

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

King Grant-Davis,

Plaintiff,

v.

Jason Mikell, Esquire; Stephen
Harris, Esquire; and City of
Charleston,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01388

**ORDER GRANTING DEFENDANT
STEPHEN HARRIS, ESQUIRE'S MOTION
TO DISMISS**

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This matter comes before the Court on Defendant Stephen Harris, Esquire's ("Attorney Harris") Motion to Dismiss Plaintiff's Complaint, filed May 21, 2019. A hearing was held on October 31, 2019. After careful consideration of the filings, arguments of counsel, and review of the record, the Court finds that Plaintiff King Grant-Davis's Complaint fails to state a claim against Attorney Harris. Accordingly, for the reasons set forth herein, Attorney Harris's Motion to Dismiss is GRANTED.

BACKGROUND

This criminal legal malpractice action arises out of a criminal case against Plaintiff in which he was charged with making a "verbal threat." (Compl. ¶¶ 1-7). Plaintiff's initial appearances in court after the charge on April 12, 2016 and May 3, 2016 were continued. (Compl. ¶¶ 10, 12). Trial was set for June 14, 2016, and Attorney Jason Mikell appeared on Plaintiff's behalf. (Compl. ¶ 13). Plaintiff arrived late for trial and was convicted of assault in his absence. (Compl. ¶¶ 13, 18).

Plaintiff alleges he made post-conviction relief applications "several times" after June 14, 2016. (Compl. ¶ 14). On June 28, 2016, Judge Morrison ordered him released from jail and set a hearing for his motions, which were ultimately denied. (Compl. ¶¶ 14-16). Plaintiff appealed to

the Circuit Court, and in an Order filed January 11, 2017, Judge Harrington reversed Plaintiff's conviction and remanded the case for a new trial. (Compl. ¶¶ 17-21).

STANDARD

“In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint.” Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). “The 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.” Id.

FINDINGS AND CONCLUSIONS

- I. Plaintiff's legal malpractice claim against Attorney Harris fails because Plaintiff and Attorney Harris had no attorney-client relationship; Plaintiff has not filed the supporting affidavit of an expert; and Plaintiff did not plead his innocence of the underlying charge.**

A plaintiff in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (internal citations omitted).

In an action for damages against an attorney, “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.” S.C. Code Ann. § 15-36-100(B). If the affidavit is not timely filed, “the complaint is subject to dismissal for failure to state a claim.” S.C. Code § 15-36-100(C)(1). Only in cases involving subject matter that lies within the ambit of common knowledge and experience is such affidavit not required. S.C. Code § 15-36-100(C)(2).

In actions for legal malpractice based on the conviction of a crime, the plaintiff must plead his innocence of the underlying criminal charges against him. Brown v. Theos, 345 S.C. 626, 630, 550 S.E.2d 304, 306 (2001).

Plaintiff does not satisfy the first of the four necessary elements to state a claim for legal malpractice under Rydde: Plaintiff had no attorney-client relationship with Attorney Harris when he was convicted on June 14, 2016. In fact, Plaintiff alleges “Jason Mikell, Esquire was present for the plaintiff ... to formally appear as the plaintiff’s attorney at that point in time.” (Compl. ¶ 13). This lack of an attorney-client relationship between Plaintiff and Attorney Harris is fatal to Plaintiff’s legal malpractice claim.

Plaintiff has also failed to file the requisite affidavit of an expert with the complaint. Based on the complaint, the Court finds that the subject matter is not within the “ambit of common knowledge” such that the expert affidavit is not required. Plaintiff’s failure to file the statutorily-required affidavit further warrants dismissal of Plaintiff’s legal malpractice claim.

Plaintiff has also failed to plead his innocence of the underlying criminal charges, warranting dismissal of the Complaint.

II. Plaintiff fails to plead fraud with particularity.

In order to state a valid claim for fraud, the pleader must allege: 1) a representation; 2) its falsity; 3) its materiality; 4) the speaker’s knowledge of its falsity; 5) his intent that it should be acted upon by the person; 6) the hearer’s ignorance of its falsity; 7) the hearer’s reliance on its truth; 8) his right to rely thereon; and 9) his consequent and proximate injury. Mutual Sav. and Loan Ass’n v. McKenzie, 274 S.C. 630, 633, 266 S.E.2d 423, 425 (1980). Plaintiff alleges Attorney Harris “committed common law fraud when he refused to take the assignment [to

represent Plaintiff].” (Amd. Compl. ¶ 35). These allegations clearly fall short of the heightened pleading requirements for fraud claims, and Plaintiff’s fraud claim is therefore dismissed.

III. Plaintiff fails to assert a claim for breach of contract.

To recover for breach of contract, a plaintiff must allege and prove 1) the existence of a contract, 2) breach of the contract, and 3) damages caused by the breach. Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010). A complaint that fails to allege a contract between the plaintiff and defendant fails to state a claim and should be dismissed. Tidewater Supply Co. v. Indus. Elec. Co., 253 S.C. 483, 486, 171 S.E.2d 607, 608 (1969).

Plaintiff’s Amended Complaint fails to allege a contract between Plaintiff and Attorney Harris. Instead, Plaintiff asserts simply that Attorney Harris “committed breach of contract and the assignment to represent plaintiff...” (Amd. Compl. ¶ 35). As a result, Plaintiff’s breach of contract claim fails and is dismissed.

IV. Plaintiff’s Constitutional claim fails because Attorney Harris was not acting “under color of” state law.

Plaintiff claims Attorney Harris denied him the “federal Constitutional right to the assistance of an attorney for his defense” (Amd. Compl. ¶ 35), amounting to a violation of 42 U.S.C. § 1983. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988). The United States Supreme Court has held that a public defender as counsel to a defendant in a criminal proceeding does not act under color of state law. Polk Cty. V. Dodson, 454 U.S. 312, 325, 102 S. Ct. 445, 453, 70 L. Ed. 2d 509 (1981). Therefore, even if Attorney Harris were Plaintiff’s attorney at the June 2016 hearing, he would not have been acting under color of state law. Plaintiff’s constitutional claim fails as a result.

V. Plaintiff's claims for breach of contract, fraud, and violation of the Constitution fail because they are duplicative of the claim for legal malpractice.

Plaintiff purports to assert claims for breach of contract, fraud, and violation of the Constitution against Attorney Harris, in addition to the legal malpractice claim. Each of these additional claims is premised on the same underlying factual allegations as the legal malpractice claim. Where claims against a lawyer in addition to a legal malpractice claim arise out of the alleged attorney-client relationship and the same factual allegations, those claims are duplicative of the legal malpractice claim and properly dismissed. See RFT Mgt. Co., LLC v. Tinsley & Adamas, LLP, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012). Plaintiff's additional claims are premised on the same factual allegations as the legal malpractice claim and are merely duplicate claims. As such, they are dismissed as duplicative in addition to the other grounds for dismissal herein.

Accordingly, Defendant Stephen Harris, Esquire's Motion to Dismiss is GRANTED.

IT IS SO ORDERED!

Electronic Signature Page Attached.

Bentley Price, Circuit Court Judge



Charleston Common Pleas

Case Caption: King Grant Davis VS Jason Mikell Esq , defendant, et al
Case Number: 2019CP1001388
Type: Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order granting Stephen Harris motion to dismiss complaint

CASE NO: 2019CP1001388

King Grant Davis VS Jason Mikell Esq , defendant, et al

This judgment was entered on the 07th day of November, 2019, and notice mailed first class on Thursday, November 07, 2019, to all counsel of record and/or all parties entitled to receive notice.

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