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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ALAN NIX, NORMA J. NIX, THE)
ESTATE OF NORMA J. NIX,)
)
Plaintiffs,)
)
vs.)
)
CHURCHILL PARK, CHURCHILL)
PARK AT PARK WEST, INC.,)
CHURCHILL PARK HOMEOWNERS)
ASSOCIATION, INC., DAVID BROWN,)
AND CATHERINE BROWN, *et al.*,)
)
Defendants.

IN THE COURT OF COMMON PLEAS
Case No.: 2019-CP-10-00067

**ORDER GRANTING DEFENDANT
DAVID BROWN AND DEFENDANT
CATHERINE BROWN'S MOTION TO
DISMISS**

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff's Attorney: *Pro Se*
Defendant's Attorney: G. Troy Thames, Esq.
Date of Hearing: September 26, 2019
Court Reporter: Elizabeth Harris

FILED
2019 OCT 17 PM 4:27
JULIE J. HARRIS
CLERK OF COURT

This matter was before the Court on September 26, 2019 upon Defendants David Brown and Catherine Brown's Motion to Dismiss. Counsel for Defendants David Brown and Catherine Brown, G. Troy Thames, Esquire, was present and *pro se* Plaintiff, Alan Nix, was present.¹ The Court heard oral arguments from all parties pertaining to the Motion and additionally took into consideration the pleadings and pertinent South Carolina Rules of Civil Procedure, specifically SCRCP 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6).

¹ Chase McNair, Esq. appeared on behalf of Defendants Churchill Park, Churchill Park at Park West, Inc., Churchill Park at Park West Association, Inc., and Stephen Summer. However, their Motion to Dismiss, filed May 24, 2019 was not scheduled for the current docket by the clerk's office. Further, the Plaintiff did not consent to a waiver of the requisite notice. As a result the Motion was not heard. Counsel was instructed to consult the Clerk's non-jury coordinator regarding scheduling.

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FINDINGS OF FACT

Plaintiffs filed their Complaint on January 4, 2019. Plaintiffs name seventeen (17) causes of action in their Complaint. Under the heading for each cause of action, Plaintiffs simply state, "Plaintiff incorporates all preceding paragraphs as though fully set forth herein." Plaintiffs offer absolutely no facts to support any of their causes of actions, and make no statements upon which the court's jurisdiction depends, other than that Plaintiff is a citizen of Charleston County.

The only substantive assertion Plaintiffs includes in their Complaint states, "This complaint is being filed due to the ongoing pattern of mismanagement of cases 2014-CP-10-05407 and 2017-CP-10-04031 by Charleston County from at least the period starting 23 March 2016 to present, so as to ensure the statutes of limitations are preserved for relevant claims which could be construed to run out on 4 Jan 2019. This case should be consolidated with 2014-CP-10-05407 once that case is properly restored." Further, at the hearing, Plaintiff Alan Nix stated he had only three purposes in filing this lawsuit: to toll the applicable statute of limitations, to put the parties on notice of "what is to come," and to restore case 2014-CP-10-05407 to the docket.

Based upon the Complaint and oral arguments, Defendants' Motion to Dismiss is heard and respectfully Granted.

CONCLUSIONS OF LAW

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint

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should not be dismissed merely because the court doubts the plaintiff will prevail in the action.”

Id.

Further, a ruling must be based “solely upon the allegations set forth on the face of the complaint. The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory.” Charleston County School Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). This Court may dismiss a claim when a party demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the filed pleadings. Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

Additionally, Rule 8 (a), SCRPC requires that a pleading shall contain a short and plain statement of the grounds, including facts and statutes, upon which the court’s jurisdiction depends, a short and plain statement of the facts showing that the pleader is entitled to relief, and a prayer for relief to which he deems himself entitled.

Finally, S.C. Code Ann. § 15-36-100 requires that in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina, 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 based on the available evidence at the time of the filing of the affidavit. At the hearing, Plaintiffs could not provide an explanation as to why they failed to include an affidavit of an expert witness in filing the Complaint. However, S.C. Code Ann. § 15-36-100 (C)(2) provides an exception that the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the

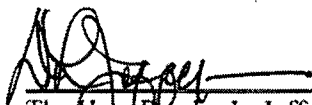
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defendant. Plaintiffs have not plead any allegation seeking an exception to the requirement namely that the contemporaneous filing requirement of subsection (B) is not required because the subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. Plaintiffs have not moved the Court for leave to file an expert affidavit outside of the time period prescribed in the statute. The Complaint is therefore subject to dismissal under S.C. Code Ann. § 15-36-100.

In reviewing Plaintiffs' Complaint and in considering the oral arguments before the Court, the Court finds that the Complaint is factually and legally insufficient pursuant to Rules 8 (a) and 12 (b)(6), SCRPC, and S.C. Code Ann. § 15-36-100, and does not provide for relief under any theory of the law. Plaintiffs' Complaint also fails to state any fact establishing jurisdiction or venue under the law. Finally, Plaintiffs' Complaint is frivolous on its face without facts to support any cause of action and/or relief upon which Plaintiffs Complaint may be granted. Even in viewing the Complaint in the light most favorable to Plaintiffs, this Court must dismiss Plaintiffs' claims because Plaintiffs allege no facts sufficient to constitute any cause of action.

Accordingly, Defendants David Brown and Catherine Brown's Motion to Dismiss is Granted, and Plaintiffs' Complaint is dismissed with prejudice.

IT IS SO ORDERED.


The Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
October 17, 2019

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