383 S.E.2d at 6. For purposes of the final element, "An act is intentional if (1) it is done willingly; and either (2) the actor desires the result of his conduct, whatever the likelihood of that result happening; or (3) the actor knows or ought to know the result will follow from his conduct, whatever his desire may be from that conduct." *Id.* (citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981)).

Plaintiff's allegation regarding a "peeping tom" on Defendant's property, with no other facts to support her claim, is insufficient to allege wrongful intrusion in to private affairs on the part of Defendant. Conclusory allegations regarding the independent actions of a third-party do not sufficiently allege an intrusion by Defendant or that there was any intentional conduct by Defendant. *See Gilstrap*, 288 S.C. at 528, 343 S.E.2d at 648 (noting that even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any

particularized allegations of fact, is insufficient to state a cause of action). Plaintiff has, therefore, failed to plead the elements of wrongful intrusion into private affairs claim. Accordingly, her invasion of privacy claim must be dismissed, with prejudice.

NOW THEREFORE, based on the foregoing, the Court hereby **GRANTS** Defendant's Motion to Dismiss, with prejudice.

IT IS SO ORDERED.

Judge J. Cordell Maddox, Jr.
Anderson County, South Carolina

_____, 2019
Anderson, South Carolina