

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
John E. Harbin, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
April Blair, Tracy Dunn, HUB Enterprises, )  
Inc., Shawn Conway, Gallivan White & )  
Boyd, Sam Nikopoulos and John Doe, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-04-02099

ORDER

**RECEIVED**  
**Aug 11 2020**  
**SC Court of Appeals**

Defendant April Blair’s (“Blair”) Motion to Dismiss came before the Court for a hearing on February 28, 2018. Donald L. Smith appeared on behalf of the Plaintiff. James P. Walsh appeared on behalf of Defendant Blair. Having heard the arguments and reviewed the submissions of the parties, Blair’s Motion to Dismiss Plaintiff’s Amended Complaint is hereby granted for the following reasons. The Court notes that it granted defendant Blair’s motion to dismiss from the bench at the hearing. However, due to a scrivener error a written order was not submitted regarding the order to dismiss the case against Blair.

**FACTUAL ALLEGATIONS OF THE COMPLAINT**

The allegations of Plaintiff’s Amended Complaint arise from an underlying dispute that Plaintiff had with Blair and Defendant Tracy Dunn. Plaintiff was shot by Dunn in the leg while he was at Blair’s house. Defendant Gallivan White & Boyd represented Blair who had homeowners coverage through State Farm Insurance Company (“State Farm”), in a suit brought by Plaintiff and bearing Civil Action No. 2014-CP-04-02908. At trial, the jury returned a defense verdict for Blair. Plaintiff’s Amended Complaint relates to this underlying lawsuit, and states one

cause of action for tortious interference with contract. The plaintiff alleges that Blair tortiously interfered with his contractual relationship with his attorney, Donald Smith.

### STANDARD OF REVIEW

A motion to dismiss must be based solely upon the allegations set forth in the Amended Complaint. Rule 12(b)(6), SCRCP; Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794, (Ct. App. 1998). The Court should view the evidence in the light most favorable of the Plaintiff, and, if facts alleged in the Amended Complaint and inferences reasonably deduced therefrom do not entitle Plaintiff to relief, then the motion to dismiss must be granted. Jarrell, 331 S.C. at 209, 500 S.E.2d at 794. See also Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 519 S.E.2d 802 (Ct.App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001) (holding the trial court promptly dismissed action under 12(b)(6), SCRCP); Stiles v. Onorato, 318 S.C. 297, 457 S.E. 2d 601 (1995) (affirming trial court's dismissal of action under 12(b)(6), SCRCP).

### ARGUMENT

The elements of a cause of action for tortious interference with a contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Where there is no breach of the contract, there can be no recovery. First Union Mortg. Corp. v. Thomas, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

In the instant case, Plaintiff has failed to plead any facts or circumstances evidencing a breach of the contract between Plaintiff and his attorney, Donald Smith. In pertinent part, Plaintiff's Amended Complaint alleges the following:

70. Plaintiff entered into a contract with his attorney to pursue litigation against Blair and Dunn.
71. Defendants were aware that a contract existed based on the fact that they were all participants in the litigation in some capacity.
75. Blair utilized the charge against Dunn, and his subsequent incarceration, to convince him to testify that not only did he mean to shoot Harbin, but also Blair had nothing to do with the shooting.
80. As a result of the intentional interference with Plaintiff's contract, all named Defendants prevented Harbin from getting the damages for which he was entitled due to the shooting.

These allegations, even if taken as true, fail to establish that the contract between Plaintiff and his attorney was breached. The Plaintiff has failed to include any allegations of any acts or omissions by Blair warranting the inference that her alleged intentional actions procured the breach of the contract. The Amended Complaint here contains no independent allegations of any acts or omissions by Defendant Blair warranting the inference that she intentionally procured plaintiff's attorney's discharge. In fact, it does not appear that the attorney-client relationship between the Plaintiff and his attorney was interfered with in any way. See Amended Complaint. The Plaintiff fails to allege any actions taken by Defendant Blair directly against the Plaintiff and/or his attorney that in any way had anything to do with their attorney-client relationship. Moreover, the Plaintiff has failed to allege any breach of the attorney-client relationship/contract, any actions of Defendant Blair that contributed to any alleged breach of that contract, and/or any damages resulting from

the alleged breach. As a result, this case is dismissed with prejudice in favor of Blair pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Therefore, for all of these reasons, defendant Blair's Motion to Dismiss is hereby granted and Plaintiff's Amended Complaint against Blair is dismissed with prejudice.

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Honorable J. Cordell Maddox, Jr.

April 6, 2020



Anderson Common Pleas

**Case Caption:** John Harbin , plaintiff, et al VS April Blair , defendant, et al

**Case Number:** 2017CP0402099

**Type:** Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.