

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE 5TH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

B&B ATTORNEYS, LLC,) Civil Action No. 2019-CP-40-02126
)

PLAINTIFF,)
)

vs.)

OVERTURE EROICA WALKER,)
STONEY & WALKER, LLC., JOY)
STONEY, AND STONEY LAW FIRM,)
LLC.,)

DEFENDANTS.)

ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS THIRD-PARTY
COMPLAINT AND
COUNTERCLAIMS OF DEFENDANTS

This matter comes before this court on Plaintiff's Motion to Dismiss Third-Party Complaint and Counterclaims of Defendants. A hearing was held on September 20, 2019. Attorney James E. Smith, Jr., appeared on behalf of Plaintiff; Attorney Harvey M. Watson, III, appeared on behalf of Defendants Overture Eroica Walker ("Walker") and Stoney and Walker, LLC ("S&W"); and Attorney Paul Reeves appeared on behalf of Defendants Joy Stoney ("Stoney") and Stoney Law Firm, LLC ("SLF").

By way of procedural background, Plaintiff filed a Summons and Complaint on April 16, 2019, alleging several causes of action against Defendants relating to Defendant Walker's departure from Plaintiff's law firm. Defendants Walker and S&W filed an Answer on May 23, 2019, along with a Counterclaim against Plaintiff and a Third-Party Complaint against Beth Bernstein ("Beth") and Lowell Bernstein ("Lowell"), individually, on the grounds of defamation and civil conspiracy, among other causes of action. Defendants Stoney and SLF filed their

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Answer on May 23, 2019, along with a Counterclaim against Plaintiff and against Beth and Lowell, individually, alleging defamation and civil conspiracy, among other causes of action.

Plaintiff moved to dismiss all Defendants' claims of civil conspiracy and defamation against it, and Beth and Lowell, individually, on the ground that Defendants failed to state a claim upon which relief may be granted. Plaintiff further moved to dismiss Defendants Stoney's and S&L's Counterclaim against Beth and Lowell, individually, on the grounds that they were not parties to the initial action and a counterclaim may only be presented against a named party in accordance with the South Carolina Rules of Civil Procedure. I agree.

The tort of defamation allows a party to recover for injury to his or her reputation as the result of a communication made to others of a false message about him or her. *Parrish v. Allison*, 376 S.C. 308, 320, 656 S.E.2d 382, 388 (Ct. App. 2007). "Defamation is a spoken, written or otherwise communicated statement about another person that has a natural and direct tendency to harm that person's reputation." *Capps v. Watts*, 271 S.C. 276, 281, 246 S.E.2d 606, 609 (1978). In order to pursue an action in defamation, Defendants must, at a minimum, allege a defamatory statement, by whom, when, and to whom it was made. Since the Defendants failed to allege or provide these basic elements, the defamation cause of action is hereby dismissed, as outlined below.

Similarly, Defendants failed to adequately allege an action in civil conspiracy. "Under the tort of civil conspiracy, the burden is on the moving party to establish the following three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). In the present case, Defendants have failed to

present allegations of these basic elements, specifically Defendants failed to allege special damages.

Based on the aforementioned, Defendants have failed to allege or present a *prima facie* case of defamation or civil conspiracy.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this Court finds in favor of Plaintiff's motion, as follows:

- a. Defendants Stoney and SLF's Counterclaim against Beth and Lowell, individually, is hereby dismissed.
- b. Defendants' claims of civil conspiracy are hereby dismissed.
- c. Defendants have 30 days to alter and/or amend their claims of defamation, in accordance herewith, or those causes of action will be dismissed.

Accordingly, Plaintiff's Motion to Dismiss Third-Party Complaint and Counterclaims of Defendants is hereby granted, in part, as outlined above.

AND IT IS SO ORDERED.

ROBERT E. HOOD
JUDGE, FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina
November __, 2019.



Richland Common Pleas

Case Caption: B & B Attorneys Llc , plaintiff, et al vs Overture Eroica Walker ,
defendant, et al
Case Number: 2019CP4002126
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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