THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000129
Charleston County Case No. 2019-CP-10-04193

Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow, Appellant,

v.

Natasha Anglin, Henrietta Benson, Donita Failey, Arnold Harris, Yokeema Harris, Ruby Tuesday, KC Mulligan's, ARIUM St. Ives, Carroll Management Group, South Carolina Department of Transportation, City of North Charleston, Charleston County, Defendants,

of whom Ruby Tuesday, KC Mulligan's ARIUM St. Ives and Carroll Management Group are the Respondents.

INITIAL BRIEF OF RESPONDENTS ARIUM ST. IVES AND CARROLL MANAGEMENT GROUP

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June 23, 2020

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II. CAN APPELLANT BRING A CLAIM UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT AGAINST CARROLL MANAGEMENT GROUP IN A REPRESENTATIVE CAPACITY?

STATEMENT OF THE CASE

Appellant initiated this action on April 24, 2019 in the Greenville County Court of Common Pleas and asserted causes of action against Respondents ARIUM St. Ives ("Arium") and Carroll Management Group, LLC ("CMG") for 1) common law recklessness and negligence; 2) negligent hiring, retention and supervision; 3) negligent entrustment; 4) survival action; 5) wrongful death; 6) violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"); and 7) a putative class action on behalf of "all persons using the public roads located where the collision described herein occurred who have been injured by the defendants' negligence and recklessness and all persons harmed by the defendants' recklessness involving other public roads in Charleston County and the City of North Charleston that do not have crossways or other proper safety precautions."

On May 31, 2019, Arium and CMG filed separate Answers to the Complaint and filed a joint Motion to Dismiss, or in the alternative, Motion for Judgment on the Pleadings. On July 18, 2019, Appellant filed an Amended Complaint. On August 8, 2019, Arium and CMG responded to the Amended Complaint by filing separate Answers to the Amended Complaint and another joint Motion to Dismiss, or in the alternative, Motion for Judgment on the Pleadings.[1]

During the pendency of the initial Complaint and before the filing of the Amended Complaint, Arium and CMG, along with other defendants, moved to transfer venue to Charleston County. The Honorable Edward W. Miller held a hearing on July 23, 2019, wherein he granted the Motion to Transfer Venue to Charleston County, and ruled that all the pending motions, including the motions filed by Arium and CMG, would be considered

[1] The Motions to Dismiss the Complaint and Amended Complaint are virtually identical.

by the court in Charleston County.

Arium and CMG's motion was heard by The Honorable Bentley Price in the Charleston County Court of Common Pleas on January 10, 2020. During the hearing, Appellant agreed to voluntarily dismiss Arium from the lawsuit. (Tr. 18:15-25; 21:16-20). In addition, Appellant agreed to dismiss their allegations against CMG arising from its alleged failure to warn of the dangers of crossing a roadway without a crosswalk. (Tr. 19:19-22). Appellant's remaining allegations against CMG stemmed from a theory of "wrongful eviction" of the decedent, entitling the estate and the family to damages. (Tr. 22:19-24).

On January 13, 2020, the trial court granted CMG's motion to dismiss and entered a Form 4 Order also dismissing Arium from the lawsuit. On January 13, 2020, Appellant filed a Motion to Reconsider.[2] On January 23, 2020, CMG timely filed a Motion pursuant to Rule 59(e), SCRCP for an amended Order granting its motion to dismiss, and the amended Order was filed the same day. On January 24, 2020, Appellant filed their notice of appeal.

STANDARD OF REVIEW

In reviewing the dismissal of an action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the appellate court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Under Rule 12(b)(6), a defendant may move for a dismissal based on a failure to state facts sufficient to constitute a cause of action. When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the trial court must grant the motion if, viewing the evidence in

[2] Appellant filed a second Motion to Reconsider on January 23, 2020, but it did not pertain to Arium or CMG.

the plaintiff's favor, the "facts alleged in the complaint and inferences reasonably deducible do not entitle the plaintiff to relief on any theory of the case." Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999) aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001). When a 12(b)(6) motion presents a question of law, as opposed to a factual dispute, the question of law is properly disposed by a 12(b)(6) motion. Id.

The trial court will grant a Rule 12(c) motion for judgment on the pleadings if the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action is stated. Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982). A motion for judgment on the pleadings considers the allegations in the defendant's answer and other pleadings in the case. Brown v. United Ins. Co. of America, 268 S.C. 254, 233 S.E. 2d 298 (1977). While a Rule 12(c) motion admits the well-pleaded facts in the complaint, it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990).

FACTS

This case arises from a tragic accident where the decedent Jennifer Muxlow ("Decedent") was struck and killed by a motor vehicle while she attempted to cross Rivers Avenue in North Charleston, South Carolina on foot. (Am. Compl. ¶¶ 33, 37). In addition to naming the driver and passenger of the vehicle that struck Decedent as defendants, Appellant named Arium and CMG, among others. Arium is a trademark for an apartment complex managed by CMG known as Arium St. Ives. (Am. Compl, ¶ 11; Answer ¶ 11). At the time of her death, Decedent resided at Arium St. Ives with her boyfriend Arnold Harris. (Am. Compl. ¶ 28; Answer ¶ 9). Following the accident, Decedent's parents

reported her death to CMG; however, an eviction action was initiated against Decedent and Harris (who still resided in the apartment) as both were leaseholders. (Am. Compl. ¶ 40; Answer ¶ 11). Appellant alleges that Decedent's family sustained damages in the form of "additional pain and anguish during an already traumatic time" following CMG's initiation of eviction proceedings against Decedent. (Am. Compl. ¶ 40).

ARGUMENT

Appellant argues that the trial court improperly granted CMG's Motion to Dismiss because Appellant sufficiently pled allegations for 1) improperly initiating eviction proceedings after the decedent's death; and 2) violating the South Carolina Unfair Trade Practices Act by engaging in improper business practices that affect the public. (App. Br. 10).

However, Appellant does not provide any detail as to these alleged improper business practices, offers no case law in support of their arguments, and does not challenge any specific findings in the trial court's order. Further, Appellant makes no argument that Arium was improperly dismissed from the case, despite naming it as a party to this appeal. Accordingly, Appellant has failed to preserve any of their arguments for appellate review. See Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority).

I. The Trial Court Correctly Held That No Cause of Action for Wrongful Eviction Exists as to Carroll Management Group.

Appellant has failed to sufficiently plead the elements of a cause of action for wrongful eviction against CMG. The rights and duties of landlords and tenants are established by the South Carolina Residential Landlord Tenant Act ("SCRLTA"). See S.C.

Code Ann. § 27-40-20. If a landlord wrongfully evicts a tenant by unlawfully removing or evicting the tenant from the premises, then the exclusive remedies available to the tenant are set forth in S.C. Code Ann. § 27-40-660.

It is undisputed that CMG initiated eviction proceedings against Decedent after her death. Since Decedent was no longer alive at the time of eviction, it stands to reason that Decedent suffered no damages from the so-called "wrongful eviction" as she was not unlawfully removed or excluded from the premises. As Decedent's family members were not tenants at the subject apartment complex, CMG does not owe them duties under the SCRLTA.

Appellant also claims Decedent's family suffered emotional distress as a result of the "wrongful eviction." An emotional distress claim against CMG arising from a wrongful eviction claim is not actionable under South Carolina law because the eviction action was not directed toward Appellant or Decedent's family. See Doe 2 v. Citadel, 421 S.C. 140, 153, 805 S.E.2d 578, 585 (Ct. App. 2017), reh'g denied (Sept. 27, 2017), cert. denied (Mar. 28, 2018) ("While The Citadel's failure to notify law enforcement of alleged abuse in 2007 is highly lamentable, Doe did not present any evidence that The Citadel directed any tortious conduct specifically toward him."); Upchurch v. New York Times Co., 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993) ("It is not enough that the conduct is intentional and outrageous. It must be *directed at the plaintiff* or occur in the presence of a plaintiff of whom the defendant is aware.") (emphasis added); Restatement (Second) of Torts § 46(2) (1965)(bodily harm or physical presence requirement for recovery for emotional distress by a third-party); Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985) (negligent infliction of emotional distress limited to bystander recovery, where mother

could recover damages for emotional trauma arising from *witnessing injuries* to her daughter) (emphasis added). Accordingly, Appellant's wrongful eviction claim fails as a matter of law, as alleged damages arising from a landlord's decision to file eviction proceedings are not recoverable in an emotional distress claim.

II. Appellant Cannot Bring a Claim Under the South Carolina Unfair Trade Practices Act Against Carroll Management Group in a Representative Capacity.

Appellant argues that CMG violated SCUTPA on the basis that it engaged in improper business practices that affect the public. Appellant lacks standing to bring a SCUTPA claim because such claims cannot be brought in a representative capacity. See S.C. Code Ann. § 39-5-140(a), (1976). The statute provides that "[a]ny person who suffers any ascertainable loss of money or property . . . may bring an action individually, but not in a representative capacity, to recover actual damages." Id.; see also Wosan v. Kunze, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005), aff'd as modified, 379 S.C. 581, 666 S.E.2d 901 (2008) (affirming circuit court's grant of summary judgment on a SCUTPA claim brought by the Personal Representative of an estate). Appellant is therefore precluded from maintaining a SCUTPA action in his capacity as Personal Representative for the Estate of Jennifer Muxlow.

CONCLUSION

The trial court properly granted CMG's motions to dismiss and affirmed the voluntary dismissal of Arium. Appellant has failed to establish a cause of action for wrongful eviction as to CMG, and Appellant cannot bring a SCUTPA claim in a representative capacity. Appellant did not provide any supporting authority for any of their arguments against CMG or Arium, which constitutes abandonment of those claims.

Accordingly, the Order of the trial court must be affirmed.

Respectfully Submitted,

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of whom Ruby Tuesday, KC Mulligan's ARIUM St. Ives and Carroll Management Group are the Respondents.

PROOF OF SERVICE

I hereby certify that I have served Respondents' Initial Brief by depositing copies of it in the United States Mail, postage paid, stamped First Class delivery, on June 23, 2020 addressed to the following attorneys of record as follows:

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PROOF OF SERVICE

I hereby certify that I have served Respondents' Designation of Matter to be Included in the Record or Appeal by depositing copies of it in the United States Mail, postage paid, stamped First Class delivery, on June 23, 2020 addressed to the following attorneys of record as follows:

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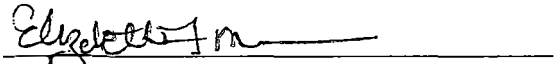

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VIA U.S. MAIL
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Re: Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow, Appellant,

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In the Charleston County Court of Common Pleas, Case No: 2019-CP-10-04193
Appellate Case No. 2020-000129

Dear Ms. Kitchings:

Please find enclosed one (1) original and one (1) copy of Respondents ARIUM St. Ives and Carroll Management Group's Initial Brief; Designation of Matter; and Proofs of Service in connection with the above-referenced action. I would appreciate if you would return the file-stamped copy in the enclosed self-addressed stamped envelope.

By copy of this correspondence, we are copying all counsel of record and serving them with a copy of the same.

Thank you for your attention to this matter.

Very truly yours,

Elizabeth F. Morrison

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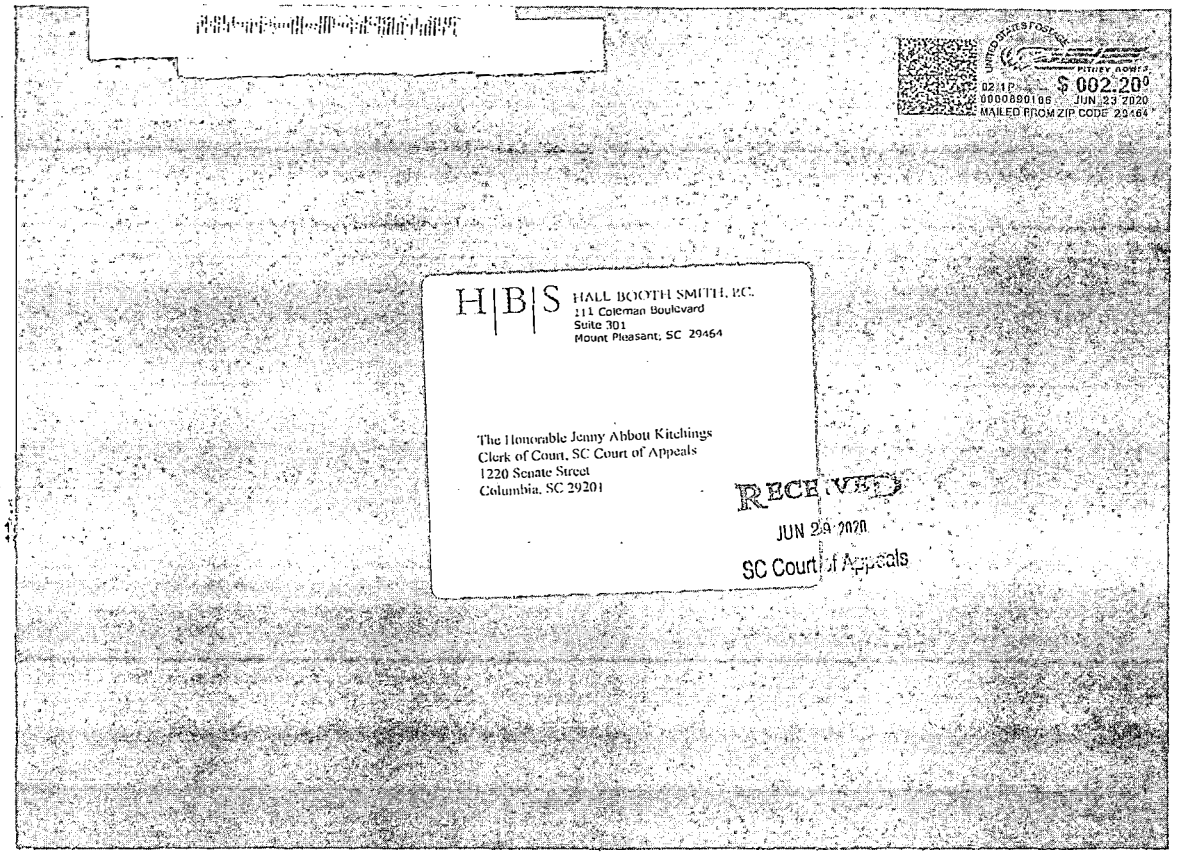

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