

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No.: 2018-cp-40-02425

RECEIVED

Jun 16 2020

SC Court of Appeals

Appellate Case No. 2019-000648

Jefferson Davis, Jr.,Appellant

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,Respondents

SUPPLEMENTAL RECORD ON APPEAL

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[Appellant and remaining Respondents on following page]

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¹ This Supplemental Record contains material that is also contained within the original Record on Appeal. The only new material is the Affidavit of Mr. Kirkland, the addition of which was approved by this Court by order on June 12, 2020. The material within the original Record on Appeal is being provided in association with the new material for the Court’s ease of reference.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	CASE NO.: 2018-CP-40-02425
)	
Jefferson Davis, Jr.,)	
)	
Plaintiff,)	
vs.)	
)	
Ellen Weaver, Chad Connelly, Oran P. Smith,)	MOTION TO DISMISS
Neil J. Mellen, Howard S. Rich, Rick Reames,)	
Stephen D. Kirkland, Palmetto Promise)	
Institute, Palmetto Family Council, Palmetto)	
Family Action, South Carolinians for)	
Responsible Government, SCRG Foundation,)	
Access Opportunity South Carolina, Friedman)	
Foundation for Educational Choice, Inc., Cato)	
Institute, South Carolina Educational Credit for)	
Exceptional Needs Children Fund, South)	
Carolina Education Oversight Committee, South)	
Carolina Department of Revenue, South)	
Carolina Department of Labor, Licensing and)	
Regulations, First Impressions, Inc. d/b/a)	
Richard Quinn & Associates, First Tuesday)	
Strategies, LLC, Bill Wilson, Jason Bedrick,)	
Jim DeMint, Randy Page, Tony Denny, Phillip)	
Cease, Melanie Barton, Doris Cubitt, Susan)	
Thomas, John McCormick, Nate Leupp,)	
Institute of Management Consultants USA &)	
John Doe(s) 1-40,)	
)	
Defendants.)	

COMES NOW, Defendant Stephen D. Kirkland, by and through the undersigned counsel, and hereby moves this Court for an Order granting his Motion to Dismiss pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure.

This Motion is based on the following grounds: Plaintiff has failed to properly serve Mr. Kirkland with the Amended Summons and the Amended Complaint. It appears he attempted to serve Mr. Kirkland by Certified Mail; however, Mr. Kirkland never received and did not sign the return receipt. Further, no one authorized to sign on behalf of Mr. Kirkland signed the return

receipt. In addition, Plaintiff has failed to state facts sufficient to constitute a cause of action against Mr. Kirkland, and therefore, Mr. Kirkland is entitled to a dismissal with prejudice.

This Motion is supported by the Affidavit of Stephen D. Kirkland, filed with this motion as Exhibit A, and will be further supported by a Memorandum of Law to be filed prior to a hearing on the Motion. It is further supported by the South Carolina Rules of Civil Procedure, applicable statutory and case law, and any other evidence properly submitted prior to the hearing of this Motion.

WHEREFORE, Mr. Kirkland prays the Court dismiss the Complaint with Prejudice and with all costs taxed against the Plaintiff.

This 21st day of December, 2018.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP.

By: s/Douglas W. MacKelcan
DOUGLAS W. MACKELCAN
State Bar No.: 76332
WILLIAM J. FARLEY, III
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Attorney for Defendant Stephen D. Kirkland

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Ph: 843-727-0307

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) FIFTH JUDICIAL CIRCUIT

) CASE NO.: 2018-CP-40-02425

Jefferson Davis, Jr.,

Plaintiff,

vs.

**AFFIDAVIT OF
STEPHEN D. KIRKLAND**

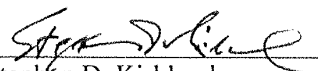
Ellen Weaver, Chad Connelly, Oran P. Smith,
Neil J. Mellen, Howard S. Rich, Rick Reames,
Stephen D. Kirkland, Palmetto Promise
Institute, Palmetto Family Council, Palmetto
Family Action, South Carolinians for
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Jim DeMint, Randy Page, Tony Denny, Phillip
Cease, Melanie Barton, Doris Cubitt, Susan
Thomas, John McCormick, Nate Leupp,
Institute of Management Consultants USA &
John Doe(s) 1-40,

Defendants.

Personally appeared before me, Stephen D. Kirkland, who, under oath, states as follows:

1. I am over the age of eighteen (18) years and competent to give this Affidavit.
2. I have personal knowledge of the facts contained in this Affidavit.
3. The facts herein are true and correct to the best of my knowledge.
4. The attached documents, apparently filed by the Plaintiff in an attempt to prove service, illustrate that I did not sign the green card, and no one signed it on my behalf.

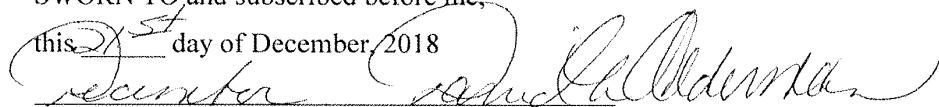
5. In fact, I never received the green card. It appears to have been removed from an envelope containing a copy of the Amended Complaint, which was left in my mailbox.
6. I have never been personally served with the Amended Complaint.
7. No one was home at my house on November 26, 2018, therefore, the envelope could not have been, and was not, left with an individual as is stated in the attached documents.



Stephen D. Kirkland

SWORN TO and subscribed before me,

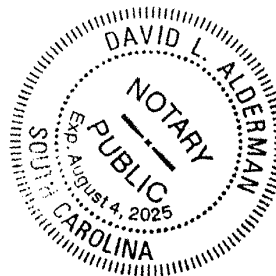
this 27th day of December, 2018



Notary Public for the State of S.C.

My Commission Expires: _____

(SEAL)



STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)
) C.A. NO. 2018-CP-40-02425
)
 Jefferson Davis, Jr., Plaintiff)
)
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) vs.)
)
)
) Ellen Weaver, Chad Connelly, Oran P. Smith,)
) Neil J. Mellen, Howard S. Rich, Rick Reames,)
) Stephen D. Kirkland, Palmetto Promise)
) Institute, Palmetto Family Council, et al.,)
)
)
) Defendants.)
)
)

**PROOF OF SERVICE – STEPHEN KIRKLAND, CPA,
 PALMETTO FAMILY COUNCIL & PALMETTO FAMILY ALLIANCE
 (Green Card)**

SENDER, COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <u>Kirkland</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by <u>Kirkland</u> <input type="checkbox"/> Agent <u>11/26</u> <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Stephen D. Kirkland, CPA, CMC 2724 Canterbury Road Columbia, SC 29204</p>	
<p>9590 9402 4138 8092 9732 93</p>	
<p>7018 1130 0000 0363 8557</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9059</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Mail Restricted Delivery</p>
	<p>Domestic Return Receipt</p>

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

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COLUMBIA SC 29204

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11/21/2018

Stephen D. Kirkland, CPA, CMC
 2724 Canterbury Road
 Columbia, SC 29204

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Remove X

Your item was delivered to an individual at the address at 3:20 pm on November 26, 2018 in COLUMBIA, SC 29204.

 **Delivered**

November 26, 2018 at 3:20 pm
Delivered, Left with Individual
COLUMBIA, SC 29204

Get Updates ∨

Feedback

Text & Email Updates ∨

Tracking History ∨

November 26, 2018, 3:20 pm

Delivered, Left with Individual
COLUMBIA, SC 29204

Your item was delivered to an individual at the address at 3:20 pm on November 26, 2018 in COLUMBIA, SC 29204.

November 26, 2018

In Transit to Next Facility

November 23, 2018, 12:17 am

Departed USPS Regional Destination Facility
COLUMBIA SC PROCESSING CENTER

ELECTRONICALLY FILED - 2018 Dec 21 3:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

November 22, 2018, 11:40 am
Arrived at USPS Regional Destination Facility
COLUMBIA SC PROCESSING CENTER

November 21, 2018, 9:36 pm
Arrived at USPS Regional Facility
GREENVILLE SC DISTRIBUTION CENTER

November 21, 2018, 6:12 pm
Departed Post Office
GREENVILLE, SC 29616

November 21, 2018, 4:42 pm
USPS in possession of item
GREENVILLE, SC 29616

Product Information



Feedback

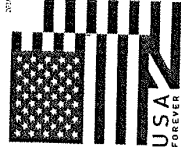
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Jeff Davis, JD, MBA
403 McCarter Avenue
Greenville, SC 29615



**Richland County Clerk of Court
P.O. Box 2766
Columbia, SC 29202-2766**

ELECTRONICALLY FILED - 2018 Dec 21 3:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4002425

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-40-02425

Jefferson Davis, Jr.,)
Plaintiff,)

vs.)

Ellen Weaver, Chad Connelly, Oran P. Smith,)
Neil J. Mellen, Howard S. Rich, Rick Reames,)
Stephen D. Kirkland, Palmetto Promise)
Institute, Palmetto Family Council, Palmetto)
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Thomas, John McCormick, Nate Leupp,)
Institute of Management Consultants USA &)
John Doe(s) 1-40,)

Defendants.)

**MEMORANDUM IN SUPPORT OF
DEFENDANT STEPHEN D.
KIRKLAND’S MOTION TO DISMISS**

NOW COMES Defendant Stephen D. Kirkland (“Kirkland”), by and through the undersigned counsel, and hereby presents this Memorandum in Support of his Motion to Dismiss the Amended Complaint. As detailed below, this Court should enter an Order granting Defendant’s Motion to Dismiss pursuant to Rules 12(b)(5) and 12(b)(6), SCRPC.

BACKGROUND

This lawsuit broadly arises from the South Carolina Legislature’s approval of the Educational Credit for Exceptional Needs Children Fund and Plaintiff’s involvement with the

same. Among the various and wide-ranging factual allegations purportedly giving rise to the causes of action, there are few allegations specific to Kirkland. First, the Amended Complaint alleges Defendant South Carolina Department of Revenue and/or Defendant Rick Reames hired Kirkland to conduct an audit to “make sure Plaintiff and his group was not politically targeted and were treated fairly by DOR.” *See* Amended Complaint, Paragraph 120. Plaintiff further alleges Kirkland was “conflicted” in this engagement due to his status as Board Member for Defendant Palmetto Family Council and Defendant Palmetto Family Alliance. *See* Amended Complaint, Paragraph 124. Of the 192 factual allegations in the Amended Complaint, Plaintiff’s causes of action against Kirkland apparently arise from this “conflicted” engagement.

Plaintiff initially filed the Complaint on May 3, 2018 against Defendants Ellen Weaver, Palmetto Institute and John Does 1-20 (“the Original Defendants”). The Complaint asserted the following causes of action: (1) Defamation; (2) False Light; (3) Invasion of Privacy; (4) Negligence; (5) Intentional Infliction of Emotional Distress; (6) Tortious Interference with Prospective Contractual Relations; (7) Unfair Trade Practices; (8) Piercing the Corporate Veil; and (9) Civil Conspiracy. Counsel for the Original Defendants previously filed a Motion to Dismiss.

On October 1, 2018, this Court heard arguments on the Motion, and, on October 30, 2018, entered an Amended Order granting in part, and denying in part, the Motion to Dismiss. Specifically, the Court granted the Original Defendants’ Motion to Dismiss as to Plaintiff’s causes of action for False Light, Tortious Interference with Prospective Contractual Relations, and Unfair Trade Practices, and the Court denied the Original Defendants’ Motion to Dismiss as to Plaintiff’s causes of action for Defamation, Negligence, Intentional Infliction of Emotional Distress, and Piercing the Corporate Veil. Finally, the Court granted Plaintiff leave to amend his

Complaint with additional facts supporting his causes of action for Invasion of Privacy and Civil Conspiracy.

Plaintiff subsequently filed an Amended Complaint, naming various additional Defendants (including Kirkland) while asserting the same nine causes of action originally included in the Complaint. Plaintiff allegedly served Kirkland via certified mail on or around November 26, 2018. Now, Kirkland seeks a dismissal of all causes of action set forth in the Amended Complaint for failure to state a claim and for insufficiency of service of process.

STANDARD

A defendant may move to dismiss a complaint based upon a failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRPC; *Spence v. Spence*, 368 S.C. 106-17, 628 S.E.2d 869, 874 (2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

ARGUMENT

A. PLAINTIFF'S AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED BY THIS COURT; THEREFORE, KIRKLAND MUST BE DISMISSED.

As a preliminary matter, this Court has previously granted the Original Defendants' Motion to Dismiss as to Plaintiff's causes of action for False Light, Tortious Interference with Contract, and Unfair Trade Practices, and there is no factual or legal basis for Plaintiff's inclusion of these causes of action in the Amended Complaint. However, to the extent this Court does not find the Amended Order controlling as to Plaintiff's claims against Kirkland, all causes of action in the Amended Complaint are addressed below.

1. Defamation

Plaintiff's cause of action for defamation is based on the alleged representation that Plaintiff was disbarred from the practice of law. *See* Amended Complaint, Paragraph 222. While the cause of action generally refers to "Defendants" making said representation, the factual allegations of the Amended Complaint attribute this statement solely to Weaver. *See* Amended Complaint, Paragraph 199. In fact, the Amended Complaint is void of any alleged statement – verbal, written, or otherwise – by Kirkland regarding Plaintiff and sufficient to serve as the basis of a cause of action for defamation. In the absence of such allegation, Plaintiff's cause of action for defamation must be dismissed as to Kirkland.

2. False Light

The Amended Order previously entered by this Court confirms the State of South Carolina does not recognize false light as a viable cause of action. For this reason, Plaintiff's cause of action for false light must be dismissed as to Kirkland.

3. Invasion of Privacy

Plaintiff's cause of action for invasion of privacy is based on the allegation Defendants "improperly" gained and used personal knowledge regarding Plaintiff and used the same to further Defendants' financial and political interest. *See* Amended Complaint, Paragraph 230. In South Carolina, the elements of invasion of privacy include: (1) publicizing; (2) absent any waiver or privilege; (3) private matters in which the public has no legitimate interest; (4) so as to bring shame or humiliation to a person of ordinary sensibilities. *Swinton Creek Nursery v. Edisto Farm Credit, et al.*, 334 S.C. 469, 514 S.E.2d 126 (1999).

It is clear from the factual allegations in the Amended Complaint there is no basis for an invasion of privacy cause of action against Kirkland. First, the Amended Complaint is void of any allegation Kirkland ever possessed or improperly accessed private matters relative to

Plaintiff. Second, there is no allegation Kirkland ever publicized – as the term has been interpreted by South Carolina law – any information regarding Plaintiff. In the absence of such allegations, Plaintiff’s cause of action for invasion of privacy must be dismissed as to Kirkland.

4. Negligence

Plaintiff’s cause of action for negligence is based on the allegation that Defendants “had a duty to ensure the truthfulness of their statements but they knew their statements were false and nevertheless acted with reckless disregard for the truth by publishing their statements to third parties.” *See* Amended Complaint, Paragraph 234. As noted above, the Amended Complaint is void of any “statements” attributed to Kirkland regarding Plaintiff. Instead, the only factual allegations specific to Kirkland relate to his engagement by Defendant South Carolina Department of Revenue and/or Defendant Rick Reames to conduct a limited audit. The Amended Complaint is void of any “statements” attributed to Kirkland. Accordingly, this cause of action must be dismissed as to Kirkland.

5. Intentional Infliction of Emotional Distress

To prevail on a cause of action for intentional infliction of emotional distress, a plaintiff must satisfy the following elements: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized society; (3) the actions of the defendant caused the plaintiff’s emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Upchurch v. New York Times Co.*, 314 S.C. 531, 431 S.E.2d 558 (1993).

Plaintiff’s cause of action for intentional infliction of emotional distress is broadly based on Defendants’ conduct, which “was intended to inflict emotional distress on the Plaintiff and

was outrageous beyond the bounds of conduct expected by members of society” such that Plaintiff suffered severe emotional distress. *See* Amended Complaint, Paragraph 236. Not surprisingly, the allegations do not identify specific Defendants or specific conduct purportedly giving rise to this cause of action. Again, Defendant South Carolina Department of Revenue and/or Defendant Rick Reames retained Kirkland to conduct a limited audit. In doing so, Kirkland did not interact with Plaintiff or otherwise act (intentionally or recklessly) with the intent to harm Plaintiff, an individual he has never met and does not know. Accordingly, Plaintiff’s cause of action for intentional infliction of emotional distress must be dismissed as to Kirkland.

6. Tortious Interference with Prospective Contract

To prevail on a cause of action for tortious interference with prospective contract, a plaintiff must prove: (1) the intentional interference with the plaintiff’s potential contractual relations; (2) for an improper purpose or by improper methods; and (3) causing injury to the plaintiff. *United Educ. Distributors, LLC v. Educ. Testing Serv.*, 350 S.C. 7, 564 S.E.2d 324 (Ct. App. 2002). As the Court acknowledged in its Amended Order, this matter “does not involve any contracts.” *See* Amended Order, Page 2. That characterization of the factual allegations and causes of action is certainly applicable to Kirkland. Within the context of the limited allegations against Kirkland, there is no suggestion Kirkland interfered with a potential contract, knew of a potential contract, or that any potential contract ever existed. In the absence of such allegations, Plaintiff’s cause of action for intentional interference with prospective contract must be dismissed as to Kirkland.

7. Unfair Trade Practices

To recover in an action under the UTPA, a plaintiff must show the defendant: (1) engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or

deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 743 S.E.2d 808 (2013). "Trade" or "commerce" is defined by statute to include the "advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. See S.C. Code Ann. § 39-5-10(b).

As the Court previously acknowledged in its Amended Order, this lawsuit "does not involve trade or commerce under the South Carolina Unfair Trade Practices Act. This characterization is certainly applicable to Kirkland, who never engaged in "trade" or "commerce" as defined by the statute with Plaintiff. In the absence of such allegations, Plaintiff's cause of action for violation of the UTPA must be dismissed.

8. Piercing the Corporate Veil

This cause of action is directed to the "Corporate Defendants" and is not applicable to Kirkland.

9. Civil Conspiracy

To recover for a cause of action alleging civil conspiracy, a plaintiff must prove the following: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; and (3) which causes special damages. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). To satisfy the element of special damages when bringing a claim for civil conspiracy, plaintiff must allege special damages that occurred as a result of the conspiracy in addition to any alleged damages resulting from other claims. The alleged damages resulting for the civil conspiracy must not overlap or be a mere subset of damages allegedly arising from other claims set forth in a pleading. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d

505 (2006). Additionally, a claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than re-allege other claims within the complaint. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009).

In this case, Plaintiff's claim for civil conspiracy is based on the allegation Defendants "conspired and colluded together and amongst themselves to execute the above stated Cause of Action." See Amended Complaint, Paragraph 250. There is no explanation of what Defendants "conspired and colluded together" or the specific acts taken in furtherance of this alleged civil conspiracy. Specific to Kirkland, there is no suggestion he conspired with any other Defendant for the purpose of harming Plaintiff. Kirkland was simply retained by Defendant South Carolina Department of Revenue and/or Defendant Rick Reames to perform a limited audit. In doing so, Kirkland did not interact with Plaintiff, did not make any representations regarding Plaintiff, and did not perform the audit with any other party to the present lawsuit. Additionally, Plaintiff's alleged damages arising from the civil conspiracy cause of action are indistinguishable from and overlap the damages allegedly incurred as a result of the prior causes of action. Accordingly, Plaintiff's cause of action for civil conspiracy must be dismissed as to Kirkland.

B. ALTERNATIVELY, PLAINTIFF HAS NOT COMPLIED WITH THE SERVICE OR PROCESS REQUIREMENTS SET FORTH IN RULE 12(B)(5), SCRCP.

Pursuant to Rule 4(d)(8), SCRCP, a plaintiff may serve an individual defendant by registered or certified mail, return receipt requested and delivery restricted to the addressee. Applied to the present case, Plaintiff attempted service of process on Kirkland via certified mail, return receipt requested. The return receipt (green card) indicates Plaintiff attempted service of the Amended Complaint on Kirkland at 2724 Canterbury Road, Columbia, South Carolina 29204. The return receipt suggests the certified mail was signed for on November 26, 2018. The "signature" is the handwritten last name, Kirkland.

As set forth in the Affidavit of Stephen Kirkland, a copy of which was attached to Kirkland's Motion to Dismiss, Kirkland did not sign the return receipt (green card) and nobody present at the attempted service address signed the return receipt (green card) on his behalf. In fact, nobody was present at the attempted service address on the alleged date of service. To date, Kirkland has never signed the return receipt (green card) and has not otherwise been served with process in accordance with Rule 4, SCRPC. Accordingly, and to the extent this Court does not grant Kirkland's Motion to Dismiss as to all causes of action pursuant to Rule 12(b)(6), SCRPC, Kirkland hereby requests the Court grant his Motion to Dismiss pursuant to Rule 12(b)(5), SCRPC, for insufficiency of service of process.

CONCLUSION

Based on the foregoing, Kirkland respectfully requests this Court enter an Order dismissing all causes of action against him with all costs taxed against Plaintiff. Defendant Kirkland further seeks any additional relief this Court deems just and proper.

This 6th day of February, 2019.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP.

By: s/Douglas W. MacKelcan
DOUGLAS W. MACKELCAN
State Bar No.: 76332
WILLIAM J. FARLEY, III
State Bar No.: 101033
Attorneys for Defendant Stephen D. Kirkland

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