

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No. 2018-CP-40-01869

RHONDA L. MEISNER,

Plaintiff,

v.

KIMBERLY ALSTON, DAVID ALSTON,
THE INEXPERIENCED DRIVER, JOHN
AND JANE DOES 1-10; WHOSE NAME
REPRESENTS INDIVIDUALS OR
COMPANIES THAT IS YET
DISCOVERED AND/OR CURRENTLY
UNKNOWN,

Defendants.

**ORDER ON DEFENDANTS'
MOTION TO STRIKE AND
MOTION TO DISMISS**

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JUN 21 2019

SC Court of Appeals

This matter is before the Court upon the motion of defendants, Kimberly Alston and David Alston ("Defendants"), for an order dismissing Plaintiff's Complaint pursuant to SCRPC, Rule 12(b)(4), (5), and (6). Alternatively, Defendants' moved for an order, pursuant to SCRPC, Rule 12(f), striking portions of Plaintiff's Complaint. A hearing was held before the undersigned on October 31, 2018. Defendants were represented by their attorney, Lee E. Dixon. Plaintiff was unrepresented and appeared on her own behalf. After careful consideration of the written and oral submissions of the parties, and as set forth in more detail below, the Court hereby GRANTS Defendants' Motion to Dismiss. Because this decision is dispositive of the case, the Court makes no ruling on the alternative remedy of the Motion to Strike.

Complaint

In her Complaint, the plaintiff, Rhonda Meisner ("Plaintiff"), alleges various causes of action against Defendants, as well as other unnamed and unidentified individuals and/or entities

identified as defendants John and Jane Does 1-10 and “the inexperienced driver.” Plaintiff’s Complaint purports to allege the following causes of action: (1) Trespass Upon Chattel (as to all defendants); (2) Negligence, Negligence Per Se, Willful and Wanton Conduct (as to “the inexperienced driver”); and (3) Negligence Entrustment (as to defendants Kimberly and David Alston). These alleged causes of action arise out of a May 5, 2015, automobile accident involving a motor vehicle owned by Plaintiff. At the time of the accident, Plaintiff was neither a driver nor a passenger in the vehicle.

Analysis

Pursuant to SCRCP, Rule 12(b)(6), the Court may dismiss a complaint for failure to state facts sufficient to state a cause of action. In this case, Plaintiff has alleged three (3) separate causes of action arising out of the accident referenced in the Complaint. As alleged in the Complaint, Plaintiff has failed to allege facts that would support any of the three causes of action.

1. Trespass Upon Chattel (as to Defendants and the “Inexperienced Driver”)

Plaintiff’s first cause of action is styled as a claim for Trespass Upon Chattel. In their Motion, Defendants correctly note that such a claim is an intentional tort and requires intentional conduct. See e.g., Snow v. City of Columbia, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991)(“Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another’s land.”). Plaintiff’s Complaint alleges that Defendants and the “Inexperienced Driver” interfered with her chattel by causing the motor vehicle accident, damaging her chattel property, and making it unusable. See Complaint, ¶ 30. Plaintiff’s Complaint, however, does not plead facts sufficient to show the requisite intent on behalf of any Defendant to interfere with her chattel. As such, Plaintiff’s Complaint fails to state any facts that would

constitute an intentional tort and, therefore, Plaintiff's claim for Trespass Upon Chattel is dismissed.

2. Negligence, Negligence Per Se, Willful and Wanton Conduct (as to the "Inexperienced Driver")

In her second cause of action, Plaintiff alleges negligence, negligence per se, willful and wanton conduct against the unnamed "inexperienced driver."¹ As alleged in the Complaint, Plaintiff's negligence claim is a personal injury claim. Plaintiff's Complaint alleges that she was the owner of the Suburban that was involved in the motor vehicle accident on May 5, 2015. See Complaint, ¶7, 9, 10. Plaintiff herself was not in the vehicle at the time of the accident and did not come onto the scene until after the accident had occurred. Because Plaintiff was not involved in the wreck, or even at the scene when the accident occurred, she was not injured. Thus, she cannot recover under a negligence theory.

3. Negligent Entrustment (as to Defendants)

Plaintiff's third and fourth causes of action are styled as negligent entrustment claimants against Defendants. In order to state a cause of action for negligent entrustment, Plaintiff must allege that Defendants knew or had reason to know that "the inexperienced driver" was unfit to operate the vehicle involved in the accident. See Lydia v. Horton, 343 S.C. 376, 381, 540 S.E.2d 102, 105 (Ct. App. 2000), rev'd, 355 S.C. 36, 583 S.E.2d 750 (2003)(discussing the history of negligent entrustment law in South Carolina). In her Complaint, Plaintiff's allegations refer solely to the age, inexperience, and inability of the "Inexperienced Driver" to safely operate the vehicle. Plaintiff, however, fails to allege any facts that would tend to show that Defendants were negligent

¹ In their Motion, Defendants also sought dismissal of all claims against the "Inexperienced Driver" pursuant to SCRCF, Rule 12(b)(4) and (5). Because the Court's decision on the merits of the Complaint is dispositive, the Court makes no finding as this additional grounds for dismissal.

in entrusting the subject vehicle to the unnamed driver. It is undisputed that the driver of the vehicle was lawfully operating the vehicle with a South Carolina drivers' license at the time of the accident. A lack of driving experience is not sufficient to sustain a claim for negligent entrustment under South Carolina law. As such, Plaintiff's claims for negligent entrustment are hereby dismissed.

Conclusion

As set forth above, Plaintiff's Complaint fails to allege facts that would support her claims for: (1) Trespass Upon Chattel; (2) Negligence; or (3) Negligent Entrustment. Consequently, pursuant to SCRCP, Rule 12(b)(6), Plaintiff's Complaint is hereby DISMISSED.

****JUDGE'S SIGNATURE PAGE TO FOLLOW****



Richland Common Pleas

Case Caption: Rhonda L Meisner vs David Alston , defendant, et al

Case Number: 2018CP4001869

Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165