

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ON CERTIORARI FROM THE COURT OF APPEALS
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Cordell Maddox Jr., Presiding Judge

Case No. 2018-CP-04-01409
Appellate Case No. 2019-000754

Taranika Webb,

Appellant,

v.

Fairview Gardens,

Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Taranika Webb
203 Miracle Mile Drive Apt 162
Anderson, SC 29621
SubrinaIheart@gmail.com

PRO SE APPELLANT

George A. Reeves, III (SC Bar No. 73659)
greeves@fisherphillips.com
Phillips L. McWilliams (SC Bar No. 101809)
pmcwilliams@fisherphillips.com
FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Phone: (803) 255-0000
Fax: (803) 255-0202

ATTORNEYS FOR RESPONDENT

RECEIVED

Apr 28 2020

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2018CP0401409

Taranika S. Webb
PLAINTIFF(S)

Fairview Gardens
DEFENDANT(S)

Submitted by: Court

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration, Judge Sprouse denies Defendant's motion to dismiss. Plaintiff shall have 30 days to submit an amended complaint.

ELECTRONICALLY FILED - 2019 Jan 11 3:00 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401409

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2752	1/10/19
Circuit Court Judge	Judge Code	Date

ELECTRONICALLY FILED - 2019 Jan 11 3:00 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401409



Anderson Common Pleas

Case Caption: Taranika S Webb VS Fairview Gardens
Case Number: 2018CP0401409
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2019-01-11 14:34:40 page 4 of 4

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STATE OF SOUTH CAROLINA)	IN COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
)	
Taranika Webb,	)	Case No.: 2018-CP-04-01409
)	
Plaintiff,)	
)	
vs.	)	PROPOSED ORDER GRANTING
	)	MOTION TO DISMISS
Fairview Gardens,)	
)	
Defendant.)	
)	

BEFORE THE COURT is Defendant Fairview Gardens’ (“Defendant”) Motion to Dismiss Plaintiff Taranika Webb’s (“Plaintiff”) Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing on this matter was held in Anderson County, South Carolina on March 19, 2019. Defendant was represented by counsel at the hearing, while Plaintiff represented herself pro se. After fully considering Defendant’s motion and the arguments and authorities of all parties, the Court issues this Order dismissing Plaintiff’s Complaint, with prejudice.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a current resident of Defendant’s property located in Anderson, South Carolina. On July 19, 2018, Plaintiff filed her Summons and Complaint alleging violations of her privacy rights and breach of contract. Defendant filed a Motion to Dismiss or in the Alternative Motion for a More Definite Statement on November 6, 2018. A hearing was held on Defendant’s Motion to Dismiss on January 10, 2019, before the Honorable Judge R. Scott Sprouse. Plaintiff represented herself pro se at the January 10, 2019 hearing, while Defendant was represented by counsel. At the conclusion of the January 10, 2019 hearing, Judge Sprouse instructed Plaintiff to file an Amended Complaint within thirty (30) days to address the issues raised by Defendant in its

Motion to Dismiss. On January 11, 2019, Judge Sprouse issued a Form 4 Order, in which he denied Defendant's Motion to Dismiss, and instructed Plaintiff to amend her Complaint within thirty (30) days.

On January 23, 2019, Plaintiff filed her Amended Complaint alleging three causes of action: (1) breach of contract, (2) negligence, and (3) invasion of privacy. In support of these causes of action, Plaintiff alleges there is a "peeping tom" somewhere on the property owned by Defendant, that the Defendant maintained a "handbook" which promises a habitable living environment, and that on an unspecified date, Plaintiff returned to her apartment and found a set of keys hanging from her apartment door.

II. LEGAL STANDARD

"In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the [pleading]." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011); *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). If the claimants fail "to state facts sufficient to constitute a cause of action" in their pleading, the circuit court should dismiss the claims. *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

III. LEGAL ANALYSIS

1. Breach of Contract

In support of Plaintiff's first cause of action for breach of contract, Plaintiff alleges that "P.K. Management promised in their handbook to maintain a habitable pleasant living environment;" that Plaintiff complained of a "peeping tom" living in another apartment; and that Defendant did not respond to her complaints. These facts do not support a cause of action for breach of contract.

In order to state a cause of action for breach of contract, a party must plead and prove the following elements: (1) the existence of a contract, (2) its breach, and (3) damages caused by such breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting *S. Glass & Plastics Co., v. Kemper*, 399 S.C. 483, 491-91, 732 S.E.2d 205, 209 (Ct. App. 2012)). Plaintiff failed to plead these elements or any facts in support of these elements.

Plaintiff did not plead the existence of a contract. Although Plaintiff states that Defendant's "handbook" promises a "habitable pleasant living environment," this allegation is insufficient to allege the existence of a contract, as "it is essential in setting forth a breach of contract, either the substance of the instrument be averred in the pleading, or that the contract itself be set forth." *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986) (quoting 61A Am.Jur.2d Pleading Section 92 (1981)). Accordingly, Plaintiff's allegation that the "handbook" constitutes a contract, without more, is insufficient to allege the first element of a breach of contract claim. *See Jones*, 343 S.E.2d at 648 (affirming dismissal where plaintiff failed to set forth pertinent provisions of alleged contract or incorporate contract into complaint.)

Moreover, even if Plaintiff's allegation regarding a "handbook" was sufficient to allege the existence of a contract, Plaintiff fails to plead that Defendant breached this contract or that any damages were caused by Defendant's breach. Nor does she allege any facts from which such an inference could be taken. Plaintiff's breach of contract cause of action is, therefore, dismissed with prejudice.

2. Negligence

The facts in support of Plaintiff's negligence claim are that on an unspecified day she came home and there were "keys hanging from [her] door" while the "[l]easing officer [was] at lunch." These facts are insufficient to support a cause of action for negligence.

In order for Plaintiff to state a cause of action for negligence, she must plead and prove the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). Plaintiff's allegations do not contain facts to support any of the elements of a negligence claim. Plaintiff's allegation that she found keys in her door while the leasing officer was at lunch, even if taken as true, fails to establish a duty or liability on the part of Defendant. Further, Plaintiff does not allege any damages arising from this incident or facts that would support an inference that Plaintiff suffered any damages. Plaintiff's negligence claim is, therefore, dismissed, with prejudice.

3. Invasion of Privacy

The entirety of Plaintiff's allegations regarding her invasion of privacy claim are: "Invasion of privacy – Because of what they allowed to happen on this property with the peeping tom and refusing to take this complaint serious. When it is a crime and also against HUD rules and policy to allow such a thing as this." These allegations fail to state a claim under any of the causes of action for invasion of privacy recognized under South Carolina law.

South Carolina recognizes three distinct causes of action related to privacy rights: (1) wrongful appropriation of personality; (2) wrongful publicizing of private affairs; and (3) wrongful intrusion into private affairs. *Snakenburg v. Hartford Cas. Ins. Co., Inc.*, 299 S.C. 164, 170, 383 S.E.2d 2, 5 (Ct. App. 1989) (citing *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984); *Wright v. Sparrow*, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989)).

In order to state a cause of action for wrongful appropriation of personality, Plaintiff must plead facts that establish the intentional, unconsented use of Plaintiff's name, likeness, or identity by the Defendant for its own benefit. *Snakenburg*, 299 S.C. at 170, 383 S.E.2d at 5. The Amended Complaint does not allege Defendant used Plaintiff's name, likeness, or identity for Defendant's

benefit. Accordingly, Plaintiff fails to allege a cause of action for wrongful appropriation of personality.

Similarly, Plaintiff fails to plead a cause of action for wrongful publicizing of private affairs. This cause of action requires Plaintiff to plead facts sufficient to show that Defendant intentionally disclosed facts in which there is no legitimate public interest, and that the disclosure is such as would be offensive and likely to cause serious mental injuries to a person of ordinary sensibilities. *Snakenburg*, 299 S.C. at 170-171, 383 S.E.2d at 6. Plaintiff's Complaint is devoid of any allegations that Defendant disclosed any facts about Plaintiff and, therefore, fails to state a claim under this theory.

Finally, Plaintiff's Complaint does not state a claim for wrongful intrusion into private affairs. This cause of action requires Plaintiff to plead and prove facts sufficient to establish: (1) an intrusion, (2) into that which is private, (3) that is substantial and unreasonable enough to be legally cognizable, and (4) that Defendant's act or course of conduct was intentional. *Snakenburg*, 299 S.C. at 171-172, 383 S.E.2d at 6. For purposes of the final element, "An act is intentional if (1) it is done willingly; and either (2) the actor desires the result of his conduct, whatever the likelihood of that result happening; or (3) the actor knows or ought to know the result will follow from his conduct, whatever his desire may be from that conduct." *Id.* (citing *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981)).

Plaintiff's allegation regarding a "peeping tom" on Defendant's property, with no other facts to support her claim, is insufficient to allege wrongful intrusion in to private affairs on the part of Defendant. Conclusory allegations regarding the independent actions of a third-party do not sufficiently allege an intrusion by Defendant or that there was any intentional conduct by Defendant. *See Gilstrap*, 288 S.C. at 528, 343 S.E.2d at 648 (noting that even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any

particularized allegations of fact, is insufficient to state a cause of action). Plaintiff has, therefore, failed to plead the elements of wrongful intrusion into private affairs claim. Accordingly, her invasion of privacy claim must be dismissed, with prejudice.

NOW THEREFORE, based on the foregoing, the Court hereby **GRANTS** Defendant's Motion to Dismiss, with prejudice.

IT IS SO ORDERED.

Judge J. Cordell Maddox, Jr.
Anderson County, South Carolina

_____, 2019
Anderson, South Carolina



Anderson Common Pleas

Case Caption: Taranika S Webb VS Fairview Gardens
Case Number: 2018CP0401409
Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.

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ELECTRONICALLY FILED - 2019 Apr 05 2:25 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401409

FILED-CLERK'S OFFICE
ANDERSON SC

2018 JUL 19 PM 12:53

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

TARANIKA WEBB

PLAINTIFF(S)

VS.

/FAIRVIEW

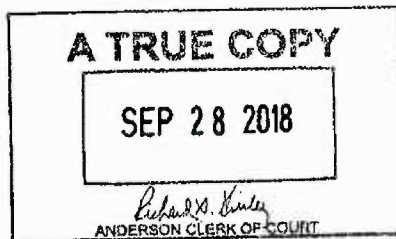
DEFENDANT(S)

2018CP04 01409

SUMMONS

GARDENS

TO THE DEFENDANT P.K. MANAGEMENT/FAIRVIEW GARDENS



YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within 10 days from the first day after receipt of this summons. Your answer must be received by the Magistrate's Court located at:

100 SOUTH MAIN STREET

ANDERSON S.C.

29625, SC

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. If you desire a jury trial, you must request one in writing at least five (5) working days prior to the date set for trial. If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand, this 1 day of July, 2018.

Tarika Webb

FILED-CLERK'S OFFICE
ANDERSON SC

2018 JUL 19 PM 12:53

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF ANDERSON

COMMON PLEAS AND
GENERAL

Taranika Subrina Webb

PLAINTIFF

2018CP0401409

1101 williamston rd. apt. 14b

STREET ADDRESS

Anderson , South carolina 29625

CITY, STATE ZIP

8642216366

Taranika.Jackson@gmail.com

TELEPHONE

VS.

Fairview Gardens Apartment

DEFENDANT(S)

1101 wiilamston rd.

STREET ADDRESS

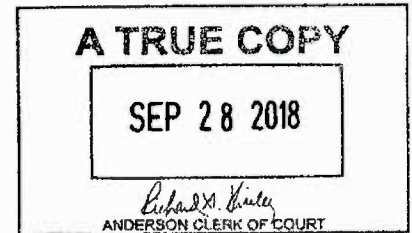
Anderson South carolina 29625,

CITY, STATE ZIP

(864)2253933

TELEPHONE

COMPLAINT



I, Taranika webb, the plaintiff in this civil action do make the following claims:

1. I believe the defendant, Fairview Garden, is a resident of Anderson County, and resides at 1101 williamston rd. apt. 14a, which is within Judge _____'s magisterial jurisdiction or this Complaint is properly filed in Anderson County.

2. I make this complaint on the following:

Violating my rights to privacy. (Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$10 of your four bedroom apartments at the hud price of 1,500 a month. I ask for the deed and the ownership of each of those apartments. and/or other relief as below requested:

_____ including any costs resulting in this action.

~~I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.~~

Dated: July 19, 2018

Taranika Webb
Signature of Plaintiff (or his attorney)

problem to the staff on this property the problem only got worst.

Article 2. Breach of contract

- a. Fairview gardens states in their lease agreement and as landlord that they would follow all rules and enforce the rules and regulation. The tenant in 14a Apartment has violated all of the rules including Huds.

Granita Webb
101 Williamston Rd
Apt. 14 b.
Anderson S.C.
29625

CERTIFIED MAIL



7036 0680 0001 2397 6280

GREENWILLE
SC 296
03 OCT 19
PM 4 11



29621



U.S. POSTAGE PAID
FIRST CLASS PERMIT NO. 100
ANDOVER, SC

\$6.20
R2305E/123411-03

Fairview Garden Apt.
1101 Williamston Rd. office
Anderson, S.C. 29621



29621-651199

State Of South Carolina

Case No.

County Of Anderson

2018CP0401409

Taranika Subrina Webb

1101 Williamston RD. APT.14b

Anderson South Carolina 29625

*Amend to
Complaint.*

VS

Fairview Gardens/P.K. Management

1101 Williamston RD.

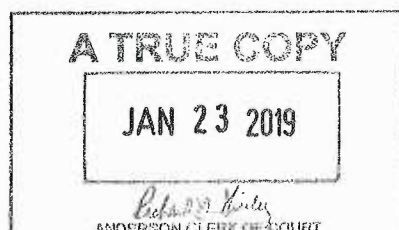
Anderson South Carolina 29624

To the court and the defendant(s):

Since filing the original complaint against the defendant(s), I have become aware of certain facts that existed at the time of original filing but which were ~~not~~ known to me. As a result I now wish to amend the original Complaint to include the following facts, allegations and issue as follows:

Breach of contract- P.K. Management promises in their handbook to maintain a habitable pleasant living environment.

- a. I complained for many months of a peeping tom living in apartment 14a. After many complaints refused to address the problem.
- b. I contacted the corporate office and asked them to move me off the property no reply.



JAN 23 2019
Anderson, SC COC. OF A/S

Negligence –On November 28, 2018 at around 12:30pm. I came in from work to notice keys hanging from my door and a host of tenants my front door. Leasing officer at lunch.

Invasion of privacy- Because of what they allowed to happen on this property with the peeping tom and refusing to take this complaint serious. When it is a crime and also against HUD rules and policy to allow such a thing as this.

As a result of this amend complaint, I request the court grant to me a judgement against the defendant(s) ten of P.K management apartment at 1500.00 dollars a month equal to 15,000 for the rest of my life. I ask that the previous month be paid starting in November of last year. I ask for the deeds and ownership for each of these apartments or 1 million dollars and two apartments.

Taranyika Webb
Taranyika Webb
1/22/2019

Taranika Subrina Webb
1101 Williamston Rd. Apt. 14
Anderson S.C. 29625



GREENVILLE SC 29615

25 JUN 2019 PM 1:4

George A. Reeves, III
1380A Main St, Suite 750
Columbia, SC. 29201



State of South Carolina
County of Anderson

Court of Common Pleas

Taranika S. Webb)
)
 Plaintiff,)
 v.)
 Fairview Gardens)
)
 Defendant.)

Transcript of Record
2018-CP-04-01409

March 19, 2019
Anderson, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Judge.

A P P E A R A N C E S:

Taranika S. Webb,
Plaintiff

Phillips McWilliams, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

* * * * *

1
2
3 THE COURT: All right. *Webb v. Fairview*
4 *Gardens*. This a motion to dismiss; is that right?

5 MR. MCWILLIAMS: Yes, Your Honor.

6 THE COURT: Okay. Are you Ms. Webb?

7 MS. WEBB: Yes.

8 THE COURT: Okay. Just for the court reporter,
9 y'all introduce yourselves just -- and then I'll let
10 you explain your motion after.

11 MR. MCWILLIAMS: Phillips McWilliams, Your
12 Honor.

13 THE COURT: Okay.

14 MS. WEBB: I'm Taranika Webb.

15 THE COURT: Okay. Ms. Webb, you don't have a
16 lawyer. The only thing I would ask is that when
17 you're talking, stand up so she can hear you.

18 All right. They filed a motion to dismiss, so
19 apparently you're -- they're asking me to dismiss
20 your case. I don't know what your case is about,
21 but give me some background and tell me what you
22 need.

23 MR. MCWILLIAMS: Yes, Your Honor. Phillips
24 McWilliams for the defendant, Fairview Gardens.

25 And this is actually Ms. Webb's second bite at

1 the apple. My colleague, George Reeves, argued a
2 motion to dismiss in front of Judge Sprouse
3 previously, and he granted her leave to amend her
4 complaint. Gave her 30 days -- 30 days to amend it.
5 She did amend her complaint and actually assert
6 three causes of action, which are breach of
7 contract, negligence, and invasion of privacy.
8 However, she failed to allege any of the elements of
9 those claims or any facts in support of those
10 elements.

11 For a breach of contract claim, she's alleged
12 there is a handbook between her and the apartment
13 complex that somehow constitutes a contract. That,
14 one, doesn't -- there's no facts there to show that
15 that is a contract. Two, there's no facts in her
16 complaint that show that Fairview Gardens breached
17 that contract. And even if those two facts were
18 there, she's not alleged any damages caused by that
19 breach. Therefore, that claim is wholly
20 insufficient and should be dismissed.

21 Her second cause of action is negligence, which
22 she supports with the allegation that she came home
23 one day and found a set of keys in her apartment
24 door. There's no allegation of a duty on behalf --
25 on the part of Fairview Gardens. There's no

1 allegations of that saying that Fairview Gardens
2 breached that duty by negligent act or omission.
3 And, finally, there's no allegation that -- that
4 allege -- that alleged breach proximately caused any
5 damages to Ms. Webb. So, again, we ask that claim
6 should be dismissed.

7 Her final cause of action is an invasion of
8 privacy claim. South Carolina -- and the facts she
9 said has to support this, is she alleges there is a
10 peeping Tom somewhere in the apartment complex.
11 There are three causes of action that South Carolina
12 law recognizes that are related to privacy rights.

13 The first is wrongful appropriation of
14 personality, which a peeping Tom could not
15 constitute. The second is wrongful pub -- wrongful
16 publicizing of private affairs to get a peeping Tom
17 allegation we will touch on. The final is a
18 wrongful intrusion into private affairs. But even
19 here, she's failed to allege any facts that she had
20 elements of that claim, which are an intrusion into
21 that which is private, that it's substantial and
22 unreasonable enough to be legally cognoscible, and
23 that act was intentional.

24 Here she has alleged an act on the part of a
25 third party that may not be intentional, but there

1 has been no act on the part of Fairview Gardens was
2 intentional to support this cause of action.

3 So, Your Honor, we'd ask that you dismiss this
4 complaint given that it's her second bite at the
5 apple. She's already been allowed to amend it once,
6 and she's still failed to allege any facts to
7 support her cause of action.

8 THE COURT: All right. Well, let me ask you
9 this: The breach of contract, is there -- is there
10 a lease agreement?

11 MR. MCWILLIAMS: My understanding is there is a
12 lease agreement, yes, Your Honor.

13 THE COURT: Okay.

14 MR. MCWILLIAMS: But she has failed to allege
15 anything with -- with the lease agreement in her
16 complaint.

17 THE COURT: Okay. All right. Yes, ma'am.
18 Anything you want to reply to that? Whose keys were
19 they?

20 MS. WEBB: They was the apartment complex's
21 keys. They was doing their annual inspection, and I
22 came home from work, and they left the keys in
23 the -- in the door from their annual inspection.

24 THE COURT: Oh, okay.

25 MS. WEBB: I talked to one of the corporate

1 offices today and asked them about their policy on
2 annual inspections. And I talked to Simone. She
3 said -- these were her exact words. And I talked to
4 her today at 11:21 a.m., and I was actually -- this
5 is what she stated: "Leaving the keys in the
6 resident's door is against our policy, and this
7 should not -- this should not have happened. This
8 should have never happened."

9 And then she said that I should have
10 contacted -- when I went to the leasing -- when I
11 went to the leasing office to ask -- to ask them
12 about the keys, they was gone and out to lunch, so I
13 couldn't -- there was nobody there to talk to.

14 As far as the -- the handbook, I did bring a
15 copy of the handbook that goes with the contract --
16 the lease -- the -- the lease that I signed with
17 Fairview Gardens apartments.

18 And as far as the peeping Tom, he -- I don't
19 know. His -- you can hear the person in the -- in
20 the -- in his -- in his apartment. And I have
21 complained about it for many, many, many, many
22 months. And I -- I moved there, and I keep telling
23 them, I moved there from being homeless. So as far
24 as me moving there and just quickly moving out, I
25 didn't want to it because I've been homeless. It

1 was my first thing -- I ain't never been homeless
2 before.

3 THE COURT: Right.

4 MS. WEBB: And so -- well, I moved there from
5 being homeless. So when I went and contacted the
6 lease -- the property manager, and, you know, they
7 never really took it serious. They laughed it off.

8 And then I went to their corporate office, and
9 I just e-mailed Mr. Reeves an e-mail today from the
10 corporate office -- from corporate office with no
11 replies because they never reply back about it,
12 so...

13 THE COURT: They won't move your apartment?

14 MS. WEBB: Huh? They won't ---

15 THE COURT: They won't move you to another
16 apartment?

17 MS. WEBB: --- they won't move me into an
18 apartment. I've been to my mom's. Most of my
19 family lives on low income, so, you know, you only
20 can be there for a number of days, and then I have
21 to move back out and move back in.

22 THE COURT: No. But, I mean, Fairview Gardens
23 won't move you into another apartment away from this
24 person that's ---

25 MS. WEBB: No! The person that I complained

1 about when I first moved in, they moved the person
2 right next door to me because he would run and kick
3 my door and steal my mail and do things like that.
4 So when I complained about it, they moved him right
5 next door to me, and then it just got -- it just got
6 worse from there. He stole ---

7 THE COURT: You mean he was doing that stuff
8 before he lived next door to you?

9 MS. WEBB: Yes. He had lived there before me,
10 before I did, so...

11 THE COURT: So he was kicking your door and
12 stealing your mail ---

13 MS. WEBB: Kicking my door and ---

14 THE COURT: --- and he lived somewhere -- wait
15 a minute. Wait a minute. He lived somewhere else
16 in the apartment?

17 MS. WEBB: He lived across the hall -- across
18 the building across the -- he lived in the building
19 right across from me.

20 THE COURT: And did you complain about him
21 doing that?

22 MS. WEBB: Yes.

23 THE COURT: And they moved him next door to
24 you?

25 MS. WEBB: Right next door to me.

1 THE COURT: Why would they do that?

2 MS. WEBB: Well, his grand -- well, his
3 grandma -- he used to live with his grandma, and
4 then he got his own little apartment. So he
5 lived -- so when he moved from his grandma, he moved
6 right next door to me.

7 MR. MCWILLIAMS: Your Honor, I -- I'm not aware
8 of any of these facts, but none of them are in the
9 complaint. And even if she says that the keys were
10 left by someone from Fairview Gardens, which that
11 fact is not in the complaint, she's not alleged how
12 she was damaged or harmed from any of that.

13 THE COURT: Yeah, no. Hey, here's -- here's
14 the deal, you probably ---

15 MS. WEBB: I understand what you're saying.

16 THE COURT: --- you've probably -- he's
17 probably right, but here's the deal. On the key
18 thing, I'm going to grant you that.

19 On the breach of contract, I -- I'll have to
20 grant their motion to dismiss, but I'm going to take
21 under advisement the privacy matter. And here's
22 what would be kind of a nice way to resolve this and
23 then, is to get that guy moved to another apartment
24 or move her. I mean, I -- I don't think you have
25 any chance to win legally. I'm being honest with

1 you, but I'm going to hold off on ---

2 MS. WEBB: Would I win on this ---

3 THE COURT: Hold on a minute. I'm going to
4 hold of on deciding and maybe they'll get you moved
5 while -- maybe they will.

6 MS. WEBB: I really, really -- I really want to
7 buy me a house, so I really don't want to stay on
8 that property -- that property. I really want to go
9 from low income to owning my own is why I'm here.

10 As far as my case, I don't know, you know.

11 THE COURT: He's right about all the
12 legalities. How long are you going to be staying at
13 Fairview Gardens?

14 MS. WEBB: I'm hoping to be moved out soon.
15 I'm going to move back to -- in my family's house,
16 and I stay there every now and then, but...

17 THE COURT: Okay. So it wouldn't help you if I
18 ask them to move him or move you?

19 MS. WEBB: Huh?

20 THE COURT: It wouldn't help you much if I ---

21 MS. WEBB: It may help some if I'm -- yeah,
22 it'll help.

23 THE COURT: See what you can do, and I -- and
24 then I -- I got to tell you, and I'm going to take
25 it under advisement for ten days. I probably have

1 to rule in his favor, which means your lawsuit's
2 out, but I'm doing that to see if they'll move you
3 and -- and get this resolved.

4 MS. WEBB: Okay.

5 THE COURT: Okay. Good luck to you.

6 MS. WEBB: If you do it -- if you dismiss my
7 case, can you do it without prejudice, please?

8 THE COURT: I probably really shouldn't, but
9 I'm not sure that would prevent you -- I mean, you
10 may have some issue here. The lease is the real
11 contract, not the handbook. I can't give you legal
12 advice. That's illegal. So I'm just telling you
13 that that's my opinion, but I'll see what I can do.
14 Let's see if we can get you moved. See what you can
15 do.

16 MR. MCWILLIAMS: I'll look into it, Your Honor.
17 Do you need anything from us in ten days or...

18 THE COURT: Yeah, send me an e-mail in ten days
19 and send a copy to her just to remind me of it, and
20 then I'll let you know on that issue only. So,
21 basically, the only thing you have left is the
22 privacy issue, and I'm just hoping they move you so
23 you can get away from this crazy person. Okay.

24 MR. MCWILLIAMS: So, Your Honor, I just want to
25 make sure I understood. You're dismissing the

1 breach of contract and the negligence action and
2 you're hold ---

3 THE COURT: Yep.

4 MR. MCWILLIAMS: --- you're taking under
5 advisement for ten days the invasion of privacy?

6 THE COURT: Yep.

7 MR. MCWILLIAMS: All right. Thank you, Your
8 Honor. And I'll -- I'll e-mail you in ten days, and
9 I'll look into that.

10 THE COURT: Okay. See if we can help her out.

11 MR. MCWILLIAMS: Yes, sir.

12 MS. WEBB: Thank you.

13 THE COURT: Good luck to you.

14 MS. WEBB: Thank you.

15 (The proceedings concluded at 2:42 p.m.)

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STATE OF SOUTH CAROLINA)	IN COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
)	
Taranika Webb,	)	Case No.: 2018-CP-04-01409
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT’S MOTION TO DISMISS
	)	OR IN THE ALTERNATIVE MOTION
Fairview Gardens,	)	FOR A MORE DEFINITIVE
	)	STATEMENT
Defendant.)	
)	

Defendant Fairview Gardens, by and through its undersigned counsel, hereby moves to dismiss Plaintiff’s Complaint in its entirety pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because the Plaintiff has failed to state facts sufficient to constitute a cause of action for breach of contract or invasion of the right of privacy. Alternatively, should the Court decline to grant Defendant’s Motion to Dismiss, Defendant also moves for a more definite statement pursuant to Rule 12(e). Defendant cannot determine what causes of action Plaintiff is attempting to assert against Defendant in her current Complaint and, therefore, cannot reasonably be required to prepare a responsive pleading. This Motion will be supported by the applicable statutes and case law as well as a Memorandum of Law prior to hearing and in accordance with the Rules of Civil Procedure.

Respectfully submitted,

s/ George A. Reeves, III
 George A. Reeves, III (SC Bar No. 73659)
 greeves@fisherphillips.com
 FISHER & PHILLIPS LLP
 1320 Main Street, Suite 750
 Columbia, South Carolina 29201
 Phone: (803) 255-0000
 Fax: (803) 255-0202

ATTORNEYS FOR DEFENDANT

Dated this 6th day of November 2018.
 FPDOCS 34674022.1

STATE OF SOUTH CAROLINA	)	IN COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
)	
Taranika Webb,	)	Case No.: 2018-CP-04-01409
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT’S MOTION TO DISMISS
	)	AMENDED COMPLAINT AND
Fairview Gardens,	)	STRIKE REQUESTED DAMAGES
)	
Defendant.)	
)	

Defendant Fairview Gardens, by and through its undersigned counsel, hereby moves to dismiss Plaintiff’s Amended Complaint in its entirety pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because the Plaintiff has failed to state facts sufficient to constitute a cause of action for breach of contract, negligence, or invasion of the right of privacy. Further, Defendant’s move to strike the damages requested by Plaintiff pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a current resident of Defendant’s property located in Anderson, South Carolina. On July 19, 2018, Plaintiff filed a Magistrate’s Court form Summons and Complaint in this Court. The Summons, which only allowed Defendant 10 days to respond rather than the 30 days required under Rule 12(a) of the South Carolina Rules of Civil Procedure, was served by mail on October 17, 2018. Defendant filed a Motion to Dismiss or in the Alternative Motion for a More Definite Statement on November 6, 2018. A hearing was held on Defendant’s Motion to Dismiss on January 10, 2019 before the Honorable Judge R. Scott Sprouse. At the conclusion of the hearing, Judge Sprouse instructed Plaintiff to file an Amended Complaint within 30 days to address the issues raised by Defendants in their Motion to Dismiss. On January 11, 2019, Judge Sprouse issued a

Form 4 Order in which he denied Defendants' Motion to Dismiss and instructed Plaintiff to amend her Complaint within 30 days.

On January 23, 2019, Plaintiff filed an amended Complaint with the Anderson County Clerk of Court. Plaintiff served counsel for Defendants via mail on or about January 28, 2019. In Plaintiff's amended Complaint, Plaintiff again provides only vague factual allegations which, even if taken as true, do not state a cause of action upon which relief may be granted. Each of the proposed causes of action are addressed below.

II. LEGAL ANALYSIS

A court may dismiss a claim when the defendant demonstrates that the plaintiff has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. SCRCP 12(b)(6). On a motion filed pursuant to Rule 12(b)(6), "the question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." Williams v. Condon, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499-500 (Ct.App. 2001).

A. MOTION TO DISMISS

1. Breach of Contract

Plaintiff's first cause of action purports to be one for breach of contract. In support of this cause of action, Plaintiff alleges only that "P.K. Management promised in their handbook to maintain a habitable pleasant living environment;" that Plaintiff complained of a "peeping tom" living in another apartment; and that Defendants did not respond to her complaints. As stated, these facts do not support a cause of action for breach of contract and, therefore, should be dismissed pursuant to Rule 12(b)(6).

In order to state a cause of action for breach of contract, a party must plead and prove the following elements: (1) the existence of a contract, (2) its breach, and (3) damages caused by such breach. Hotel & Motel Holdings, LLC v. BJC Enters., LLC, 414 S.C. 635, 780 S.E.2d 263 (Ct.App. 2015)(citing S. Glass & Plastics Co., v. Kemper, 399 S.C. 483, 732 S.E.2d 205, 209(Ct.App. 2012)). In this case, Plaintiff has failed to plead these elements or any facts in support of these elements. As an initial matter, Plaintiff has failed to adequately plead the existence of a contract. Although Plaintiff states that Defendants' "handbook" promises a "habitable pleasant living environment" this allegation is insufficient as "it is essential in setting forth a breach of contract, either the substance of the instrument be averred in the pleading, or that the contract itself be set forth." Jones v. Gilstrap, 288 S.C. 525, 343 S.E.2d 646 (Ct.App. 1986)(quoting 61A Am.Jur.2d Pleading Section 92 (1981)). The bald assertion that the "handbook" constitutes a contract without more, or without incorporating the "handbook" is insufficient. See Jones, 343 S.E.2d at 648 (affirming dismissal where plaintiff failed to set forth pertinent provisions of alleged contract or incorporate contract into complaint.). Furthermore, even if the vague reference to a "handbook" provision could constitute a contract, Plaintiff fails to plead fact sufficient to support a breach of the alleged contract or any damages that were caused by the breach imputable to Defendants. As such, Plaintiff's amended Complaint should be denied.

2. Negligence

Plaintiff's amended Complaint appears to base her cause of action for negligence on "keys hanging from [her] door." There is no interpretation of this allegation that can support a cause of action for negligence on the part of Defendant. In order for Plaintiff to state a cause of action for negligence, she must plead and prove the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately caused by the breach. Huggins v. CITIBANK, NA., 355 S.C. 329, 585 S.E.2d 275

(2003). Plaintiff's simple statement that she found keys in her door, even if taken as true, in no way establishes a duty or liability on the part of Defendants. Further, there are no allegations of damages arising from this alleged incident or facts that would support an inference that Plaintiff suffered any damages. Therefore, Plaintiff's cause of action for negligence must be dismissed.

3. Invasion of Privacy

In her amended Complaint Plaintiff alleges the following: "Invasion of privacy – Because of what they allowed to happen on this property with the peeping tom and refusing to take this complaint serious. When it is a crime and also against HUD rules and policy to allow such a thing as this." This vague statement, without more, is insufficient to state a claim under any of the recognized causes of action for invasion of privacy.

South Carolina recognizes three distinct causes of action related to privacy rights: (1) wrongful appropriation of personality; (2) wrongful publicizing of private affairs; and (3) wrongful intrusion into private affairs. Snakenburg v. Hartford Cas. Ins. Co., Inc., 299 S.C. 164, 170, 383 S.E.2d 2, 5(Ct. App. 1989)(citing, Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39(Ct. App. 1984); Wright v. Sparrow, 298 S.C. 469, 381 S.E.2d 503 (Ct. App. 1989)).

In order to state a cause of action for wrongful appropriation of personality, Plaintiff must plead facts that establish the intentional, unconsented use of Plaintiff's name, likeness or identity by the Defendant for its own benefit. Id. Likewise, Plaintiff has failed to plead a cause of action for wrongful publicizing of private affairs. This cause of action requires that Plaintiff plead facts sufficient to show that Defendant intentionally disclosed facts in which there is no legitimate public interest, and that the disclosure is such as would be offensive and likely to cause serious mental injuries to a person of ordinary sensibilities. Snakenburg, 299 S.C. at 170-171, 383 S.E.2d

at 6. Plaintiff's Complaint is devoid of any allegations that Defendant disclosed any facts about Plaintiff and, therefore, she cannot state a claim under this theory.

Next, Plaintiff's Complaint does not state a claim for wrongful intrusion into private affairs. This cause of action requires Plaintiff to plead and prove facts sufficient to establish: (1) an intrusion, (2) into that which is private, (3) that is substantial and unreasonable enough to be legally cognizable, and (4) that Defendant's act or course of conduct was intentional. Snakenburg, 299 S.C. at 171-172, 383 S.E.2d at 6. For purposes of the final element, "an act is intentional if (1) it is done willingly; and either (2) the actor desires the result of his conduct, whatever the likelihood of that result happening; or (3) the actor knows or ought to know the result will follow from his conduct, whatever his desire may be from that conduct." Id., citing, Bazley v. Tortorich, 397 So.2d 475 (La. 1981). In support of this theory, Plaintiff appears to make the conclusory allegation that Defendant allowed a neighbor to act as a "peeping tom." Plaintiff provides nothing more than this bald assertion to support her claim. This is insufficient to show an intrusion by Defendant or that there was any intentional conduct by Defendant. See, Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct.App. 1986)(even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient). Without these necessary elements, Plaintiff cannot state a claim and, to the extent that she has attempted to state a cause of action for wrongful intrusion into private affairs, that claim must fail.

B. MOTION TO STRIKE

In the event that the Court should deny Defendant's Motion to Dismiss, Defendant requests that the Court strike Plaintiff's requested damages pursuant to Rule 12(f). In her amended Complaint, Plaintiff seeks the "deeds and ownership" of 10 of Defendant's apartments or "1 million dollars and two apartments."

Rule 12(f) of the South Carolina Rules of Civil Procedure provides that the Court may strike “any redundant, immaterial, impertinent or scandalous matter.” Here, if Plaintiff were to succeed on any of her stated claims, she may not be awarded ownership of Defendant’s property. The damages available for any of the stated causes of action are limited to actual or compensatory damages and, depending on the facts, punitive damages. Because Plaintiff cannot recover real property as damages for her claims, this request should be stricken as immaterial and/or impertinent.

Respectfully submitted,

s/ George A. Reeves, III
George A. Reeves, III (SC Bar No. 73659)
greeves@fisherphillips.com
FISHER & PHILLIPS LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Phone: (803) 255-0000
Fax: (803) 255-0202

ATTORNEYS FOR DEFENDANT

Dated this 7th day of February 2019.

CERTIFICATE OF RESPONDENT'S COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court titled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

George A. Reeves III, S.C. Bar No. 73659
Fisher & Phillips, LLP
1320 Main Street, Suite 750
Columbia, South Carolina 29201
greeves@fisherphillips.com

ATTORNEY FOR RESPONDENT

Columbia, South Carolina
_____, 2020

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Apr 28 2020
SC Court of Appeals