

**Exhibit**

**C**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alan G. Nix, Norma J. Nix and the Estate of  
Norma J. Nix,

Plaintiffs,

v.

Churchill Park, Churchill Park Homeowners  
Association, Inc., Churchill Park at Park West  
Association, Inc., Southern Community  
Services, LLC, Park West Master Association,  
Inc., LPPM, Inc., **McCabe, Trotter & Beverly,  
PC**, Larry Ridlehover, **Stephanie Trotter,  
Ryan McCabe, Jamie McSweeney**, Mike  
Hurd, Sheri Cothran, David Brown, Stephen  
Sumner, Richard Riccoboni, Rick Cumberland,  
Park West Amenity Association, Inc., C.  
Richard Dobson Builders, Inc., D.R. Horton,  
Inc., Brian Gardner, Dodds & Hennessy, LLP,  
Kim Atkeson, Jennifer Williamson, Jessica  
Turner, Kevin Steelman, Landtech  
Development, LLC, Landtech Incorporated of  
South Carolina, Land Tech Charleston, LLC,  
Park West Development, Inc., Rogers,  
Townsend, Thomas, PC, Henry Munn,  
Individual Directors, Officers, Agents,  
Attorneys, Accountants, Independent  
Contractors, Investors, Successors,  
Predecessors, Parents, Subsidiaries, Sister and  
Affiliated entities, Partners and Members of all  
named entities,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A NO.: 2019-CP-10-0067

**ORDER GRANTING MOTION TO  
DISMISS  
OF DEFENDANTS MCCABE,  
TROTTER & BEVERLY, PC,  
STEPHANIE TROTTER, RYAN  
MCCABE AND JAMIE  
MCSWEENEY**

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

FILED

Presiding Judge:  
Counsel for Plaintiffs:  
Counsel for Defendants:  
Date of Hearing:  
Court Reporter:

Hon. Deadra L. Jefferson  
*Pro Se*  
Andrew Countryman, Esq.  
September 26, 2019  
Elizabeth Harris

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**RECEIVED**

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SC Court of Appeals

This matter came before the Court on September 26, 2019 for a hearing on Defendants McCabe, Trotter & Beverly, PC, Stephanie Trotter and Ryan McCabe and Jamie McSweeney's (hereinafter "Defendants") Motion to Dismiss, filed January 14, 2019. A hearing took place in Charleston, South Carolina on September 26, 2019. Andrew Countryman, Esq. appeared on behalf of Defendants, and Plaintiff Alan Nix appeared *pro se*.<sup>1</sup> After considering the pertinent pleadings, arguments of counsel and Plaintiff, and for the reasons set forth below, Defendants' Motion to Dismiss is Granted and Plaintiffs' claims are dismissed with prejudice.

### **FINDINGS OF FACT**

Plaintiffs filed this *pro se* Summons and Complaint on January 4, 2019. Plaintiffs have not filed any affidavit of service of the Summons and Complaint, nor is there any evidence of service on any of these Defendants as of the date of the hearing. On January 14, 2019, counsel for Defendants filed a Motion to Dismiss, which was served upon Plaintiffs on or about January 10, 2019.

The initial hearing for the Motion to Dismiss was set for June 4, 2019, in front of Judge Knie, at which time she was also set to hear Plaintiffs' Motion to Change Venue, filed May 24, 2019. Judge Knie heard the Motion to Change Venue and decided not to hear the Motion to Dismiss until she ruled on the Motion to Change Venue. She entered an Order denying the Motion to Change Venue on July 10, 2019. This Motion to Dismiss was then set for a hearing before the Court on September 26, 2019. At no point did Plaintiffs did file a responsive pleading to the Motion to Dismiss. Plaintiffs have not moved the Court or asked for leave to amend the Complaint.

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<sup>1</sup> 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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The Complaint contains no factual allegations and is comprised of only headings, a conclusory statement and prayer for relief. It names over thirty-five (35) Defendants and seventeen (17) purported causes of action. Under the heading for each cause of action, Plaintiffs simply state, "Plaintiff incorporates all preceding paragraphs as though fully set forth herein." Plaintiffs plead no supporting facts within the body of the Complaint which to constitute 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 include 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 (3) 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.

#### **STANDARD OF REVIEW**

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

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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).

Rule 12(b)(5), SCRCF provides that a defendant may move for dismissal for insufficiency of service of process. Additionally, Rule 8(a), SCRCF provides that a pleading setting forth a cause of action “shall contain (1) a short and plain statement of the grounds, including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.”

#### CONCLUSIONS OF LAW

- 1. The Complaint is facially deficient under SCRCF's Rules of pleading and fails to state a claim upon which relief can be granted.**

Plaintiffs' Complaint fails on its face to comply with any of the Rules of pleading, including SCRCF 12(b) and 8(a). The document does not state any factual allegations. It only lists headings of various causes of action against the Defendants. No reading of the Complaint gives any notice to the Defendants as to the substance of Plaintiffs' claims against them. No reading of the Complaint, even in the light most favorable to the Plaintiffs, and with every doubt resolved in their behalf, gives rise to the basis of their claims against these Defendants.

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These Defendants filed and served their Motion to Dismiss approximately nine (9) months ago, and Plaintiffs have made no effort to amend or otherwise formally respond to the Motion. The Complaint is subject to dismissal for failure to state facts sufficient to constitute a cause of action against these Defendants pursuant to SCRCP 12(b)(6).

**2. The Complaint is subject to dismissal for failure to perfect service of process on these Defendants.**

Rule 3(a), SCRCP provides that a civil action is commenced when the summons and complaint are filed with the clerk of court if (1) they are served within the statute of limitations; or (2) if not served within the statute, actual service must be accomplished no later than 120 days after filing. Rule 5(d), SCRCP provides that a proof of service shall be filed within ten days of service of the summons and complaint. Upon failure to serve the summons and complaint, the court may dismiss the action on its own initiative or upon application of any party. Id.

Plaintiffs filed the Complaint on January 4, 2019. The Complaint includes a paragraph on the final page indicating the statute of limitations "could be construed to run out on January 4, 2019." Plaintiffs also represented at the hearing of this matter that he filed the lawsuit to preserve the statute of limitations.

Plaintiffs have not filed an affidavit or proof of service nor has he presented evidence he served any of these Defendants with the Summons and Complaint. These Defendants filed their Motion to Dismiss on January 14, 2019, and raised failure to perfect service as a basis for dismissal. It has been over 265 days since the filing of the Summons and Complaint, and Plaintiff has failed to serve these Defendants. This lawsuit is therefore subject to dismissal pursuant to Rules 3(a) and 5(d), SCRCP.

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**3. Plaintiffs' Complaint is subject to dismissal pursuant to S.C. Code Ann. § 15-36-100.**

S.C. Code § 15-36-100 provides that a complaint alleging professional negligence requires the contemporaneous filing of an affidavit of a qualified expert witness identifying at least one negligent act or omission of the professional defendant and the factual basis for each claim based on the evidence available at the time of the filing. S.C. Code Ann. § 15-36-100 (B). This Code Section specifically applies to South Carolina lawyers. S.C. Code Ann. § 15-36-100 (G)(2). The contemporaneous filing 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 Defendant. S.C. Code Ann. § 15-36-100 (C)(2). If a plaintiff fails to file an expert affidavit in compliance with the statute, and the defendant raises this issue via a motion to dismiss, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100 (C).

The contemporaneous filing requirement does not apply to a case in which the statute of limitations will expire, or where there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten (10) days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five (45) days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after a hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100 (C)(1). However, S.C. Code

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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 defendant.

While Plaintiffs' Complaint here contains no factual allegations, it does name these Defendants. Of them, McCabe, Trotter & Beverly, P.C. ("MTB") is a law firm, and Ryan McCabe, Stephanie Trotter and Jamie McSweeney are or were lawyers at MTB. The firm, through those lawyers, represented Plaintiff's homeowners' association in a lien foreclosure action referenced in the Complaint. In addition to naming these Defendants, the pleading names two other law firms (Rogers, Townsend & Thomas, PC and Dodds & Hennessy, LLP). The pleading also contains references to causes of action sounding in professional negligence, including negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligent supervision, and negligent misrepresentation.

Plaintiffs did not file an expert affidavit specifying a negligent act or omission of any of the lawyers or law firms Plaintiffs named in the case. Plaintiffs failed to do so contemporaneously with the Complaint or any time thereafter. Further, Plaintiff has not included 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.

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**4. The Complaint fails to allege the elements necessary to establish a claim against these Defendants.**

To survive a Rule 12 (b)(6) motion on a claim against a lawyer for malpractice, a plaintiff must allege the following elements: (1) existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client's damage by the breach. Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). A plaintiff asserting a legal malpractice claim against a lawyer must first establish the existence of an attorney-client relationship between the lawyer defendant and the plaintiff. Id. The failure to allege the existence of a lawyer-client relationship is fatal to a complaint alleging legal malpractice. Id.

South Carolina law also provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf of and with the knowledge of the client. Stiles v. Ontario, 318 S.C. 297, 458 S.E.2d 601 (1995). *See also* Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The only exception to these generally recognized principles is the context of a beneficiary of a will. Rydde v. Morris, 318 S.C. 643, 675 S.E.2d 431 (2009).

These Defendants are a law firm and lawyers that work or worked there, and the Complaint purports to maintain claims based on professional negligence against them. The Complaint does not allege these Defendants represented the Plaintiffs, who admitted no attorney client relationship existed during the hearing of this Motion. The Complaint also fails to allege what, if anything, these lawyers did outside of the scope of their representation of a client. Such information is necessary for Plaintiffs to pursue a claim against these lawyers, who did not represent him. The Complaint is therefore subject to dismissal.

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**5. No basis for claims against individually named Defendants.**

While the Complaint does not state facts underlying any claim against these Defendants, it does reference two other cases, 2014-CP-10-05407 and 2017-CP-10-04031. Those cases are actually the same matter, Churchill Park v. Nix. This is the case in which MTB represented Plaintiff Alan Nix's Homeowners' Association in the pursuit of various amounts he allegedly owed to the Association. A cursory review of the pleadings shows that Case Number 2014-CP-10-05407 was dismissed pursuant to SCRPC 40(j) and subsequently restored as Case Number 2017-CP-10-04031. Mr. Nix failed to prevail in Case Number 2017-CP-1004031 and filed an appeal. The Court of Appeals affirmed<sup>2</sup> the lower Court's ruling, and Mr. Nix has since filed a pending petition for a writ of certiorari with the Supreme Court.

Stephanie Trotter, Ryan McCabe and Jamie McSweeney are or were lawyers at MTB during the time period when MTB represented the Homeowners' Association the above-referenced case(s) against Mr. Nix. The Complaint contains no allegation that any of these individually-named Defendants were acting outside their scope as lawyers at any time pertinent to this case. They are, therefore, improper Defendants in this case. Plaintiffs' claims against Ryan McCabe, Stephanie Trotter and Jamie McSweeney are therefore subject to dismissal.

**6. Improper Plaintiffs**

In addition to Alan Nix, the Complaint caption lists Norma Nix and the Estate of Norma Nix as Plaintiffs. However, the body of the pleading only states "Plaintiff is a resident of Charleston County, South Carolina." Norma Nix is deceased. She is therefore not a proper party to any legal action.

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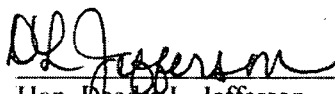
<sup>2</sup> Appellate Case No. 2018-000056, November 13, 2018.

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Norma Nix' Estate could theoretically be a party. However, the Complaint does not state that Mr. Nix is the administrator of the Estate of Norma Nix, nor does it state any facts on which a claim by the Estate could be based. To the extent the Complaint brings claims on behalf of Norma Nix and her Estate, those claims fail as pled for these reasons.

**Conclusion**

Accordingly, Defendants McCabe, Trotter & Beverly, PC, Stephanie Trotter and Ryan McCabe and Jamie McSweeney's Motion to Dismiss is Granted, and Plaintiffs' Complaint is dismissed with prejudice.



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

October 17, 2019  
Charleston, South Carolina

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