

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mary Kimbrell,

Plaintiff,

vs.

Walmart Stores, Inc., Claims Management,
Inc., and Josh Johnson,

Defendants.

COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-23-06795

**ORDER OF DISMISSAL PURSUANT
TO RULE 12(b)(8)**

This matter was before the Court on March 9, 2020, to hear Defendants' Walmart Stores, Inc. ("Walmart"), Claims Management, Inc. ("CMI"), and Josh Johnson (hereinafter, collectively, "Defendants") Motion to Dismiss the above-captioned action pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure. Joshua Hawkins, counsel for Plaintiff, and Nashiba Boyd, counsel for Defendants, were both present before the Court. Having duly considered the Motion and supporting documents submitted prior to the hearing, as well as the arguments presented by both counsel at the hearing, the Court hereby grants Defendants' Motion as set forth more fully below.

APPLICABLE LAW

"In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (Ct. App. 2009); *see also State ex rel. Wilson v. Condon*, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014) (recognizing the avoidance of "duplicative litigation" as the underlying principle of Rule 12(b)(8)).

PROCEDURAL POSTURE

Plaintiff's initial Complaint, filed November 16, 2017, alleges causes of action of

negligence and gross negligence; relief pursuant to the South Carolina Unfair Trade Practices Act; false imprisonment; negligent hiring, supervision, and retention; class action; improper claim practices; abuse of process; and libel, slander, and defamation, arising from an alleged incident at the Walmart in Greenville, South Carolina, that occurred on March 4, 2017. The parties litigated this matter for more than two (2) years before mutually agreeing to strike the matter from the active roster pursuant to Rule 40(j), SCRCPP, to conduct additional discovery and mediation as well as to avoid an impending December 2019 trial date. On October 24, 2019, the Court entered a Consent Order Pursuant to Rule 40(j), SCRCPP, in which the parties agreed to restore the case pursuant to the appropriate motion.

Notwithstanding the aforementioned Consent Order, Plaintiff filed a new Complaint on November 20, 2019, alleging negligence and gross negligence; relief pursuant to the South Carolina Unfair Trade Practices Act; false imprisonment; negligence hiring, supervision, and retention; class action; improper claim practices; abuse of process; defamation; and malicious prosecution, arising from an alleged incident at the Walmart in Greenville, South Carolina, that occurred on March 4, 2017. Defendants filed a Motion to Restore Civil Action No. 2017-CP-23-07414 on December 23, 2019. Immediately thereafter, Defendants filed a Motion to Dismiss the instant action pursuant to Rule 12(b)(8), SCRCPP. Defendants' Motion to Restore was subsequently granted by this Court on March 9, 2020.

RULING OF THE COURT

In light of the Court's decision on Defendants' Motion to Restore Civil Action No. 2017-CP-23-07414, the Court finds that the above-captioned action is duplicative litigation pursuant to Rule 12(b)(8), SCRCPP, as there is another action pending between the same parties for the same claims. Thus, the above-captioned should be dismissed. The Court further finds that Plaintiff is

not unduly prejudiced by this ruling as Plaintiff retains the ability to request an amendment of her Summons and Complaint in the restored action pursuant to Rule 15, SCRPC.

Accordingly, the above-captioned matter is hereby DISMISSED.

IT IS SO ORDERED.

Robin B. Stilwell
Circuit Court Judge for the Thirteenth Judicial Circuit

Greenville, South Carolina
March _____, 2020



Greenville Common Pleas

Case Caption: Mary Kimbrell vs. Walmart Stores Inc , defendant, et al

Case Number: 2019CP2306795

Type: Order/Dismissal

So Ordered

s/ Robin B. Stilwell 2158