

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2019-CP-26-0345

Michael Marceda and Cheryl Marceda,

Plaintiffs,

v.

Winchester Oceanview Development, Inc.,
Sands Building Group, Inc., C3 Studio, LLC,
Sands Realty Group, Inc., Jonathan B.
Dickerson, and John Woodward,

Defendants.

**ORDER ON DEFENDANT C3 STUDIO,
LLC'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

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SC Court of Appeals

This action came before this Court on April 24, 2019, for hearing of the Motion to Dismiss of Defendant C3 Studio, LLC. The Court received and considered briefs, and heard oral argument by counsel for C3 Studio, LLC and counsel for Plaintiffs.

Pursuant to S.C. Code Ann. § 15-36-100 and S.C. R. Civ. P. 12(b)(6), Defendant, C3 Studio, LLC ("Defendant"), has moved this Court for an order dismissing all claims against Defendant in Plaintiffs' Complaint. The basis for this motion is that Plaintiffs failed to attach to their Complaint the affidavit of an expert to support Plaintiffs' professional negligence-based claims against Defendant, as required by S.C. Code Ann. § 15-36-100 under the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"), S.C. Code Ann. § 15-36-10 to -100.

Background

Defendant is based in Knoxville, Tennessee, but has provided architectural services in South Carolina. Defendant's CEO, Greg Huddy, is a licensed architect in the State of South Carolina (License Number AR .7568).

Plaintiffs filed their Complaint against Defendant on January 22, 2019, alleging negligent misrepresentation, negligence/gross negligence, breach of contract/breach of duty of good faith

and fair dealing, breach of express and implied warranties, and Unfair Trade Practices pursuant to S.C. Code Section 39-5-10 *et seq.*, stemming from architectural services provided by Defendant in connection with Plaintiffs' residence. Specifically, Plaintiffs allege that Defendant carried out its "obligations and duties in a negligent, grossly negligent, and otherwise wrongful fashion; in breach of contract; in violation of industry standards, building codes, and installation instructions; and in other wrongful way [sic], all of which proximately caused damages to Plaintiffs." (Compl. ¶¶ 12, 13, 14, & 15).

Analysis

In 2005, as part of its tort reform efforts and in an attempt to curtail frivolous claims against professionals, the South Carolina Legislature implemented the Act. *See* S.C. Code Ann. § 15-36-10 to -100; *see also* 2005 S.C. Acts 32. Among other things, the Act requires attorneys to read and verify the legitimacy of pleadings filed with the Court, and sets forth penalties to be imposed when parties file frivolous and unmeritorious documents. *See* S.C. Code Ann. § 15-36-10. Moreover, with regard to claims against professionals, the Act sets forth the mandatory pre-suit procedure through which professional negligence-based claims may be asserted. *See* S.C. Code Ann. § 15-36-100.

Specifically, § 15-36-100 of the Act applies to actions "for damages alleging professional negligence" against architects. *See* S.C. Code Ann. §§ 15-36-100(B) & -100(G)(1). In such actions, "the plaintiff *must* file as part of the complaint an affidavit of an expert witness which *must* specify at least one negligent act or omission claimed to exist and the factual basis for each claim" S.C. Code Ann. § 15-36-100(B) (emphasis added); *see also* S.C. Code Ann. § 15-36-100(C)(1) (explaining that, except under inapplicable circumstances, the affidavit must be

filed contemporaneously with the complaint). If a plaintiff fails to comply with the Act's affidavit requirement, the complaint "is subject to dismissal for failure to state a claim." S.C. Code Ann. § 15-36-100(C)(1). Additionally, an expert affidavit is required to support breach of contract claims associated with claims of professional negligence. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 473, 570 S.E.2d 197, 204 (Ct. App. 2002) (holding that the party claiming professional negligence was required to support both its tort and contract claims with expert testimony to establish the standard of care).

Plaintiffs' negligent architectural services allegations fall squarely within the purview of the Act's affidavit requirement, because Plaintiffs must prove that the licensed professional architect breached the standard of care for a professional architect. Additionally, Plaintiffs' breach of contract claim against Defendant falls within the purview of the Act's affidavit requirement as Defendant could not have breached the alleged contract with Plaintiffs without negligently performing its architectural services. The same is true for Plaintiffs' Unfair Trade Practices claim because it would be dependent upon conduct by Defendant that amounts to negligent performance of its architectural services. None of these claims fall within the common knowledge exception to the affidavit requirement under the Act. Therefore, Plaintiffs were statutorily required to investigate Plaintiffs' architectural services claim before suing Defendant, and to evidence such investigation by an architect's affidavit filed contemporaneously with Plaintiffs' Complaint. Plaintiffs failed to meet this requirement.

Plaintiffs contend that S.C. Code Ann. § 15-36-100 applies only to individuals engaged in the professions listed therein, and not to companies like Defendant. Section 15-36-100 of the Act is entitled: "Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission." S.C. Code Ann. § 15-

36-100 (emphasis added). Moreover, Section (G) of the Act states that its affidavit requirement applies to the architecture “profession.” See S.C. Code Ann. § 15-36-100(G) (stating: “this section applies to the following professions: . . . (1) architects”) (emphasis added). These portions of the Act evidence that S.C. Code Ann. § 15-36-100 applies to both individual professionals and professional companies like Defendant. Because the intent of the Act is to limit non-meritorious claims against those engaged in the listed professions, there is no logical reason for S.C. Code Ann. § 15-36-100 to distinguish between individual professionals and professional companies; and the Act cannot reasonably be construed to support such a distinction.

Order

Defendant's Motion to Dismiss pursuant to Rule 12(b), SCRCPP, is GRANTED to the extent that Plaintiffs shall have 30 days from the date of this hearing, April 24, 2019, to file and serve an affidavit as required by S.C. Code § 15-36-100. Should Plaintiffs file and serve the required affidavit within said 30 days, then Defendant shall have 30 days after such service to file responsive pleadings. Should Plaintiff fail to file and serve the required affidavit within said 30 days, then all causes of action against Defendant C3 Studio, LLC are dismissed, without prejudice.

[Judge's Electronic Signature Page to Follow]



Horry Common Pleas

Case Caption: Michael Marceda , plaintiff, et al VS Winchester Oceanview
Development, Inc. , defendant, et al
Case Number: 2019CP2600345
Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148