

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

KING GRANT-DAVIS,)

CASE NO. 2019-CP-10-1388

PLAINTIFF,)

vs.)

**ORDER GRANTING DEFENDANT CITY
OF CHARLESTON'S MOTION TO
DISMISS PLAINTIFF'S AMENDED
COMPLAINT WITH PREJUDICE**

JASON MIKELL, ESQUIRE, STEPHEN
HARRIS, ESQUIRE, AND CITY OF
CHARLESTON,)

RECEIVED

DEFENDANTS.)

DEC 10 2019

SC Court of Appeals

This matter came before the Court upon Defendant City of Charleston's (hereinafter "City" or "Defendant City"), Motion to Dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, on the grounds that the Amended Complaint fails to state facts sufficient to constitute a cause of action.¹ On October 31, 2019, the Court heard oral arguments on City's Motion to Dismiss.² During the hearing, the Court gave counsel for Defendants and Plaintiff (*pro se*) a full and fair opportunity to proffer the factual allegations and legal issues that they deemed important. The Court has reviewed the Amended Complaint and all other filings by Plaintiff, in addition to the Motion and Memorandum filed by Defendant City, and this matter is now ripe for resolution.

¹ Co-Defendants' Jason Mikell, Esq. and Stephen Harris, Esq. Motions to Dismiss were also before the Court, as well as Plaintiff's "Motion to take Judicial Notice."

² Court heard the other arguments from Co-Defendants and from Plaintiff at this hearing as well.

Upon consideration of all the parties' arguments at the hearing and the pleadings before the Court, including Defendant's Memorandum of Law submitted and filed with the Court, this Court hereby GRANTS City's Motion to Dismiss Plaintiff's Amended Complaint, with prejudice.

BACKGROUND

This case arises out of a series of hearings on Plaintiff's assault charge in the City of Charleston Municipal Court. Plaintiff alleges that on March 8, 2016, he made his initial appearance before the Honorable Alesia Rico Flores, where he asked for an attorney and a jury trial.³ Plaintiff's Amended Complaint states that Judge Flores continued the case to April 12, 2016 "for the purpose of providing the plaintiff a defense attorney".⁴ Plaintiff received a notice of this continuance that listed Stephen Harris, Esq. (hereinafter "Defendant Harris") as "Attorney."⁵

Plaintiff's Amended Complaint alleges that he made Municipal Court appearances on both April 12, 2016 and May 3, 2016 on his assault charge.⁶ He alleges that at each of these hearings (1) Defendant Harris failed to appear, (2) his case was continued, and (3) that Defendant Harris remained his appointed attorney on the continuance notices he received from the Court.⁷

Plaintiff failed to appear at his June 14, 2016 hearing.⁸ The Amended Complaint states that Jason Mikell, Esq. (hereinafter "Defendant Mikell") appeared on Plaintiff's behalf.⁹ The

³ Plaintiff's Am. Compl., ¶ 31. Plaintiff's Compl., ¶ 8.

⁴ Plaintiff's Am. Compl., ¶ 31. Plaintiff's Compl., ¶ 8.

⁵ *Id. see also* Exhibit 4(A) of Plaintiff's Opposition to Harris' Motion to Dismiss Plaintiff's Amended Complaint.

⁶ Plaintiff's Am. Compl., ¶ 32. Plaintiff's Compl., ¶ 10. Plaintiff's Am. Compl., ¶ 32, Plaintiff's Compl., ¶ 12. *See also* Exhibit 4(A) of Plaintiff's Opposition to Harris' Motion to Dismiss Plaintiff's Amended Complaint.

⁷ *Id. See also* Exhibit 4(B) and 4(C) of Plaintiff's Opposition to Harris' Motion to Dismiss Plaintiff's Amended Complaint.

⁸ Plaintiff's Am. Compl., ¶ 34. By the time Plaintiff arrived, the Court hearing had concluded. Plaintiff's Am. Compl., Exhibit 3.

⁹ Plaintiff's Compl., ¶ 13.

Amended Complaint alleges that Defendant Mikell moved to be relieved and that his motion was granted.¹⁰ The trial went forward and Plaintiff was convicted.¹¹

Judge Morrison sentenced Plaintiff to thirty (30) days.¹² Plaintiff alleges he spent fourteen (14) days in jail before he was released pending his post-conviction relief motion.¹³ The Amended Complaint cites to the Honorable Kristi Lea Harrington's January 13, 2017 Order that reversed Plaintiff's conviction, finding that the trial should not have proceeded in Plaintiff's absence without counsel for Plaintiff.¹⁴

Plaintiff's initial Complaint sued only Defendants Harris and Mikell. Plaintiff thereafter filed an Amended Complaint, where he added claims for fraud, breach of contract, and 42 U.S.C. § 1983 against the City of Charleston.¹⁵

STANDARD OF REVIEW

"A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to 'state facts sufficient to constitute a cause of action' in the pleadings filed with the court."¹⁶ "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief."¹⁷ When ruling on a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the court should consider only the allegations set forth on the

¹⁰ Plaintiff's Am. Compl., ¶ 34. Plaintiff's Compl., ¶ 13.

¹¹ Plaintiff's Am. Compl., Exhibit 3.

¹² *Id.*

¹³ Plaintiff's Compl., ¶ 14.

¹⁴ See Judge Harrington's Order (January 13, 2017).

¹⁵ See Plaintiff's Am. Compl., ¶ 36.

¹⁶ *Williams v. Condon*, 347 S.C. 227, 232–33, 553 S.E.2d 496, 499 (Ct. App. 2001) (citing Rule 12(b)(6), SCRCP); *Flateau v. Harrelson*, 335 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003) (affirming the dismissal of the complaint) (citing *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999)).

¹⁷ *Williams*, 347 S.C. at 333, 553 S.E.2d at 499.

face of the plaintiff's complaint.¹⁸ A court further views the content of the pleadings in light of the general pleading rules and in the light most favorable to the plaintiff.¹⁹ Although the court must liberally construe a *pro se* pleading, it remains that if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case, the motion to dismiss must be granted.²⁰

FINDINGS AND CONCLUSIONS OF LAW

A. 42 U.S.C. § 1983 – Violation of Sixth Amendment Right to Counsel

Plaintiff argues in his Amended Complaint that the City's failure to insure that the appointed attorney defendants provided him with legal defense amounts to a violation of his Sixth Amendment right to counsel.²¹

The City argues Plaintiff's §1983 claim fails because Plaintiff does not allege facts showing his constitutional injury was caused by a policy or custom of the City. The Court agrees. "To hold a municipality liable for a constitutional violation under §1983, the plaintiff must show that the

¹⁸ *Baird v. Charleston Cnty.*, 511 S.E.2d 69 (1999); *Williams*, 347 S.C. at 333, 553 S.E.2d at 499.

¹⁹ *Woodell by Allen v. Marion Sch. Dist. One*, 414 S.E.2d 794 (S.C. Ct. App. 1992); *Plyler v. Burns*, Op. No. 26335 (S.C. Sup. Ct. filed June 11, 2007) (holding the trial court properly granted the defendant's motion to dismiss).

²⁰ *Gray v. State Farm Auto Ins. Co.*, 491 S.E.2d 272 (S.C. Ct. App. 1997) (The Court must grant a motion to dismiss "if the facts and inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case.").

²¹ Plaintiff's Am. Compl., ¶ 36.

execution of a policy or custom of the municipality caused the violation”.²² Single or isolated incidents are not sufficient.²³

Plaintiff’s Amended Complaint fails to allege a policy or custom attributable to the City that caused Plaintiff’s alleged constitutional injuries. Plaintiff’s Amended Complaint fails to allege any “widespread” or “consistent” problem, fails to cite to any relevant City ordinance or regulation that caused his alleged injuries, and fails to identify any pattern of behavior on behalf of the City that deprived individuals of their rights.²⁴

Plaintiff argues that the United States District Court holding in *Bairefoot v. City of Beaufort*²⁵ supports his claim; however, the Court finds *Bairefoot* distinguishable. In *Bairefoot*, the City of Beaufort made a “deliberate decision to create criminal courts that operate without providing counsel to indigent defendants,” and the court held the City violated the plaintiff’s Sixth Amendment rights.²⁶ By contrast, here, the Amended Complaint shows the City of Charleston contracted with attorneys to provide representation to indigent defendants in Municipal Court. Unlike in *Bairefoot*, Plaintiff’s allegations concern only one incident and the Amended Complaint includes no allegations showing Plaintiff’s alleged injury was caused by a City policy or custom.

²² *Barrett v. Bd. of Educ. of Johnston Cty., N.C.*, 590 F. App’x 208, 210 (4th Cir. 2014) (citing *Love–Lane v. Martin*, 355 F.3d 766, 782 (4th Cir.2004)). See also, *Evans v. City of Sumter, S.C.*, No. 3:07-2688-JFA-JRM, 2008 WL 4177225, at *9 (D.S.C. Sept. 3, 2008), aff’d sub nom. *Evans v. Sumter Cty., SC*, 360 F. App’x 415 (4th Cir. 2010).

²³ *Evans v. City of Sumter, S.C.*, No. 3:07-2688-JFA-JRM, 2008 WL 4177225, at *9 (D.S.C. Sept. 3, 2008), aff’d sub nom. *Evans v. Sumter Cty., SC*, 360 F. App’x 415 (4th Cir. 2010).

²⁴ Plaintiff submitted “Exhibit 5” which lists City Ordinances 2-110, 2-111, and 2-112 as the ordinances “the Defendants” acted under. However, the Court finds these ordinances are completely irrelevant as they involve the City hiring private legal counsel to assist them with civil matters. The plain language of the ordinances show they have nothing to do with indigent defendants in Municipal Criminal Court.

²⁵ *Bairefoot v. City of Beaufort*, 312 F. Supp. 3d 503 (D.S.C. 2018), Plaintiff’s Am. Compl., Exhibit 6.

²⁶ *Id.*

Based on these reasons, the Court grants the City's Motion to Dismiss as to Plaintiff's §1983 claim.

B. Breach of Contract

The Amended Complaint alleges that the City had a "Public Defender Contract" with Defendants Mikell and Harris to provide indigent defendants with counsel in Municipal Court.²⁷ Plaintiff alleges the City "failed to insure that Mikell and Harris complied with their contracts or agreements to provide professional defense of the Plaintiff".²⁸

The City argues that the Plaintiff fails to allege facts showing that the City breached the contracts at issue. The Court agrees. The contracts provide in relevant part as follows:

The City is paying for the services provided by the Contractor, however, his clients are the individuals for whom he provides legal representation under this Agreement and that the attorney/client relationship and all rights, responsibilities and privileges appurtenant to that relationship are as between the Contractor and his individual clients.²⁹

The City's obligation under the contracts is to pay the attorneys, and the Amended Complaint does not allege the City failed to do so. The contracts do not require the City to "insure that Mikell and Harris complied with their agreements to provide professional defense of the Plaintiff" as Plaintiff alleges the City failed to do.³⁰ Therefore, the Court finds that Plaintiff failed to allege facts showing that the City breached the contracts at issue, and grants the City's Motion to Dismiss Plaintiff's breach of contract claim.

²⁷ Plaintiff's Am. Compl., Exhibit 2. The Plaintiff attached the City's contract with Defendant Mikell to his Complaint. Plaintiff was not a party to these contracts.

²⁸ Plaintiff's Am. Compl., ¶ 36.

²⁹ Plaintiff's Am. Compl., Exhibit 2.

³⁰ Plaintiff's Am. Compl., ¶ 36.

C. Fraud

The Amended Complaint includes a claim for fraud against the City.³¹ The Amended Complaint asserts that the City failed to insure Defendants Mikell and Harris provided professional defense to Plaintiff and the City's inaction amounts to fraud.³²

The City argues that the Amended Complaint fails to plead facts supporting each of the nine (9) elements of fraud, and that this failure is fatal to Plaintiff's fraud claim. The Court agrees. Under South Carolina law, to properly plead fraud, a plaintiff must allege facts showing: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.³³ "A Complaint is fatally defective if it fails to allege all nine elements of fraud."³⁴ "Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim."³⁵

Plaintiff fails to allege facts in his Amended Complaint regarding a false City representation, the City's knowledge of the falsity, Plaintiff's reliance on the falsity, or any intent from the City that Plaintiff act upon a false representation. Other than simply reciting the word

³¹ Plaintiff's Am. Compl., ¶ 36.

³² *Id.*

³³ *Thomas Daniels Agency, Inc. v. Nationwide Ins. Co. of Am.*, 122 F. Supp. 3d 448, 451 (D.S.C. 2015) (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432, 444-45 (S.C.Ct.App.2003)).

³⁴ *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) (citing *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 S.E.2d 691 (1988)). In *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, the Supreme Court of South Carolina held that a motion to dismiss should have been granted against Inman because his complaint failed to allege all nine essential elements of fraud. The Supreme Court found that Inman failed to assert allegations of (1) intent that the representation be acted upon, and (2) Inman's ignorance of the statement's falsity. *Id.* at 242, 393 S.E.2d 691, 692.

³⁵ *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993).

“fraud”, the Amended Complaint fails to allege facts that support his fraud claim against the City. For this reason, the Court finds Plaintiff’s Amended Complaint fatally defective.

The City also argues the statute of limitations bars Plaintiff’s fraud claim. The Court agrees. Under the South Carolina Tort Claims Act (SCTCA) §15-78-110, Plaintiff has two (2) years from the date of loss to file his fraud claim against the City because he did not file a verified claim.³⁶ The Municipal Court hearing at issue in Plaintiff’s Amended Complaint was held on June 14, 2016. Accordingly, Plaintiff would have needed to file his fraud claim against the City by June 14, 2018. Plaintiff failed to do so.³⁷ Thus, the Court finds that Plaintiff’s fraud claim is barred by the statute of limitations under the South Carolina Tort Claims Act. For the above-outlined reasons, the Court dismisses Plaintiff’s fraud claim against the City.

Accordingly, for the aforementioned reasons, IT IS HEREBY ORDERED that Defendant City of Charleston’s Motion to Dismiss is GRANTED, and Plaintiff’s Amended Complaint is dismissed WITH PREJUDICE, and

IT IS SO ORDERED.

The Honorable Bentley Price
Ninth Judicial Circuit

³⁶ S.C. Code Ann. § 15-78-110. If a plaintiff files a verified claim, the three (3) year statute of limitations applies, however, Plaintiff did not make a verified claim.

³⁷ Plaintiff filed his fraud claim against the City on April 24, 2019, well past the two-year deadline.



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

JULIE J. ARMSTRONG

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

Order Granting City of Charlestons Motion to Dismiss

CASE NO: 2019CP1001388

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

This judgment was entered on the 13th day of November, 2019, and notice mailed first class on Wednesday, November 13, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.