

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
BRUCE R. HOFFMAN,)
)
)
Plaintiff,)
)
v.)
)
DIANE L. KING, MARY E. SHARP AND)
SHARP LAW FIRM, LLC,)
)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2019-CP-07-02046

**ORDER GRANTING
MOTION TO DISMISS
AS TO SHARP DEFENDANTS**

This matter comes before the Court on the Motion to Dismiss Complaint filed by Defendants Mary E. Sharp (“Sharp”) and Sharp Law Firm, LLC (together the “Sharp Defendants”). The Motion seeks dismissal of Plaintiff’s Complaint pursuant to rule 12(b)(6) of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, the Court GRANTS the Motion and dismisses with prejudice Plaintiff’s Complaint as to the Sharp Defendants.

FACTUAL BACKGROUND

Plaintiff Bruce Hoffman (“Hoffman”) is an attorney representing himself in this lawsuit. Hoffman is also the attorney who represents Plaintiffs Johnnie and Josephus Major in an adverse possession lawsuit pending in Beaufort County before the Honorable Marvin Dukes entitled *Johnnie and Josephus Major v. Diane L. King*, 2018-CP-07-00022. The Sharp Defendants represent defendant Diane King in that adverse possession lawsuit. These are matters of public record and the Court may take judicial notice of these facts. (SC Rules of Evidence 201(f)).

In this lawsuit, Hoffman complains that an email, which he attaches to his Complaint, was sent to Judge Dukes’ administrative assistant, Heather McLeod, on July 31, 2019.

(Complaint, para 9). The email is from Diane King, from her email address, and references discovery, amending the complaint and a time frame for compliance. (Complaint, Exhibit A). The references are to the *Major v. King* case in which Diane King is the named Defendant. (Complaint, para. 13 and 17). This fact is further illustrated through Plaintiff's Motion for Recusal/Disqualification of Judge Marvin H. Dukes III, filed in the *Major v. King* case on September 19, 2019.

PROCEDURAL BACKGROUND

Plaintiff Hoffman filed his Complaint on September 10, 2019, alleging two causes of action against the Sharp Defendants, one for defamation through an email and one for conspiracy between the Sharp Defendants and their client in the *Majors v. King* case, Diane King. The Sharp Defendants filed their Motion to Dismiss Complaint on September 27, 2019. The Motion to Dismiss came before the Court for hearing, duly noticed, on November 19, 2019. The Court heard argument of counsel and considered the briefs and law submitted, including the Memorandum in Support of Motion to Dismiss Complaint and Opposition to Sharp/Sharp Law Firm Motion to Dismiss. After due consideration, the Court grants the Motion to Dismiss as to the Sharp Defendants for the reasons set forth below.

STANDARD OF REVIEW

On a Rule 12(b)(6) motion to dismiss, the court shall consider the law applicable to the factual allegations set forth in the complaint. *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light must favorable to the plaintiff, would *not* entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is proper. *Id.*

If clarification is needed, the Court may take judicial notice of pleadings without converting the motion to a motion for summary judgment. In this matter, however, it is

undisputed that the email at issue and attached to the Complaint was sent by Diane King to the administrative assistant to the Judge presiding in the *Majors v King* case. Although the pleadings in that case provide supporting information, the court need only focus on the pleadings and attachments in the instant case to render its opinion.

LEGAL DISCUSSION

A. THE DEFAMATION CAUSE OF ACTION FAILS TO STATE A CLAIM AS TO THE SHARP DEFENDANTS.

The law on defamation is well settled in South Carolina. To recover for defamation, the plaintiff must establish by a preponderance of the evidence, each of the following four elements:

1) a false and defamatory statement made by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication. *Holtzscheiter v. Thomas Newspapers, Inc.*, 332 S.C. 502, 518, 506 S.E.2d 496 (1998). In this case, the Complaint fails to satisfy at least two of the four elements, and because a failure of any one element defeats the claim, the cause of action must be dismissed as to the Sharp Defendants.

1) The Sharp Defendants Did Not Make the Claimed Defamatory Statement.

The first element of a defamation claim is a false and defamatory statement made by the defendant. The Complaint states that the alleged defamatory statement is a July 31, 2019 email (Complaint para. 9; email attached as Ex. A to the Complaint). The email is from Diane King from her personal email address. Thus, based on the allegation of the Complaint, the Sharp Defendants did not make the allegedly false and defamatory statement that forms the basis for the defamation claim. Without this first element, therefore, the defamation claim as to the Sharp Defendants fails and the cause of action as to the Sharp Defendants must be dismissed.

2) The Sharp Defendants Hold an Absolute Privilege and are Immune from a Claim of Defamation.

The second element of a defamation cause of action requires a communication that is not privileged. Even if the Court were to somehow construe the email as being a statement by Sharp, she and her firm, as counsel for King, hold an absolute privilege. Restatement (Second) of Torts, §586. A communication by an attorney in any way related to a judicial proceeding is absolutely privileged, and no action for defamation lies based upon the publication of any such communication. “We hold that the absolute privilege exists as to any utterance out of the judicial proceeding and having any reasonable relation to it.” *Crowell v. Herring*, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct App 1990). “When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it is published, i.e., an action will not lie even if the report is made with malice.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22, 567 S.E.2d 881,892 (Ct App 2002) (citing *Hainer v. American Med. Intern, Inc.*, 328 S.C. 128, 135, 492 S.E.2d 103, 106 (1997)). Thus, for this additional reason, the defamation claim as to the Sharp Defendants must be dismissed.

B. THE CONSPIRACY CAUSE OF ACTION FAILS TO STATE A CLAIM AS TO THE SHARP DEFENDANTS.

Under South Carolina Law, an attorney will not be held liable for conspiracy in representing her client, unless the plaintiff pleads and proves that she breached some independent duty owed to plaintiff or acted in her own personal interest, outside the scope of her representation of the client. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

In this matter, it cannot be disputed that Sharp represents King in the case in which King sent the email to the Judge’s assistant referencing discovery matters; thus, the primary purpose of the Sharp/King combination is representation by Sharp of her client King in an ongoing lawsuit, *Majors v. King*. There is no allegation that Sharp owed Hoffman an independent duty as

opposing counsel or that she acted outside the scope of her representation of King for her own personal interest. In addition, the Complaint (para. 9) states that the alleged conspiracy resulted in the publication of the King email, and this allegation further defeats any claim against the Sharp Defendants, because the Sharp Defendants are immune from a claim based upon publication of the email. The Court further notes that the Complaint does not allege any special damages separate from those in the defamation cause of action. Under South Carolina law, the damages alleged must go beyond the damages alleged in the other cause of action, *Pye v. Estate of Fox*, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006). For all of these reasons, the cause of action for conspiracy must be dismissed as to the Sharp Defendants.

Finally, the Court acknowledges that the Sharp Defendants moved for sanctions as a part of their Motion to Dismiss and argued for sanctions at the hearing. While the Court agrees that no claim may be advanced against the Sharp Defendants in this matter, the Court declines to award sanctions at this time.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Sharp Defendants' Motion to Dismiss Complaint is GRANTED and the case as to the Sharp Defendants is dismissed, with prejudice.

IT IS SO ORDERED.

Honorable Jennifer B. McCoy
Circuit Judge

_____, 2020



Beaufort Common Pleas

Case Caption: Bruce R Hoffman VS Diane L King , defendant, et al

Case Number: 2019CP0702046

Type: Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764