

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

John E. Harbin,)
)
Plaintiffs,)

Civil Action No. 2017-CP-04-02099

v.)

**ORDER GRANTING DEFENDANT HUB
ENTERPRISES, INC.'S AND DEFENDANT
SHAWN CONWAY'S MOTION TO DISMISS**

April Blair, Tracy Dunn, Shawn)
Conway, HUB Enterprises, Inc.,)
Gallivan, White & Boyd, Sam)
Nikopoulos and John Doe,)

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Defendants.)

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SC Court of Appeals

This matter comes before the Court on Defendants HUB Enterprises, Inc. ("HUB") and Shawn Conway ("Conway") (collectively "Defendants") Motion to Dismiss the Plaintiff's Amended Complaint. For the reasons set forth below, Defendants' Motion is GRANTED.

FACTS

The Plaintiff's Amended Complaint alleges a claim of tortious interference with contractual relations. Plaintiff alleges that, on June 21, 2014, he was shot in the lower right extremity by Defendant Tracy Dunn ("Dunn") while on the property of Defendant April Blair ("Blair"). Am. Compl., ¶¶ 22-30. After that shooting occurred, several related legal proceedings followed. First, Dunn was charged with a criminal offense; he would later plead guilty to Assault and Battery of a High and Aggravated Nature and receive a probationary sentence. Am. Compl. ¶ 34. Second, Plaintiff filed a complaint naming Blair and Dunn as defendants. Am. Compl., ¶ 31. Dunn failed to answer that complaint or otherwise file a responsive pleading. Am. Compl., ¶ 32. Blair had homeowners insurance coverage through State Farm Insurance Company and was represented

during that litigation by counsel from the law firm of Defendant Gallivan, White & Boyd ("GWB"). Prior to trial of the case, GWB made a settlement offer on behalf of Blair to Plaintiff. That offer was rejected. At trial, the jury returned a defense verdict for Blair. Am. Compl., ¶ 44. Thereafter, GWB moved for an order granting costs for all expenses incurred from the date the settlement offer was made. Attached to the motion was an affidavit in support, including Exhibit I, an invoice from HUB for three (3) days of attempted surveillance on Plaintiff by its employee Conway. The trial court granted that motion. Plaintiff moved for a new trial, arguing that GWB's failure to disclose Conway's attempted surveillance on Plaintiff was newly discovered evidence that entitled him to a new trial. The trial court denied that motion. Plaintiff now alleges that HUB and Conway tortuously interfered with his contractual relationship with his attorney, Donald Smith. Am. Compl., ¶¶ 70-81.

STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct.App.1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct. App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court properly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

ARGUMENT

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

In the instant case, Plaintiff has failed to plead any facts or circumstances evincing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
77. Conway signed an affidavit which attested to the fact that he had provided surveillance on Harbin, on behalf of Blair, but had *never seen him*, and, therefore, he is responsible as an individual for interfering with Plaintiff's contract. (emphasis in original).

78. HUB Enterprises, Inc. was retained by Gallivan, White & Boyd to provide surveillance on John Harbin for the underlying tort action brought by Harbin and, therefore, it is responsible for the conduct of Conway pursuant to *respondeat superior*, and, therefore, it is responsible for interfering with Plaintiff's contract.

80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by HUB or Conway warranting the inference that either of their intentional actions procured the breach of the contract.

IT IS THEREFORE ORDERED that Defendant HUB Enterprise, Inc.'s and Defendant Shawn Conway's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Tenth Judicial Circuit

Anderson, South Carolina
November _____, 2018



Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al

Case Number: 2017CP0402099

Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.