

10P 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALICE H. ANDERSON,

Plaintiff,

vs.

ROBERT MICHAEL DROSE and  
DROSE LAW FIRM,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2018-CP-10-02963

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

RECEIVED

FEB 20 2020

SC Court of Appeals

ELECTRONICALLY FILED - 2020 Jan 08 10:04 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002963

This matter comes before the Court on Defendants Robert Michael Drose and Drose Law Firm's Motion for Summary Judgment, filed together with a supporting memorandum on May 15, 2019. Plaintiff filed a memorandum in opposition on June 14, 2019. A hearing was held on October 8, 2019.

After careful consideration of the filings, arguments of counsel and Plaintiff, and review of the record, the Court finds that there is no genuine issue of material fact and judgment in favor of Defendants is appropriate. Accordingly, for the reasons set forth herein, Defendants' Motion for Summary Judgment is GRANTED.

**FACTUAL BACKGROUND**

Unless admitted or stipulated by the parties, the following facts are only alleged: Ms. Anderson engaged Defendants on May 24, 2013 to represent her in a Chapter 13 bankruptcy action, and the terms of the engagement was reduced to writing (the "Agreement"). Defendants secured a bankruptcy plan for Ms. Anderson which required her to resume her contractual payments directly to all her mortgage creditors beginning in July 2013, with arrearages owed through June 2013 to be paid through payments made to the bankruptcy trustee. Ms. Anderson

failed to comply with the bankruptcy plan and, by October 2013, was three (3) additional months behind on payments, including payments to the mortgagee of her Orangeburg rental property, Caliber Home Loans ("Caliber").

On October 2, 2013, Caliber moved in the bankruptcy matter to have the automatic stay lifted so that it could pursue foreclosure. Defendants objected to the motion and negotiated a settlement whereby Ms. Anderson could avoid the stay lifting by agreeing to resume her regular monthly payment to Caliber, in addition to an arrearage payment beginning in November 2013. The settlement agreement contained a so-called "drop-dead clause" which enabled Caliber to have the stay lifted upon an *ex parte* showing by affidavit and proposed order in the event of further default by Ms. Anderson.

Ms. Anderson defaulted on the settlement agreement in December 2014, and Caliber invoked the drop-dead clause on December 23, 2014. The bankruptcy court ordered the stay lifted as to the Orangeburg rental property on December 29, 2014. Ms. Anderson had failed to pay the mortgage on this property at three different junctures: 1) when the payments were due under the contractual mortgage, which were behind at the time of the Chapter 13 filing; 2) according to the Chapter 13 plan, and 3) pursuant to the settlement agreement. Caliber filed the foreclosure action in Orangeburg County on June 16, 2015, waiving deficiency judgment, and Federal Home Loan Mortgage Corporation ultimately purchased the Orangeburg rental property at auction for \$5,000. An order from the Orangeburg County Master In Equity shows Ms. Anderson owed \$75,230.00 on the note and mortgage. On December 28, 2015, Ms. Anderson's bankruptcy was dismissed upon motion of the Trustee due to her failure to make the plan-required payments.

### LEGAL STANDARD

Summary judgment is proper when “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC, see also Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” S. Glass & Plastics Co. v. Duke, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). Once a moving party sustains its initial burden, the opposing party cannot rest upon the allegations made in its pleadings but must set forth specific facts showing that there is a genuine issue for trial. Midland Mut. Life Ins. Co. v. Harrell, 331 S.C. 394, 397-98, 503 S.E.2d 189, 190-91 (Ct. App. 1998).

### ANALYSIS

To prevail in an action for negligence, the plaintiff must establish: 1) a duty of care owed by the defendant to the plaintiff, 2) a breach of that duty by a negligent act or omission, and 3) damage proximately caused by the breach. Vinson v. Hartley, 324 S.C. 389, 399, 477 S.E.2d 715, 720 (Ct. App. 1996). Where negligence is lodged against an attorney, the plaintiff must show: 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. Rydde v. Morris, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009) (citing Smith v. Haynsworth, Marion. McKay & Guerard, 322 S.C. 433, 435 n.2, 472 S.E.2d 612, 613 n.2 (1996)).

Section 1.2 of Rule 407 of the South Carolina Appellate Court Rules, entitled “Scope of Representation and Allocation of Authority Between Client and Lawyer,” provides that a “lawyer may limit the scope of the representation if the limitation is reasonable under the

circumstances and the client gives informed consent." Comment 6 provides that "[t]he scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client." Rule 1.2, SCRPC, Rule 407, SCACR, Comment 6. "[S]ubstantial latitude" is afforded the lawyer and the client to limit the representation. Rule 1.2, SCRPC, Rule 407, SCACR, Comment 7. The South Carolina Supreme Court has held that such agreements effectively limit the scope of an attorney's representation of his client. See RFT Management Co., LLC v. Tinsley & Adams L.L.P., 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012).

The Agreement is the only one which Defendants entered with Ms. Anderson, and its terms unequivocally limited Defendants' representation to the bankruptcy and precluded Defendants' obligation to represent Ms. Anderson in actions by a third party, such as Caliber Home Loans' foreclosure.

#### CONCLUSION

Based on the foregoing, Defendants are entitled to summary judgment because the scope of their representation of Ms. Anderson was expressly limited to the bankruptcy. Accordingly, Defendants' Motion for Summary Judgment is GRANTED.

AND IT IS SO ORDERED!

[Electronic Signature Follows]

Diane S. Goodstein  
Circuit Court Judge

St. George, South Carolina