

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 2018-CP-40-02545
Appellate Case No. 2020-000067

RECEIVED

Aug 17 2020

SC Court of Appeals

Dr. Kaoru Pridgen,Appellant,

v.

Colonial Family Practice, LLC
Varsity Family Care Partners, LLC,
Family Care Partners d/b/a
Family Care Partners Management,
LLC, Dr. Clay Lowder, Thomas
W. Watson, and Dr. Gary R. Katz, Respondents.

FINAL BRIEF OF RESPONDENT DR. GARY R. KATZ

August 17, 2020

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STATEMENT OF ISSUE ON APPEAL

I. WHETHER THE LOWER COURT’S DISMISSAL OF CLAIMS AGAINST DR. GARY KATZ IS PROPERLY BEFORE THIS COURT?¹

STATEMENT OF THE CASE

On May 9, 2018,² Appellant filed this civil action in the Richland County Court of Common Pleas, asserting the following claims against Respondent Dr. Gary R. Katz (“Dr. Katz”): (1) breach of contract; (2) negligent misrepresentation; and (3) promissory estoppel. (Complaint).³ Appellant alleges she was denied an ownership interest in a medical practice based on her gender and in violation of a written contract and alleged verbal promises. Upon Respondents’ motion, the case was transferred to the South Carolina Business Court. The complaint was amended on March 14, 2019.⁴ (R. p. 109).

After almost a year of extensive discovery, Respondents Colonial Family Practice, LLC (“Colonial”), Family Care Partners d/b/a Family Care Partners Management, LLC (“Family Care Partners”), Dr. Clay Lowder (“Lowder”), and Thomas W. Watson (“Watson”) (collectively the “Colonial Respondents”) filed a motion for partial summary judgment seeking

¹ With regard to Appellant’s second issue on appeal, to the extent necessary in light of the lower court’s separate order granting summary judgment as to Dr. Katz which has not been appealed, Dr. Katz incorporates and adopts arguments contained in the Initial Brief of Respondents Colonial Family Practice, LLC, Family Care Partners d/b/a Family Care Partners Management, LLC, Dr. Clay Lowder, and Thomas W. Watson.

² Appellant’s Initial Brief contains a typographical error stating the date of filing was May 9, 2019. (Appellant’s Initial Brief at p. .2).

³ Appellant filed a Stipulation of Partial Dismissal of Two Claims Against Dr. Gary R. Katz on May 29, 2019. The Stipulation dismissed Appellant’s Fourth Cause of Action for civil conspiracy and her Sixth Cause of Action for breach of contract accompanied by a fraudulent act against Dr. Katz. (Stipulation of Partial Dismissal).

⁴ The only change was the substitution of Varsity Family Care Partners, LLC (“Varisty”) for previously named defendants Varsity Healthcare Partners d/b/a Varsity Healthcare Partners UGP, II, LLC, Varsity Healthcare Partners GP II, Varsity Healthcare Partners II, LP, Varsity Healthcare Partners, II-A, LP.

dismissal of Appellant's claims for breach of contract, breach of contract accompanied by a fraudulent act, negligent misrepresentation, and promissory estoppel. (R. p. 265). On August 30, 2019, Varsity filed a separate motion for summary judgment, seeking dismissal of all claims Appellant filed against it. (R. p. 316). Dr. Katz filed his own separate Motion for Summary Judgment on December 3, 2019, seeking dismissal of all of Appellant's remaining claims against him which included (1) breach of contract; (2) negligent misrepresentation; and (3) promissory estoppel. (R. p. 263). Dr. Katz asserted Appellant had no enforceable written or verbal agreements guaranteeing her any ownership interest in Colonial. (*See id*). The lower court held a hearing on the Colonial Defendants' partial motion for summary judgment, Varsity's motion for summary judgment, and Dr. Katz's motion to dismiss and for summary judgment on December 5, 2019. (R. p. 153).

Following the December 5, 2019 hearing, the lower court granted the Colonial Respondents' motion and the Varsity's motion in two separate orders issued on December 20, 2019. (R. p. 7; R. p. 20). Appellant filed and served notice of appeal on the lower court's December 20, 2019 orders on January 16, 2020. (Appeal/Notice of Appeal to Court of Appeals filed on January 16, 2020). The lower court subsequently issued an order granting Dr. Katz's motion for summary judgment and dismissing all of Appellant's claims against him with prejudice on February 25, 2020. (R. p. 35). Appellant did not appeal and has not appealed the lower court's February 25, 2020 Order granting summary judgment to Dr. Katz. Accordingly, Appellant's claims against Dr. Katz have been dismissed with prejudice and Dr. Katz is no longer a party in this case.

Dr. Katz submits this initial brief out of an abundance of caution, to ask the court to dismiss any attempted appeal of the lower court's dismissal of claims against him and in support

of the lower court's December 20, 2019 Orders granting summary judgment to the Colonial Respondents and Varsity.

STANDARD OF REVIEW

“When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC.” *Bluestein v. Town of Sullivan’s Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (S.C. 2020) (quoting *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d at 769 (S.C. 2011)). “Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Id.* (quoting *Turner*, 392 S.C. at 122, 708 S.E.2d at 769). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Id.*

However, “a court cannot ignore facts unfavorable to [the nonmovant], and it must determine whether a verdict for that party would be reasonably possible under the facts.” *Bloom v. Ravoria*, 339, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)). The party opposing summary judgment can also not rely on mere speculation and conjecture. *McKnight v. S.C. Dep’t of Corrs.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009). “[I]dle speculation, which has no basis in the record, is clearly insufficient to overcome” summary judgment, and a party “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.” *Richland-Lexington Airport Dist. V. Atlas Properties, Inc.*, 854 F.Supp. 400, 424 (D.S.C. 1994). Finally, a court cannot properly deny a motion for summary judgment “after only finding that a genuine issue of material fact exists as to one element of the plaintiff’s claim; rather, . . . the court must determine that a genuine issue of material fact exists for each

essential element of the plaintiff's claim." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E. 68, 71 (S.C. 2007).

STATEMENT OF FACTS

The lower court correctly stated the facts of this case as they relate to Dr. Katz in its December 20, 2019 Orders on Appeal and in its February 25, 2020 Order which is not on appeal. In her initial brief, Appellant did not include information regarding the lower court's separate order issued on February 25, 2020, which is not on appeal, and granted summary judgment as to all of Appellant's claims against Dr. Katz. Appellant's brief also contains no mention of the fact that she did not serve notice of appeal with respect to the February 25, 2020 order.

ARGUMENT

I. ANY APPEAL OF THE LOWER COURT'S DISMISSAL OF CLAIMS AGAINST DR. KATZ IS NOT PROPERLY BEFORE THIS COURT AND SHOULD BE DISMISSED.

To the extent Appellant seeks reversal of any grant of summary judgment as to her claims against Dr. Katz, which is unclear from her Initial Brief, she has missed her time to do so. As set forth above, the Court granted Dr. Katz's motion for summary judgment as to all of Appellant's claims in an Order signed on February 25, 2020. Pursuant to Rule 203(b)(1) of the South Carolina Appellate Court Rules, "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." The parties received written notice of the entry of the lower court's order via electronic filing notification on February 25, 2020. Appellant did not serve a notice of appeal within thirty (30) days of receipt of notification of entry of that that order, and thus, any future attempt to appeal it would be untimely and should be dismissed. *See Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 422 S.C. 211, 217, 810 S.E.2d 856, 859 (S.C. 2018) ("an email providing written notice of the entry of an order or judgment for purposes of Rule 203(b)(1), SCACR triggers the

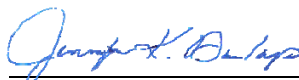
time to appeal *as long as the email is received from the court, an attorney of record or a party.*") Here, the email parties received was from the court. (R. p. 35).

Appellant's timely appeal of the lower court's December 20, 2019 orders granting the motions for summary judgment filed by other Respondents had no impact on the lower court's later order granting to summary judgment as to Appellant's claims against Dr. Katz. Pursuant to SCACR Rule 205 provides that, "[u]pon the service of the notice of appeal, the appellant court shall have exclusive jurisdiction over the appeal;" however, "[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal." As the lower court's December 20, 2019 orders pertained to motions filed by the other Respondents, it was appropriate for the court to proceed with issuing its ruling on Dr. Katz's motion for summary judgment.

CONCLUSION

WHEREFORE, having fully shown the reasons why the issue of the lower court's dismissal of Appellants claims against Dr. Katz is not properly before this Court, Dr. Katz asks that any appeal against him be dismissed.

Respectfully submitted,



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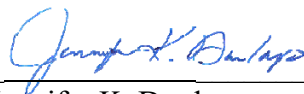
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RULE 211, SCACR Certification

I hereby certify that this Final Brief of Respondent, Dr. Gary R. Katz, complies with Rule 211(b) SCACR.

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