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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Deadra Jefferson, Circuit Court Judge

Maite Muprhy, Circuit Court Judge

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix
and the Estate of Norma J.

Nix.....Appellants

v.

Churchill Park, Churchill Park HOA, Churchill Park Homeowners' Association, Inc., Churchill at Park West Association, Inc., Churchill Property Owners Association, Churchill Park Property Owners Association, Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Churchill Park @ Park West Association, Inc., Southern Community Services, LLC, Park West Development Corp., LPPM, Inc., **McCabe, Trotter & Beverly, PC**, Dobson Builders, **Stephanie Trotter, Ryan McCabe, Jaime McSweeney**, Larry Riddlehoover, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson, Builders, Inc., DR Horton, Inc., Brian Gardner, Venture Management of South Carolina, Inc., Dodds & Hennessey, LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Rogers, Townsend & Thomas, PC, Henry Munn, Charleston County (Christine Smith), Judge Mikell Scarborough, Sandlapper Reporting, LLC, William H. Sloan, Sloan Law Firm, Individual Agents, Assigns, Attorneys, Accountants, Employees, Officers, Directors,

Independent Contractors, Investors, Successors,
Predecessors, Insurers, Representatives, Parents, Sister
and Affiliated Entities, Partners, Members of all Persons
Who Might be Liable..... Respondents.

**Motion to Dismiss and/or Strike Certain Orders on Appeal and Items Included in
Appellants’ Designation Matter of
Respondents McCabe, Trotter & Beverly, PC, Stephanie Trotter, Ryan McCabe, and
Jaime McSweeney,**

Respondents McCabe, Trotter & Beverly, PC, Stephanie Trotter, Ryan McCabe, and Jaime McSweeney, (“these Respondents” and/or “MTB Respondents”) move this Court to: (a) dismiss this appeal; and/or in the alternative (b) strike two Orders included in Appellants’ Notice of Appeal and (c) strike certain items delineated in Appellants’ Designation of Matter to be Included in the Record on Appeal (“DOM”). These Respondents also request a stay of Respondents’ time to file initial briefs and designations of matter pending a decision on this Motion.

BACKGROUND

Appellants/Plaintiffs are Alan Nix and the Estate of Norma J. Nix, Mr. Nix’ deceased wife. Without a lawyer, Mr. Nix filed an action captioned Alan Nix and the Estate of Norma J. Nix, v. Churchill Park, et al., in the Charleston County Court of Common Pleas on January 4, 2019. The court assigned it C/A no. 2019-CP-10-00067 (“Case 067”). (Ex. 1, Compl.) Among many others, the Complaint named these Respondents as Defendants. The pleading did not contain any factual allegations, so it impossible to summarize the theory of the case to this Court.

These Respondents filed a Motion to Dismiss on January 14, 2019. (Ex. 2) Judge Jefferson heard the Motion on September 26, 2019, and issued an Order granting it on October 17, 2019. That Order is Exhibit C to Appellants’ Notice of Appeal. Respondents/Defendants Catherine Brown

of Appeal, mistakenly included the case caption and case number for and was filed in Case 067 instead of Case 3315.

On October 7, 2019, Mr. Nix filed a Motion to Set Aside Judge Murphy's Order granting the Motion to Quash. (Ex. 5) Among other things, the Motion raised the issue of the court entering the Order in the wrong case and with the wrong case caption. Judge Murphy denied the Motion to Set Aside in a form Order filed October 17, 2019. (Ex. D to the Notice of Appeal) The lower court also mistakenly entered that Order in Case 067 and did not address the fact that the Order granting the Motion to Quash was entered in the wrong case and with the wrong case caption.

Judge Murphy issued an Order dismissing Case 3315 on September 27, 2019. (Ex. 6) Mr. Nix has filed an appeal of various Orders issued in that case, which is pending before this Court as Appellate Case 2019-001878.

ARGUMENT

1. The Court should dismiss this appeal for failure to adhere to the Rules.


a. SCACR 203(d)(1)(B)

SCACR 203(d)(1)(B) requires a copy of the notice of appeal to be filed with the trial court within ten days after the notice of appeal is served. Appellants filed the Notice of Appeal with this Court on November 25, 2019, and the Proof of Service shows a service (mailing) date of November 23, 2019. On December 11, 2019, this Court sent Appellants a letter noting deficiencies with Appellants' filing. (Ex. 7) One of the deficiencies noted was Appellants' failure to file a copy of the Notice of Appeal with the clerk of the trial court. The letter said the deficiencies must be corrected within ten days of the date of the letter of the appeal *will* be dismissed (emphasis added).

To date, no copy of the Notice of Appeal is on file with the Charleston County Clerk of Court. Court records show the case as “disposed,” not on appeal.

Nix, Alan G Plaintiff	2019CP1000067	01/04/2019	Disposed	10/17/2019	Common Pleas	Unfair Trade Pra 640	Common Pleas
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Additionally, the most recent document on file is Judge Jefferson’s October 17, 2019, Order granting these Respondents’ Motion to Dismiss.



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Switch View

Alan G Nix , plaintiff, et al VS Churchill Park , defendant, et al

Case Number:	2019CP1000067	Court Agency:	Common Pleas	Filed Date:	01/04/2019
Case Type:	Common Pleas	Case Sub Type:	Unfair Trade Pra 640	File Type:	Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	10/17/2019	Disposition Judge:	Jefferson, Deadra L.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials	
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Nix, Alan G	ADR/Notice of ADR	Action		10/31/2019-08:40	10/17/2019-08:40	
	Order Granting Certain Defnts Motion to Dismiss	Order		10/17/2019-08:21	10/17/2019-08:21	

Appellants initially failed to comply with the Rule, and then received specific instructions from this Court to do so or it would dismiss the appeal. Appellants have ignored the Rule, as well as this Court’s instructions and have not filed a copy of the Notice of Appeal with the clerk of the trial court.

b. SCACR 209(b).

Under SCACR 209(b), the designation of matter to be included in the record on appeal shall clearly identify what the party proposes to be included in the record on appeal. Appellants’ DOM fails in this regard. It lists thirteen items including various Orders, letters and a transcript. However, none of identifies a case caption or case number. A simple review of Appellants’ DOM shows it does

not in any manner “clearly identify” what Appellants propose be included in the record on appeal. On its face, Appellants DOM does not comply with Rule 209(b).

c. Initial brief

i. Table of Contents and Cases

SCRAC 208 sets forth the requirements for an appellant’s initial brief. Rule 208(b)(1)(A) says the initial brief shall contain a table of contents, with page references, and a table of cases, statutes and other authorities cited, with references to the pages on the brief where they are cited. Appellants’ initial brief contains a table of contents. However, it refers to “throughout and appropriately so” instead of referencing actual page numbers for multiple authorities.

ii. Statement of Issues on Appeal

SCACR 208(b)(1)(B) requires a party’s brief to contain a statement of each issue presented for review. “The statement shall be concise and direct as to each issue, and may be stated in question form.” Id. “Broad general statements may be disregarded by the appellate court.” Id. Appellants’ initial brief contains nineteen purported issues on appeal ranging from accusing judges of fraud and misconduct to corruption of the South Carolina judicial system. These are little more than disrespectful and sarcastic attempts to needle the Court and litigants to this case. The only proper issue on appeal here is whether Judge Jefferson appropriately granted these Motions to Dismiss in Case 067.

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iii. Statement of the Case

SCACR 208(b)(1)(C), states as follows:

(C) Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant.

Appellants' statement of the case is a rambling montage regurgitating upset about various matters Mr. Nix has unsuccessfully litigated. It is largely unrelated to the Motions to Dismiss in Case 067. It is replete with inappropriate accusations of fraud, conspiracy and misconduct. This does not comply with SCACR 208.

iv. Standard of Review

SCACR 207(b)(1)(D) requires an initial brief to set forth the appropriate standard of review for the issues on appeal. "[t]he brief shall set forth the applicable standard of review with citations to relevant case law establishing the standard of review." Id. Appellants' initial brief contains no standard of review section at all.

v. Argument

SCACR 208(b)(1)(E) provides that ("[T]he brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority." Id. Appellants' argument section fails to adhere to this Rule. Instead, it continues a pattern of inappropriately accusing various people of fraud and misconduct. It fails to set forth any meaningful, much less legal, assessment of why this Court should reverse Judge Jefferson's Orders granting the Motions to Dismiss in Case 067.

vi. Conclusion

SCACR 208(b)(1)(F) says the brief should contain a short conclusion stating the precise relief requested. Appellants' conclusion only continues, rambling incoherent and accusatory claims against various parties, judges, litigants and even this Court. The only cognizable request for relief is that the Court of Appeals remand the case pursuant to Appellants' Motion of July 6, 2020. However, this Court already denied that Motion. Appellants' initial brief fails to even set forth a legitimate claim for relief as SCACR 208 requires.

2. Judge Murphy's Orders granting the Motion to Quash filed in Case 3315 and denying the Motion to Set Aside (Exs. A and D to the Notice of Appeal) are not properly part of this appeal.

To the extent this appeal is viable, only Judge Jefferson's Orders of October 17, 2019 (Exs. B and C to the Notice of Appeal), are properly part of it. Judge Murphy's Orders (Exhibits A and D to the Notice of Appeal) arose out of the Motion to Quash filed in case 3315. Those Orders that rise out of a discovery motion in Case 3315, are not properly part of this appeal. Despite some similar parties and the mistaken case number(s), Case 3315 and Case 067 are substantively unrelated

Further, these Respondents were not party to the Motion to Quash in Case 3315. They had no stake in it, nor did they participate in the hearing of it. The Motion to Quash filed in Case 3315 has nothing to do with Case 067 or Judge Jefferson's Orders granting the Motions to Dismiss in it.

Clearly by mistake, the lower court filed Judge Murphy's Order granting the Motion to Quash Subpoena (Ex. A to the Notice of Appeal) with wrong case caption and case number and entered it in Case 067 instead of Case 3315. The Motion to Set Aside raised this issue, but Judge Murphy denied it via her Order entered on October 17, 2019 (Ex. D to the Notice of Appeal).

Judge Murphy's Orders (Exs. A and D to the Notice of Appeal) arise out of discovery issues in Case 3315 to which these Respondents were not party. They were filed in Case 067 when they should have been filed in Case 3315 by mistake. These Respondents had zero nothing to do with the Motion to Quash and should not be subject to fighting an appeal of orders arising from it, *i.e.*, discovery orders arising out of a motion a case in which they were not involved. Nothing arising out of or relating to Case 3315 is properly part of this appeal. If Judge Murphy's Orders on the Motion to Quash and Motion to Set Aside are appealable, they should be heard as part of that appeal (Appellate Case 2019-001878), not this one.

3. The Court should strike all items included in Appellants' Designation of Matter that are unrelated to and were not before the lower court with respect to the Motions to Dismiss in Case 067.

a. Appellants' DOM admittedly contains matter not relevant to this appeal.

The record on appeal shall only include matter presented to the lower court. SCRAC 210(c). The Record shall not, however, include matter which was not presented to the lower court or tribunal. *Id.* Rule 209(c) requires a filing party to certify that only items relevant to the appeal are included in the designation of matter. Only material(s) related to and before Judge Jefferson on the Motions to Dismiss in Case 067 are properly part of this appeal.

Appellants' SCACR 209(c) DOM admits the DOM identifies various items that are *not* relevant to this appeal:

I certify that this designation contains no matter which is irrelevant to this appeal with the exception of items which are included because these judges, attorneys and Charleston County Clerk of Court improperly utilized Order dated 27 September 2019 in case 2018-CP-10-003315, entitled ORDER ENJOINING THE PLAINTIFF FROM RE-FILING THIS MATTER AND IMPOSING SANCTIONS UPON THE PLAINTIFF ORDER to improperly prevent Appellant from filing required motions. .

This violates Rules 210 and 209 on their face(s).

Appellants' DOM includes numerous items unrelated to and not before Judge Murphy on the Motions to Dismiss in Case 067. None of those is related to this appeal or properly included in the record on appeal. This includes, but is not limited to, material arising out of case 3315.

These Respondents address each improperly included item in turn:¹

i. Judge Murphy's September 17, 2019, Order granting the Motion to Quash filed in Case 3315 (Item 1 in Appellants' DOM);

This appears to refer to Exhibit A to Appellants' Notice of Appeal and Judge Murphy's Order granting Mr. Mim's Motion to Quash filed in Case 3315. Substantively, this Order is completely unrelated to Case 067. Its only connection to this appeal is that the Order included the wrong case caption and was filed in the wrong case. It was not before Judge Jefferson on the Motions to Dismiss Case 067, nor does it have anything to do with the Orders she issued granting those Motions.

ii. Judge Murphy's October 17, 2019, Order denying the Motion to Set Aside the Order granting the Motion to Quash;

This appears to refer to Exhibit D to Appellants' Notice of Appeal Order. This arose out of the Motion to Quash filed in case 3315 and is unrelated to the Motions to Dismiss Case 067. It was not before Judge Jefferson with respect to those Motions.

¹ The undersigned make a best guesses as to what each item identified in Appellants' DOM is (the DOM does not specifically identify each proposed item to be included in the record on appeal).

iii. Judge Murphy’s September 27, 2019, Order in Case 3315 Enjoining Plaintiff from Re-filing and awarding Sanctions;

Upon information and belief, this is an Order Judge Murphy issued in Case 3315. (Ex. 8) It unrelated to Case 067. Nothing in this Order or the Motion underlying it was before Judge Jefferson with respect to the Motions to Dismiss filed in Case 067.

iv. (a) October 22, letter to Judge Murphy and South Carolina Attorney General Alan Wilson; (b) November 4, 2019, letter to Charleston County Clerk of Court, Julie Armstrong; and (c) November 8, 2019, letter to Ms. Armstrong and South Carolina Alan Wilson.

The undersigned is not familiar with these documents. Upon information and belief, these Respondents were not served with this material and are unaware of any connection it might have to the Motions to Dismiss Case 067 Judge Jefferson decided. It is clear this material was not before her with respect to those Motions.

v. Transcript of Proceedings August 28, 2019.

Appellants’ DOM references a transcript of a hearing in an unidentified case. While the DOM does not say so, these Respondents’ best guess is this relates to a hearing in Case 3315. This August 28, 2019, transcript (or partial transcript) is unrelated to the Motions to Dismiss in Case 067, and it was not before Judge Jefferson with respect to her decisions on those Motions.

4. Alan Nix is engaged in the unauthorized practice of law.

South Carolina limits the practice of law to licensed lawyers. In re Lexington County Transfer Court, 334 S.C. 47, 512 S.E.2d 791 (1999). “No person may practice or solicit the cause of another in a court of this State unless he has been admitted and sworn in as an attorney.” S.C. Code § 40-5-310. The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such

actions and proceedings on behalf of clients before judges and courts. Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003); State v. Despain, 319 S.C. 317, 460 S.E.2d 576 (1995); In re Duncan, 83 S.C. 186, 65 S.E. 210 (1909). The filing of a notice of appeal and preparation of briefs by the administrator of an estate clearly constitutes the practice of law. Brown v. Coe, 616 S.E.2d 705, 365 S.C. 137 (S.C. 2005).

Here, Alan Nix filed the subject action *pro se* on behalf of himself and the Estate of Norma Jean Nix. After the lower court dismissed the case, he filed the notice of appeal, initial brief and designation of matter on behalf of the Estate of Norma Nix. Mr. Nix is not member of the South Carolina Bar. He is engaging in the unauthorized practice of law by representing the Estate of Norma J. Nix in this case.

This is a continuing pattern by Alan Nix, who insists on proceeding *pro se* in numerous legal matters, in many of which he represents the Estate of Norma J. Nix. In addition to this matter, those include at least:

1. The Estate of Norma Jean Nix and Alan G. Nix v. Prisma Health-Upstate, et al.; 2019-NI-10-0065 (Charleston County Court of Common Pleas);
2. The Estate of Norma J. Nix and Alan G. Nix v. GHS Partners in Health, Inc., et al., 2018-NI-23-00060 (Greenville County Court of Common Pleas); and
3. Churchill Park v. Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix, 2017-CP-10-04031 (currently on appeal, appellate case number pending. Mr. Nix filed the appeal on behalf of himself and the Estate of Norma J. Nix).

This Court should dismiss this appeal in light of Mr. Nix' continuing refusal to follow the Rules, use appropriate decorum and engagement in the unauthorized practice of law. At the very least, this Court should enjoin any Court in this State from accepting further *pro se* pleadings by Mr. Nix on behalf of himself and/or anyone else.

CONCLUSION

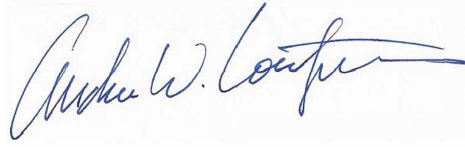
Appellants, despite receiving numerous chances to follow the Rules, continue to flagrantly ignore them. Their latest filing(s) even accuses this Court of impropriety. While Mr. Nix insists on continuing as a *pro se* litigant, that does not afford him the freedom to engage in such continuous frivolous and dilatory tactics. Further, doing so on behalf of the Estate of Norma J. Nix constitutes the unauthorized practice of law.

These Respondents respectfully ask this Court for the following relief:

1. Dismiss this appeal;
2. Refuse to accept further pleadings from Mr. Nix on behalf of himself or the Estate of Norma J. Nix. In other words, require Appellants to retain counsel to pursue this appeal further;
3. Enjoin all South Carolina circuit courts from filing further *pro se* filings from Alan Nix on behalf of himself and anyone else;
4. If the Court does not dismiss the appeal, strike Exhibits A and D to Appellants' Notice of Appeal;
5. If the Court does not dismiss the appeal, require Appellants to re-file an appropriate designation of matter complying with the Rules and including only material that was before Judge Jefferson on the Motions to Dismiss she granted in Case 067;
6. If the Court does not dismiss the appeal, require Appellants to file an amended initial brief that complies with the rules;
7. Stay Respondents' deadline to file initial briefs and designations of matter pending a ruling on this Motion;
8. Award reasonable costs and attorney's fees against Appellants; and
9. Other and further relief as the Court deems just and proper.

[signature page to follow]

Respectfully submitted,

A handwritten signature in blue ink, reading "Andrew W. Countryman". The signature is fluid and cursive, with a long horizontal stroke at the end.

COUNTRYMAN LAW FIRM

Andrew W. Countryman

S.C. Bar No. 72700

321 Wingo Way, Ste. 102

Mt. Pleasant, SC 29464

843-253-4477

awc@countrymanlawfirm.com

**Counsel of Record for Respondents
McCabe, Trotter & Beverly, PC,
Stephanie Trotter, Ryan McCabe and
Jaime McSweeney**

September 25, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

Alan G. Nix, Norma J. Nix, and the Estate)
Of Norma J. Nix)

Plaintiff,)
)

Churchill Park,)
Churchill Park Homeowners' Association,)
Inc.,)
Churchill Park at Parkwest, Inc.,)
Churchill Park at Park West Association)
Inc.,)
Southern Community Services, LLC,)
Park West Master Association, Inc.,)
LPPM, Inc.,)
McCabe, Trotter & Beverly, PC,)
Larry Ridlehover,)
Stephanie Trotter, Ryan McCabe,)
Jamie McSweeney, Larry Ridlehover,)
Mike Hurd, Sheri Cothran, David Brown,)
Catherine Brown, Stephen Sumner,)
Richard Riccoboni, Rick Cumberland,)
Park West Master Association, Inc.,)
Park West Amenity Association, Inc.,)
C. Richard Dobson Builders, Inc.)
D.R. Horton, Inc. Brian Gardner,)
Dodds & Hennessey LLP, Klm Atkeson,)
Jennifer Williamson, Jessica Turner,)
Kevin Steelman, Landtech Development)
LLC., Landtech Incorporated of South)
Carolina, Land Tech Charleston LLC.,)
Park West Development, Inc., Rogers,)
Townsend, Thomas, PC, Henry Munn,)
Individual Directors, Officers, Agents,)
Attorneys, Accountants, Independent)
Contractors, Investors, Successors,)
Predessors, Parents, Subsidiaries, Sister)
And Affiliated entities, Partners and)
Members of all named Entities.)

Defendants,)
)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)

Case No.: 2019-CP-10-0067

COMPLAINT

(Breach of Fiduciary Duty)
(Aiding and Abetting Breach of Fiduciary
Duty)
(Breach of Contract)
(Breach of Contract by Fraudulent)
(Civil Conspiracy))
(Abuse of Process))
(Constructive Fraud))
(Consumer Protection Code Violation))
(Fraud and Misrepresentation))
(Intentional Infliction Emotional Distress))
(Interference with Contractual Relations)
(Negligence))
(Negligent Misrepresentation))
(Negligent Supervision))
(Slander of Title))
(Unfair Trade Practices Act Violation))
(Unjust Enrichment)

FILED
2019 JAN -6 PM 5:55
JULIE J. AYERS
CLERK

JURY TRIAL DEMANDED



The Plaintiffs, complaining of Defendants, would respectfully show unto this honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of Charleston County, South Carolina.

FACTUAL ALLEGATIONS

FOR A FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

(As to Defendants:)

1. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

FOR A SECOND CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty)

(As to Defendants:),

2. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A THIRD CAUSE OF ACTION

(Interference with Contractual Relationship)

(As to Defendants:),

3. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A FOURTH CAUSE OF ACTION

(Abuse of Process)

(As to Defendants:)

4. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract)

(As to Defendants:)

5. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A SIXTH CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act)

(As to Defendants:)

6. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A SEVENTH CAUSE OF ACTION

(Constructive Fraud)

(As to Defendants:)

7. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR AN EIGHT CAUSE OF ACTION

(Fraud and Misrepresentation)

(As to Defendants:)

8. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A NINTH CAUSE OF ACTION

(Unfair Trade Practices Act)

(As to Defendants:)

9. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A TENTH CAUSE OF ACTION

(Civil Conspiracy)

(As to Defendants:)

10. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR AN ELEVENTH CAUSE OF ACTION

(Consumer Protection Code Violation)

(As to Defendants:)

11. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A TWELTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(As to Defendants:)

12. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A THIRTEENTH CAUSE OF ACTION

(Negligence)

(As to Defendants:)

13. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A FOURTEENTH CAUSE OF ACTION

(Negligent Misrepresentation)

(As to Defendants:)

14. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A FIFTEENTH CAUSE OF ACTION

(Negligent Supervision)

(As to Defendants:)

15. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A SIXTEENTH CAUSE OF ACTION

(Slander of Title)

(As to Defendants:)

16. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

FOR A SEVENTENTH CAUSE OF ACTION

(Unjust Enrichment)

(As to Defendants:)

17. Plaintiff incorporates all preceding paragraphs as though fully set forth herein

Plaintiff reserves the right to amend this complaint to include new parties and causes of action as may become appropriate based on ongoing investigation and information obtained in discovery.

JURY TRIAL DEMANDED.

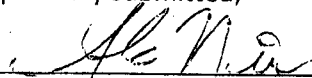
(This complaint is being filed due to the ongoing pattern of mismanagement of cases 2014-CP-10-05407 and 2017-CP-10-04031 by Charleston County from at least the period starting 23 March 2016 to present, so as to ensure the statutes of limitations are preserved for relevant claims which could be construed to run out on 4 Jan 2019. This case should be consolidated with 2014-CP-10-05407 once that case is properly restored.)

WHEREFORE, Plaintiff prays for this Court to enter judgement against Defendants as follows:

1. For actual damages, compensatory damages, and consequential damages as may be proven at trial;
2. For statutory damages and attorneys' fees and costs;
3. For punitive damages as may be proven at trial where allowed;
4. For prejudgement interest, postjudgement interest, and costs and;
5. For such other and further relief as the Court deems just, prudent and proper.

January 4, 2018

Respectfully submitted,



Alan G. Nix

1401 Densmore Circle
Mount Pleasant, SC 29466
(843) 991.4170
alan.g.nix@gmail.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alan G. Nix, Norma J. Nix and the Estate of
Norma J. Nix,

Plaintiffs,

v.

Churchill Park, Churchill Park Homeowners
Association, Inc., Churchill Park at Park West
Association, Inc., Southern Community Services,
LLC, Park West Master Association, Inc., LPPM,
Inc., **McCabe, Trotter & Beverly, PC**, Larry
Ridlehover, **Stephanie Trotter, Ryan McCabe,**
Jamie McSweeney, Mike Hurd, Sheri Cothran,
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Hennessy, LLP, Kim Atkeson, Jennifer
Williamson, Jessica Turner, Kevin Steelman,
Landtech Development, LLC, Landtech
Incorporated of South Carolina, Land Tech
Charleston, LLC, Park West Development, Inc.,
Rogers, Townsend, Thomas, PC, Henry Munn,
Individual Directors, Officers, Agents, Attorneys,
Accountants, Independent Contractors, Investors,
Successors, Predecessors, Parents, Subsidiaries,
Sister and Affiliated entities, Partners and
Members of all named entities,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A NO.: 2019-CP-10-0067

2019 JUN 14 PM 2:53
CLERK OF COURT

**MOTION TO DISMISS WITH
PREJUDICE OF DEFENDANTS
MCCABE, TROTTER & BEVERLY, PC,
STEPHANIE TROTTER, RYAN
MCCABE AND JAMIE MCSWEENEY**

TO: ALAN G. NIX, *PRO SE* PLAINTIFF:

Defendants McCabe, Trotter & Beverly, PC, Stephanie Trotter and Ryan McCabe and Jamie
McSweeney (“these Defendants”), by and through their undersigned counsel, hereby move this



Court for an Order dismissing the Plaintiffs' claims with prejudice pursuant to SCRCP 12(b)(6). These Defendants also move this Court to issue a gatekeeper Order precluding the Plaintiff from future frivolous and harassing *pro se* filings and for sanctions. The grounds for this Motion are as follows:

Plaintiff Alan G. Nix owns a home¹ in the Churchill Park subdivision of the Park West Development in Mount Pleasant. The property is subject to certain Covenants and Restrictions that, among other things, provide for payment of assessments. McCabe, Trotter & Beverly, PC ("MTB") is a law firm based in Columbia that, among other things, represents HOAs on various matters. Stephanie Trotter and Ryan McCabe are shareholders of MTB. Jamie McSweeney used to work at the firm but does not any longer. Mr. Nix' HOA retained MTB to represent it in the pursuit of unpaid amounts Mr. Nix owed to the HOA.

MTB filed a Notice of Lien against the property and an an action seeking to foreclose the Lien in Charleston County. The original amount in controversy was approximately \$1,000. The parties have litigated that case for years, with Mr. Nix filing voluminous challenges, appeals and the like. The HOA prevailed on the foreclosure action, and the HOA obtained a judgment on that claim of over \$20,000.

Mr. Nix filed an appeal, which is pending. The underlying case pleadings and history are complicated largely due to Mr. Nix' incessant filings, challenges, and appeals. The instant Complaint references that case (2014-CP-10-05407, 2017-CP-10-04031). In this suit, which Mr. Nix baselessly asks the court to combine with the underlying case, Mr. Nix has named anyone who in any way was ever connected to the underlying matter (completely without any basis to do so).

¹ Mr. Nix' late wife Norma, also owned the property with her husband. She passed away at some point during the underlying litigation.

Frustrated with his lack of success in the underlying matter, Mr. Nix filed two lawsuits naming MTB as a Defendant in state court in Charleston County in 2018. Those cases are: Nix v. MTB; 2018-CP-10-2302 and Nix v. MTB; 2018-10-2356. These cases took issue with activity MTB lawyers took in the underlying lien foreclosure case. The undersigned represented MTB in those cases and removed them to federal court. Judge Gergel granted MTB's Motions to Dismiss in each case and awarded judgments of \$400 in each to MTB against Mr. Nix. Those judgments are currently pending and unpaid as cases: MTB v. Nix, 2018-10-5884 and MTB v. Nix, 2018-10-5883.

Mr. Nix has filed yet another claim based on the underlying lien foreclosure litigation (as best the undersigned can tell without a single fact stated in the Complaint). Mr. Nix has proven to be litigious, uncooperative, and abusive of the court system. This continued with the instant action.

SCRPC 12(b)(6)

SCRPC 12(b)(6) SCRPC 12(b)(6) provides that a defendant may move for dismissal based on the plaintiff's failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In considering a 12(b)(6) motion, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (emphasis added); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) and Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). The court should not grant a 12(b)(6) motion if "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Id.* The question is whether, in the light

most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

On its face, the Complaint fails to state any facts, much less facts sufficient to constitute a cause of action against these Defendants. The Complaint does not even state a single fact, as the “Factual Allegations” section is totally blank. The Complaint is essentially a draft document that only lists causes of action and fails to describe in any manner the basis for or even list the elements of any cause of action. There is no way anyone could determine this Complaint states a cause of action against anyone, much less these Defendants.

S.C. Code § 15-36-100

S.C. Code § 15-36-100 provides that a plaintiff in a legal malpractice action must file an expert affidavit stating how the lawyer was negligent with the complaint. If the plaintiff fails to do so, the complaint is subject to dismissal. This Complaint lists a cause of action for negligence and does not include an expert affidavit. To the extent this claim is for professional malpractice against these Defendants, the court should dismiss it for failure to file an expert affidavit as S.C. Code § 15-36-100 requires.

No Lawyer Liability

To survive a rule 12(b)(6) motion, a plaintiff in a legal malpractice action must allege the following elements: (1) existence of a lawyer-client relationship; (2) a breach of duty by the lawyer; (3) damage to the client and (4) proximate causation of the client’s damage by the breach. Stokes - Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016). A plaintiff asserting a legal malpractice claim against a lawyer must first establish the existence of an attorney-client relationship between the lawyer defendant and the plaintiff. The Law of Legal Malpractice in South

Carolina (S.C. Bar- CLE Division 2017). In fact, the failure to allege the existence of a lawyer-client relationship is fatal to a complaint alleging legal malpractice. Id.

South Carolina law also provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf of and with the knowledge of the client. Stiles v. Ontario, 318 S.C. 297, 458 S.E.2d 601 (1995). *See also* Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The purpose of this is to encourage zealous representation of client without fear of lawsuits by disgruntled opposing parties. Gaar v. NMB Realty Co., 287 S.C. 525 (Ct. App. 1986). The only exception to these generally recognized principles is the context of a beneficiary of a will. Rydde v. Morris, 318 S.C. 643, 675 S.E.2d 431 (2009).

Here, these Defendants' only involvement with Mr. Nix was as lawyers working on his HOA's collections matter against him. These lawyers did not represent the Plaintiffs in this case, and there is no allegation in the Complaint saying otherwise. Further, all actions that could possibly be at issue in this lawsuit were taken as lawyers for Mr. Nix' HOA in the case against him. No recognized exception to this rule applies to any of these Defendants. They are therefore immune from liability to Mr. Nix for acts taken in the course of that litigation on behalf of his HOA.

No Liability of Individual Defendants

The Complaint names Ms. Trotter, Mr. McCabe and Ms. McSweeney as individual Defendants. Despite the Complaint's failure to state a single fact, it can only be surmised that the Complaint names these Defendants because of their alleged roles in the pursuit of Mr. Nix' HOA's claim against him. However, there is absolutely zero basis for naming individual lawyers who worked on the file. There is no allegation that any individual (Ms. Trotter, Mr. McCabe or Mr.

McSweeney) acted in any capacity other than as lawyers for Mr. Nix' HOA. It can only be surmised that Mr. Nix named these individuals for purposes of harassment and abuse.

Res Judicata and Collateral Estoppel

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of the prior action between those parties. Judy v. Judy, 393 S.C. 160, 712 S.E.2d 408 (2011). “[F]or purposes of *res judicata*, “cause of action” is not the form of action in which the claim is asserted but, rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon.” Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). The doctrine’s fundamental purpose is to ensure that no one should be sued twice for the same cause of action. Yelsen Land Co. v. State, 397 S.C. 15, 732 S.E.2d 592 (2012). “The doctrine [of *res judicata*] flows from the principle that public interest requires an end to litigation and no one should be sued twice for the same cause of action.” Duckett v. Goforth, 374 S.C. 446, 464, 649 S.E. 2d 72, 81 (Ct. App. 2007) (emphasis added) (citation omitted); *see also* S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 248, 551 S.E.2d 274, 278 (Ct. App. 2001) (“The doctrine of *res adjudicata* (or *res judicata*) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.” (quoting First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945))) South Carolina Pub. Interest Found. v. Greenville Cnty. (Ct. App. 2012).

“The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles.” Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628

(Ct. App. 1995) (citing Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944)). In Watson, our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation[.]) . . . Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is. 205 S.C. at 221-22, 31 S.E.2d at 319-20 (citations omitted); *see also* First Nat'l Bank of Greenville, 207 S.C. at 24, 35 S.E.2d at 56-57 (citing Watson) (contrasting the origins of *res judicata* and collateral estoppel) South Carolina Pub. Interest Found. v. Greenville Cnty. (Ct. App. 2012).

Mr. Nix has already sued MTB for its lawyers actions in the underlying Lien foreclosure action. He lost those cases in federal court and is now facing judgments against him resulting from those cases. This new lawsuit is merely his attempt at another bite of the same apple. The law and equity (*res judicata* and collateral estoppel) preclude him from suing MTB and its lawyers again for anything related to the underlying Lien foreclosure matter (*res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between the parties). Merely listing new causes of action does nothing to change the fact that these issues have already been litigated, and Mr. Nix lost. These “new” claims are inappropriate, and the law bars them.

Norma Nix/the Estate of Norma Nix

The Complaint caption lists Norma Nix and the Estate of Norma Nix as Plaintiffs. However, the body of the pleading only states “Plaintiff is a resident of Charleston County, South Carolina.” Para. 1. Norma Nix is deceased. She is therefore not a proper party to any legal action. In theory, her Estate could be a party. However, the Complaint does not state that Mr. Nix is the administrator

of the Estate of Norma Nix, nor does it state any facts on which a claim by the Estate could be based.

Sanctions and Gatekeeper Order

SCRCP 11 provides that a lawyer or party submitting filing certifies that the pleading, to the best of his knowledge, has good grounds to support it and is not interposed for delay or other purposes. A pleading that does not comply with the Rule shall be stricken. The court may also impose an appropriate sanction, which may include an order to pay to the other party reasonable attorney's fees and expenses incurred because of the filing. SCRCP 11(a). The decision on whether to award attorney's fees under Rule 11 is treated as one in equity. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011). The trial court's decision on this issue is subject to an abuse of discretion standard. Id. It will not be disturbed on appeal unless the decision is controlled by an error of law or based on unsupported factual contentions. Id. An abuse of discretion may be found only if the conclusions reached by the court are without reasonable factual support. Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996).

Filing a Complaint regarding matters already litigated and which contains zero factual discussion of allegations or descriptions of why a defendant is allegedly liable does not comport with Rule 11. After years of litigation that have bogged down the court system, Mr. Nix has filed another action, this one containing no facts or actual allegations. He can only have done this to harass and abuse the defendants. This especially applies to MTB and its lawyers, which have already fended off two lawsuits Mr. Nix brought regarding the underlying Lien foreclosure action. MTB is yet again forced to spend time, money and energy defending a baseless claim- one that is baseless on its face. The Court should sanction Mr. Nix and award a judgment of costs and attorney's fees in favor of these Defendants for all amounts related in any manner to defending this claim.

These Defendants also ask the court for an Order pursuant to its inherent gatekeeping authority, restricting the court from accepting any filing from Mr. Nix that is not filed and signed by a licensed South Carolina lawyer and that otherwise complies with SCRPC 11. Through the various cases in which Mr. Nix is involved (all arising out of his failure to pay \$1,000 in HOA assessments and related charges), he has proven to be litigious and unwilling or unable to follow the requirements of the court, the law and the Rules of Civil Procedure. He continues to file motions and other pleadings that lack any legal foundation. These require the Defendants to invest resources to respond and place an undue burden on the court by, among other things, demanding duplicative hearings on unnecessary matters.

The court has warned Mr. Nix that his filings could be construed as abuse of process and vexatious litigation. Mr. Nix has continuously ignored that warning and continues to submit inappropriate filings. These Defendants ask this court to preclude Mr. Nix from submitting, and the Clerk from accepting, any filings that are not signed by a licensed South Carolina lawyer and otherwise comply with Rule 11.

Statute of Limitations/Service

These Defendants also request dismissal to the extent Plaintiffs fail to serve the Complaint and/or because the three-year statute of limitations precludes Plaintiffs' claims.

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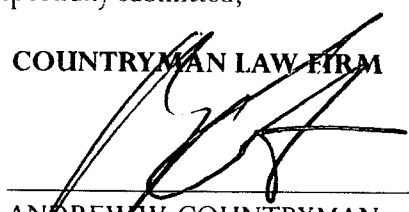
Conclusion

These Defendants therefore ask this court for an Order: (a) dismissing the Complaint with prejudice, (b) awarding sanctions in the form of attorney's fees, costs and other amounts as the court deems appropriate and (c) precluding Mr. Nix from filing, and the Clerk from accepting, any filings on his behalf not signed and filed by a licensed South Carolina lawyer and otherwise complying with SCRCP 11. These Defendants reserve the right to supplement this Motion with supporting memoranda and affidavits as appropriate.

Respectfully submitted,

COUNTRYMAN LAW FIRM

By: _____


ANDREW W. COUNTRYMAN
State Bar No.: 72700
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

And

ROBERT P. WOOD, ESQ.
Rogers, Townsend & Thomas, P.C.
1221 Main St., 14th Floor
Columbia, SC 29201
Robert.Wood@rtt-law.com
803-744-1275

**Lawyers for Defendant McCabe,
Trotter & Beverly, PC, Stephanie
Trotter, Ryan McCabe and Jamie
McSweeney**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ALAN NIX,)
)
 Plaintiff,)
)
 vs.)
)
 CHURCHILL PARK, CHURCHILL)
 PARK HOMEOWNERS ASSOCIATION,)
 INC., CHURCHILL PARK AT PARK)
 WEST, INC., CHURCHILL PARK AT)
 PARK WEST ASSOCIATION, INC.,)
 SOUTHERN COMMUNITY SERVICES,)
 LLC, PARK WEST MASTER)
 ASSOCIATION, INC., LPPM, INC.,)
 McCABE, TROTTER & BEVERLY, PC,)
 LARRY RIDLEHOVER, STEPHANIE)
 TROTTER, RYAN McCABE, JAMIE)
 McSWEENEY, LARRY RIDLEHOVER,)
 MIKE HURD, SHERI COTHRAN,)
 DAVID BROWN, CATHERINE)
 BROWN, STEPHEN SUMNER,)
 RICHARD RICCOBONI, RICK)
 CUMBERLAND, PARK WEST)
 MASTER ASSOCIATION, INC., PARK)
 WEST AMENITY ASSOCIATION, INC.,)
 C. RICHARD DOBSON BUILDERS,)
 INC., D.R. HORTON, INC., BRIAN)
 GARDNER, DODDS & HENNESSEY)
 LLP, KIM ATKESON, JENNIFER)
 WILLIAMSON, JESSICA TURNER,)
 KEVIN STEELMAN, LANDTECH)
 DEVELOPMENT LLC, LANTECH)
 INCORPORATED OF SOUTH)
 CAROLINA, LAND TECH)
 CHARLESTON LLC, PARK WEST)
 DEVELOPMENT, INC., ROGERS,)
 TOWNSEND, THOMAS, PC, HENRY)
 MUNN, INDIVIDUAL DIRECTORS,)
 OFFICERS, AGENTS, ATTORNEYS,)
 ACCOUNTANTS, INDEPENDENT)
 CONTRACTORS, INVESTORS,)
 SUCCESSORS, PREDESSORS,)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-10-00067

**DEFENDANTS DAVID AND
 CATHERINE BROWN'S
 NOTICE OF MOTION AND
 MOTION TO DISMISS**

FILED
 2019 MAY 24 AM 10:33
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY

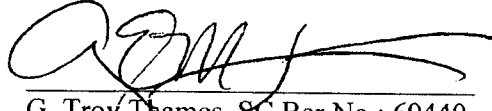


PARENTS, SUBSIDIARIES, SISTER)
AND AFFILIATED ENTITIES,)
PARTNERS AND MEMBERS OF ALL)
NAMED ENTITIES,)
)
)
Defendants.)

TO: ALAN NIX, PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendants David and Catherine Brown (hereinafter "Defendants Brown") will move this Court on June 4, 2019 for an Order pursuant to South Carolina Rule of Civil Procedure 12(b)(1); 12(b)(2); 12(b)(3); and 12(b)(6) dismissing Defendants Brown from this lawsuit. Defendants Brown so move on the grounds that subject matter jurisdiction has not been established; personal jurisdiction has not been established; venue has not been established; and the common law and statutory law of South Carolina do not recognize a cause of action against these Defendants under the facts as alleged in the Complaint. Defendants Brown crave reference to the appropriate law and any affidavits or memoranda to be provided to the Court.

WILLSON JONES CARTER & BAXLEY, P.A.



G. Troy Thames, SC Bar No.: 69440
Amy E. McLaren, SC Bar N.: 101308
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464
Telephone: (843) 284-0832
Facsimile: (843) 606-3300
E-mail: tthames@wjlaw.net
aemclaren@wjlaw.net

Mt. Pleasant, South Carolina
May 24, 2019

**ATTORNEY FOR DEFENDANTS
DAVID BROWN AND CATHERINE BROWN**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ALAN NIX,)

Plaintiff,)

vs.)

CHURCHILL PARK, CHURCHILL)
 PARK HOMEOWNERS ASSOCIATION,)
 INC., CHURCHILL PARK AT PARK)
 WEST, INC., CHURCHILL PARK AT)
 PARK WEST ASSOCIATION, INC.,)
 SOUTHERN COMMUNITY SERVICES,)
 LLC, PARK WEST MASTER)
 ASSOCIATION, INC., LPPM, INC.,)
 McCABE, TROTTER & BEVERLY, PC,)
 LARRY RIDLEHOVER, STEPHANIE)
 TROTTER, RYAN McCABE, JAMIE)
 McSWEENEY, LARRY RIDLEHOVER,)
 MIKE HURD, SHERI COTHRAN,)
 DAVID BROWN, CATHERINE)
 BROWN, STEPHEN SUMNER,)
 RICHARD RICCOBONI, RICK)
 CUMBERLAND, PARK WEST)
 MASTER ASSOCIATION, INC., PARK)
 WEST AMENITY ASSOCIATION, INC.,)
 C. RICHARD DOBSON BUILDERS,)
 INC., D.R. HORTON, INC., BRIAN)
 GARDNER, DODDS & HENNESSEY)
 LLP, KIM ATKESON, JENNIFER)
 WILLIAMSON, JESSICA TURNER,)
 KEVIN STEELMAN, LANDTECH)
 DEVELOPMENT LLC, LANTECH)
 INCORPORATED OF SOUTH)
 CAROLINA, LAND TECH)
 CHARLESTON LLC, PARK WEST)
 DEVELOPMENT, INC., ROGERS,)
 TOWNSEND, THOMAS, PC, HENRY)
 MUNN, INDIVIDUAL DIRECTORS,)
 OFFICERS, AGENTS, ATTORNEYS,)
 ACCOUNTANTS, INDEPENDENT)
 CONTRACTORS, INVESTORS,)
 SUCCESSORS, PREDESSORS,)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-10-00067

CERTIFICATE OF SERVICE

BY _____
 JULIE J. ARMSTRONG
 CLERK OF COURT

2019 MAY 24 AM 10:34

FILED

PARENTS, SUBSIDIARIES, SISTER)
AND AFFILIATED ENTITIES,)
PARTNERS AND MEMBERS OF ALL)
NAMED ENTITIES,)
Defendants.)

I hereby certify that a copy of the herein listed Defendants David and Catherine Brown's Motion to Dismiss was served upon all counsel of record by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on May 24, 2019 as follows:

Alan G. Nix
1401 Densmore Circle
Mount Pleasant, SC 29466
Pro Se Plaintiff

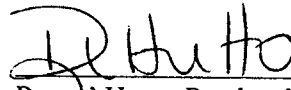
Kevin W. Mims, Esquire
Luzuriaga Mims, LLP
50 Immigration Street, Suite 200
Charleston, SC 29403
***Attorneys for Defendants Churchill Park,
Churchill Park at Park West, Inc., and
Churchill Park Homeowners Association, Inc.***

Andrew W. Countryman, Esquire
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464

-and-

Robert P. Wood, Esquire
Rogers, Townsend & Thomas, P.C.
1221 Main Street, 14th Floor
Columbia, SC 29201
***Attorneys for Defendant McCabe,
Trotter & Beverly, PC, Stephanie
Trotter, Ryan McCabe and Jamie
McSweeney***

By:



Renee' Hutto, Paralegal

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Alan Nix,)	CASE NO. 2018-CP-10-03315
)	
)	
Plaintiff,)	
)	
v.)	
)	
Churchill Park, Churchill Park at Park)	MOTION TO QUASH SUBPOENA AS ISSUED TO KEVIN MIMS
West, Inc., Churchill Park Homeowner's)	
Association, Inc., David Brown and)	
Catherine Brown,)	
)	
)	
Defendants.)	
)	

FILED
 2019 MAY 24 AM 11:31
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

TO: ALAN NIX, *PRO SE* PLAINTIFF:

PLEASE TAKE NOTICE that on June 4, 2019, Defendants will move this Court for an Order quashing the subpoena to Kevin Mims issued by *pro se* Plaintiff. On May 20, 2019 *pro se* Plaintiff issued a subpoena to Kevin Mims for his appearance in "Charleston County Court House" on June 4, 2019 at 9:30 a.m. See Subpoenas in a Civil Case, attached hereto as Exhibit 1. Grounds for this Motion are as follows:

Pursuant to South Carolina Rule of Civil Procedure 45(c)(3)(A)(iii), a subpoena shall be quashed if it requires disclosure of privileged or otherwise protected matter. Further, a subpoena cannot subject a person to undue burden. *Id.* at (iv).

Any conversations, electronic messages, or correspondence between counsel and Defendants are protected by attorney-client privilege and the work product doctrine. Both counsel's conversations and correspondence with Defendants are protected. Therefore, Kevin Mims cannot testify in regards to the subject action without breaching his duties to Defendants, and this Court should issue an Order quashing the subpoena.



In addition to counsel's request to quash the subject subpoena, counsel requests this Court sanction Plaintiff for filing a frivolous and unsupported document. The South Carolina Frivolous Civil Proceedings Sanctions Act states:


...an attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for: filing a pleading, motion, or document if...a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based; making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts. S.C. Code § 15-36-10 (A)(4)(iv)(b).

This subpoena is clearly frivolous, designed to expend costs as well as Defendants' right to a speedy resolution in the underlying matter. There are no grounds for eliciting testimony from counsel. No reasonable attorney would issue such a document, and Plaintiff has unreasonably wasted the Charleston County Clerk's Office, Charleston County Sheriff's Office, and this firm's time by filing another frivolous, unreasonable, and unrelated subpoena to Defendant's counsel. While a litigant has the right to proceed on one's behalf, the South Carolina Frivolous Civil Proceedings Act makes clear that it must be done in a good faith manner. This Plaintiff has no understanding and no respect for this Court or its proceedings, and must be ordered to consult with legal counsel licensed in the State of South Carolina prior to filing any other documents.

WHEREFORE, Defendant respectfully requests that this Court issue an Order quashing the subpoena to Kevin Mims requesting his appearance at the "Charleston County Court House" on June 4, 2019; the imposition of sanctions against Plaintiff for this frivolous and unduly burdensome subpoena, including an award of attorneys' fees and costs associated with this Motion; prohibiting *pro se* Plaintiff from filing any other

documents with this Court without the consultation of counsel licensed to practice law in the State of South Carolina and proof of such consultation and/or representation; and any other relief the Court deems necessary and proper.

LUZURIAGA MIMS, LLP

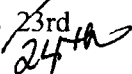
By: 
Kevin W. Mims
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com

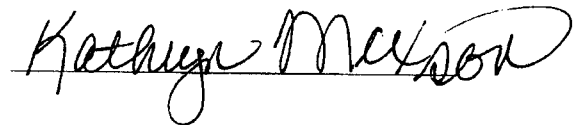
Attorney for Defendants

Charleston, South Carolina

May 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on *pro se* Plaintiff and all counsel of record in this proceeding this ^{23rd} day of May, 2019. 



STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF CHARLESTON

ALAN NIX, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2018-CP-10-03315

CHURCHILL PARK HOMEOWNERS' ASSOCIATION, INC., CHURCHILL PARK AT PARKWEST, INC., CHURCHILL PARK, CATHERINE BROWN AND DAVID BROWN



Pending in Charleston County

TO: Kevin Mims

X YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY Charleston County Court House, 100 Broad Street, Charleston, SC 29401	COURTROOM 3E
	DATE AND TIME 4 June 2019, 0930 (If Ms. Armstrong ever properly files the Plaintiff's Motion for Change of Venue, mailed on 4 April 2019, again on 25 April 2019 and again on 8 May 2019, this hearing may not be required.)

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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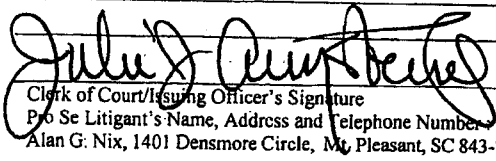
ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

Date

Print Name


Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and Telephone Number
Alan G. Nix, 1401 Densmore Circle, Mt. Pleasant, SC 843-729-2400

5/20/19
Date

Julie J. Armstrong
Print Name

Rule 45(3) SCRPC The clerk shall issue a subpoena
signed but otherwise in blank, to a party requesting
it, who shall complete it before service.

answered for Mr. Mims and stated that she supposed he was there representing himself since I had issued a subpoena to him.

Judge Murphy did not hear all of the motions scheduled for that hearing, one of specific importance the motion for Judge Young's recusal filed 4 December 2018. At the conclusion of the hearing, Judge Murphy asked Mr. Mims, Mr. Thames and the attorney from the SC Attorney General's office to provide her with proposed orders granting their motions to quash.

II.

Argument

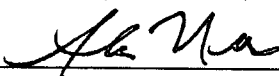
The order included in this motion clearly states at the top the case number as 2019-CP-10-00067. 2019-CP-10-00067 is clearly not 2018-CP-10-03315, the case Judge Price was scheduled to hear motions for on 28 August 2019, of which Judge Murphy heard instead. Despite a different case number being listed on the order than the one Judge Murphy heard on 28 August 2019, Judge Murphy still signed the order. Judge Murphy did not have jurisdiction to sign an order for case 2019-CP-10-00067 since case 2019-CP-10-00067 was not before her to hear or rule on on 28 August 2019. Without judicial jurisdiction, Judge Murphy's order attached as Ex. A is not valid or enforceable.

WHEREFORE, Plaintiff, respectfully requests the Court to:

1. Grant this motion to set aside the order dated 12 September 2019, filed 17 September 2019.
2. Require Judge Murphy to clarify the circumstances which led to her signing and filing this order for a case she did not have before her to rule on on 28 August 2019.
3. Depending on Judge Murphy's explanation, allow Plaintiff to request additional relief within ten days of notice of entry of Judge Murphy's explanation / clarification.
4. Any and all other and further relief as the Court deems just, prudent, and proper.

October 6, 2019

Respectfully submitted,



Alan G. Nix

1401 Densmore Circle
Mount Pleasant, SC 29466
(843) 991-4170
alan.g.nix@gmail.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Ex. A

Alan G. Nix, Norma J. Nix, and the Estate)
of Norma J. Nix,)
)
Plaintiffs,)

CASE NO. 2019-CP-10-0067

v.)

Churchill Park, Churchill Park)
Homeowner's Association, Inc., Churchill)
Park at Parkwest, Inc., Churchill Park at)
Park West Association, Inc., Southern)
Community Services, LLC, Park West)
Master Association, Inc., LPPM, Inc.,)
McCabe, Trotter & Beverly, PC, Larry)
Ridlehover, Stephanie Trotter, Ryan)
McCabe, Jamie McSweeney, Mike Hurd,)
Sheri Cothran, David Brown, Catherine)
Brown, Stephen Sumner, Richard)
Riccoboni, Rick Cumberland, Park West)
Master Association, Inc., Park West)
Amenity Association, Inc., C. Richard)
Dobson Builders, Inc., D.R. Horton, Inc.,)
Brian Gardner, Dodds & Hennessey LLP,)
Kim Atkeson, Jennifer Williamson,)
Jessica Turner, Kevin Steelman, Landtech)
Development, LLC, Landtech)
Incorporated of South Carolina, Land)
Tech Charleston, LLC, Park West)
Development, Inc., Rogers, Townsend)
Thomas, PC, Henry Munn, Individually)
Directors, Officers, Agents, Attorneys,)
Accountants, Independent Contractors,)
Investors, Successors, Predessors, Parents,)
Subsidiaries, Sister and Affiliated entities,)
Partners, and Members of all named)
Entities,)
Defendants.)

FILED
CLERK OF COURT
MID SEP 17 AM 11:35

**ORDER GRANTING MOTION TO
QUASH SUBPOENA ISSUED TO KEVIN
W. MIMS, ESQUIRE**

This matter was before the Court on August 28, 2019 upon the Motion to Quash Subpoena Issued to Kevin W. Mims, Esquire. The Court heard oral arguments from the parties pertaining to the Motion and additionally took into consideration the pleadings and pertinent South Carolina Rules of Civil Procedure, specifically SCRPC 45(c)(3)(A)(iii).

Based on the foregoing, the Motion to Quash Subpoena Issued to Kevin W. Mims, Esquire is GRANTED.

Charleston, South Carolina
Sept. 12, 2019


The Honorable Maite Murphy

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 ALAN G NIX, NORMA J NIX, AND THE)
 ESTATE OF NORMA J NIX,)
)
 Plaintiff,)
)
 vs.)
)
 CHURCHILL PARK, ET AL,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2019-CP-10-00067

CERTIFICATE OF SERVICE

2019 OCT -7 PM 4:28
 JULIE J ARMSTRONG
 CLERK OF COURTS
 BY _____

FILED

The undersigned hereby certifies that on the 7th day of October 2019, a copy of the motion to clarify and set aside was served upon all parties and/or their respective counsel of record via USPS and/or hand delivery as follows:

Judge Maite Murphy
 5200 East Jim Bilton Blvd.
 St. George, SC 29477


Kevin Mims
 Luzuriaga Mims
 50 Immigration St.
 Charleston, SC 29403

Robert Wood
 Rogers Townsend Thomas PC
 1221 Main St.
 Columbia, SC 29221

Andrew Countryman
 Countryman Law Firm
 321 Wingo Way
 Mount Pleasant, SC 29464

Alan Wilson
 SC Attorney General
 1000 Assembly St.
 Columbia, SC 29201

Troy Thames
 Wilson Jones Carter & Baxley
 421 Wando Park Blvd., Ste. 100
 Mt. Pleasant, SC 29464

By: 
 Alan G Nix
 1401 Densmore Circle
 Mount Pleasant, SC 29466
 (843) 991-4170
 alan.g.nix@gmail.com

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-03315

Alan Nix

Churchill Park, Churchill Park at Park West, Inc.,
 Churchill Park Homeowner's Association, Inc.,
 David Brown, and Catherine Brown

2019 SEP 27 PM 3:35

JULIE J. ARMISTEAD
 CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The Notice of Civil Appeal, dated June 28, 2018, was heard before this Court on August 28, 2019. Plaintiff appeals an Order of Judgment from Magistrate Court, dated June 2, 2018. Notice of Return from Magistrate Court was signed by Judge Turner on July 9, 2018 and filed the same day. Pursuant to S.C. Code Ann. § 14-25-95, Plaintiff's appeal was made after the statutorily permitted 10 day time limit had elapsed. Based on the foregoing reasons, Plaintiff's Appeal is denied. Therefore, this matter is dismissed.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 11, 2019

Alan G. Nix
1401 Densmore Circle
Mount Pleasant SC 29466

Re: Alan G. Nix v. Churchill Park
Appellate Case No. 2019-001951

Dear Mr. Nix:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and these deficiencies must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- Pursuant to Rule 203 (e)(1)(E), SCACR, your notice of appeal does not indicate which respondents are represented by counsel or identify which attorney represents each party in the appeal.
- Pursuant to Rule 203(d)(1)(B), SCACR, a copy of the notice of appeal must be filed with the clerk of the trial court.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Andrew W. Countryman, Esquire
George Troy Thames, Esquire



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Alan Nix)
)
)
)
 Plaintiffs,)
)
)
)
 vs.)
)
 Churchill Park, Churchill Park at Park)
 West, Inc., Churchill Park Homeowner's)
 Association, Inc., David Brown, and)
 Catherine Brown)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 Civil Action No.: 2018-CP-10-03315

**ORDER ENJOINING THE PLAINTIFF
 FROM RE-FILING THIS MATTER
 AND IMPOSING SANCTIONS UPON
 THE PLAINTIFF**

2019 SEP 27 PM 3:38
 CLERK OF SUPERIOR COURT

THIS MATTER COMES BEFORE THE COURT pursuant to a Motion for Sanctions filed on behalf of Defendants David Brown and Catherine Brown. A hearing on this Motion was held on August 28, 2018, at the Charleston County Courthouse, in Charleston, South Carolina. Present at the hearing was G. Troy Thames, Esquire, on behalf of Defendants David Brown and Catherine Brown. Also present at the hearing was the *pro se* Plaintiff, Alan Nix. The Defendants' motion is made pursuant to the South Carolina Frivolous Proceedings Act. Upon review of the record, pleadings, and file available to the Court, including Plaintiff's previous filings, and oral arguments, this Court now rules, and grants the Defendants' motion.

FACTUAL AND PROCEDURAL HISTORY

This claim arises from an Order of Judgment from the Charleston County Small Claims Court, North Charleston Division. The underlying judgment order regarded a contested foreclosure action against Plaintiff. In response to instituting foreclosure proceedings against him, Plaintiff filed numerous complaints with city, county and state offices complaining of Defendant Churchill Park's business practices. Further, Plaintiff sent numerous requests to state agencies for the



registration and financial information of Defendant Churchill Park.¹

On February 24, 2017, Plaintiff initiated this lawsuit by filing a Complaint in the Charleston County Small Claims Court, North Charleston Division, under Case No. 2017CV1011500354. A pre-trial conference was held on April 18, 2017; wherein, the Honorable James A. Turner dismissed this action. Plaintiff filed a motion to clarify the April 18, 2017 order and restore the case to an active docket on April 18, 2018. A motion hearing was held on April 30, 2018, and the court issued a written order on May 9, 2018 denying the motion and delineating the grounds for denial. On May 21, 2018, Plaintiff filed a motion for reconsideration of the denial of the Magistrate Court order, which was denied on May 31, 2018. Plaintiff filed another motion for clarification of the previous orders, which was denied on June 20, 2018. Plaintiff filed a Notice of Civil Appeal on June 28, 2018. The Magistrate's Return was filed on July 11, 2018.

On September 19, 2018, the Honorable Roger M. Young, acting as Chief Administrative Judge in Charleston County, executed an Order of Substitution for defense counsel. On November 1, 2018, Plaintiff filed a Motion to Set Aside, or in the Alternative, Amend Order dated 19 September 2018. On November 19, 2018, Judge Young denied Plaintiff's Motion. On November 21, 2018, Plaintiff filed a second Motion to Set Aside and Clarify Order of 19 Sept 2018, Reconsider Order of 19 November 2018 and Continuance of Hearing Scheduled for 29 November 2018. Plaintiff submitted a subpoena *duces tecum* request directed to Judge Young on November 30, 2018 for "any and all physical and electronically stored documents, including but not limited to, emails, electronic notes and archived documents pertaining to the orders filed in the above captioned case on 25 September 2018 and 19 November 2018[.]" Plaintiff filed a Motion for Judicial Recusal, Return Case to Judge McCoy's Roster and Continue the Appeal Hearing Until

¹ Additionally, Plaintiff filed a police report against Defendant Churchill Park's counsel, Stephanie Trotter, accusing Ms. Trotter of misdemeanor notary fraud.

the Order Substituting Counsel was Properly Resolved, on December 4, 2018. On December 7, 2018, Judge Young filed an Order Denying Plaintiff's Motion to Reconsider/Clarify.

Following the December 7, 2018 hearing, Plaintiff issued subpoenas to: G. Troy Thames – counsel for Defendants Brown; Joseph Kaiser – former counsel for Defendants Brown; Lyndsay Luthringer – law clerk to Judge Young; Caroline Leonard – Charleston County Common Pleas Docket Manager; and Julie Armstrong – Charleston County Clerk of Court, for “any and all physically and electronically stored documents, including but not limited to, emails, electronic notes and archived documents pertaining to the orders filed by Judge Roger Young in the above captioned case on 25 September 2018[.]”

On December 17, 2018, a Motion to Quash Plaintiff's Subpoena of Lyndsay Luthringer, was filed. On December 21, 2018, a Motion to Quash Subpoenas issued to G. Troy Thames and Joseph Kaiser, was filed. On December 28, 2018, Plaintiff filed a Rule 59 Motion. On December 31, 2018, Defendant David Brown and Catherine Brown filed this Motion for Sanctions against Plaintiff. On May 24, 2019, Plaintiff filed a Request for Continuance and Change of Venue; Defendants filed a Motion to Quash Subpoenas Issues to G. Troy Thames, Joseph Kaiser, Kevin Mims, Roger M. Young, and Lyndsay Luthringer. On May 29, 2019, a Motion to Quash Plaintiff's Subpoenas to Appear Issued to James A. Turner, Julie L. Armstrong, Johanna S. Gardner, and Caroline C. Leonard, was filed.

On June 4, 2019, the Honorable Grace Gilchrist Knie heard arguments concerning Plaintiff's Request for Continuance and Change of Venue. On July 7, 2019, Judge Knie denied Plaintiff's Request for a Change of Venue.

STANDARD OF REVIEW

The South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) allows for

imposition of sanctions for the initiation and prosecution of civil claims without merit where the court finds, by a preponderance of the evidence, that:

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
- (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(C)(1).

In determining if a pro se litigant has violated provisions of the FCPSA, Section 15-36-10(E) sets forth the following factors the court should consider:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se

- litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
 - (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
 - (7) other factors the court considers just, equitable, or appropriate under the circumstances.

The decision of whether to award sanctions under the FCPSA is treated as one in equity. *Pee Dee Health Care, PA v. Estate of Thompson*, 418 S.C. 557, 563, 795 S.E.2d 40, 43 (Ct. App. 2016). The Court has wide discretion when ordering sanctions, to include: (1) reasonable costs and attorneys' fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action brought in bad faith. S.C. Code Ann. § 15-36-10(G),

DISCUSSION AND ANALYSIS

Defendants move for this Court to impose sanctions upon Plaintiff, pursuant to the FCPSA, for continuing to make frivolous claims in an attempt to harass and injure the other parties and this Court. Defendants request that Plaintiff be enjoined from filing additional pleadings until Plaintiff has consulted with, and hired, legal counsel, licensed in the State of South Carolina. This Court finds that such remedies are within the inherent authority of the Court, and are appropriate under these circumstances.

This Court acknowledges that Plaintiff is *pro se*; however, lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney. *Hill v. Dotts*, 345 S.C. 304, 310, 547, S.E.2d 894, 897 (Ct.App.2001). The applicable law specifically provides that *pro se* plaintiffs are subject to FCPSA, and "sanctions may be

awarded regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned.” *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2012).

Pursuant to Section 15-36-10, a *pro se* litigant, participating in a civil action may be sanctioned for filing a frivolous pleading, motion, or document, if:

a reasonable attorney in the same circumstances would believe that his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party ... is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based ... making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts.

S.C. Code Ann. § 15-36-10(C)(1)(a)-(c). South Carolina courts have acted on this statute and awarded sanctions against *pro se* litigants when the case was frivolous in nature; the *pro se* litigant could not substantiate claims with facts; and *pro se* litigants engage in tactics to delay proceedings, including appeals of interlocutory matters. *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014)(holding sanctions are proper against *pro se* appellant for frivolous and dilatory litigation tactics).

This Court finds that Plaintiff has violated the FCPSA. Specifically, Plaintiff has filed three motions in regard to the September 19, 2018 Order of Substitution, which allowed Defendants Brown to substitute counsel. These motions have been denied each time. After the

first two motions had been denied by the court, any reasonable plaintiff in these “circumstances would understand that under the fact his claim was clearly not warranted under existing law.” S.C. Code Ann. § 15-36-10(A)(4)(a)-(c).

In the current instance, Plaintiff proceeded to make additional motions and filings associated with the denial of the September 19, 2018 Order, as well as a series of subpoenas to parties and non-parties of the underlying case. This Court finds that there are no facts or issues in this matter to support a subpoena to former and current counsel associated with this action. Further, Plaintiff has filed subpoenas for Charleston County Judicial staff, pertaining to orders issued by Judge Young. Judge Young has not heard any of the merits of this case, and Charleston County Judicial staff has relayed all pertinent information to Plaintiff’s requests prior to the issuance of these subpoenas.

It is important to note, the September 19, 2018 Order is a minor, interlocutory matter, which has no overall effect on Plaintiff. Plaintiff has continued to harass this Court, as well as past and present counsel, and the Charleston County Judicial staff with subpoenas *duces tecum*. The subpoenaed information has already been discussed, argued, decided, and ruled upon by this Court. Plaintiff’s continued motions and filings have demonstrated a pattern which shows a clear disdain for the judicial process, as Plaintiff continues to ignore the Court’s direction. Further, Plaintiff’s continued filings regarding a minor, interlocutory matter waste the Court’s resources, and frivolously subject Defendants to costs and fees to defend the repetitive litigation.

The Court finds that this is a prime example of a scenario where sanctions are appropriate. At this point, Plaintiff’s recalcitrant efforts to continue to litigate motions that have been repeatedly denied are undoubtedly frivolous, and potentially malicious. This Court will not allow Plaintiff to continue to abuse and harass the Judicial System and subject Defendants to the unnecessary burden

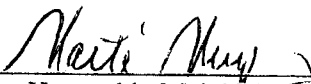
and expense of continuing to re-litigate these matters. Therefore, this Court hereby **GRANTS** the Defendants request for sanctions, and hereby imposes an Injunctive Order preventing the Clerk of Court from hereafter filing any pleadings from Plaintiff, acting pro se, regarding the matters set forth in Civil Action No. 18-CP-10-03315. The Clerk of Court may only accept further pleadings regarding the matters set forth in Civil Action No. 18-CP-10-03315 when filed by licensed, legal counsel, retained by Plaintiff.

CONCLUSION

Based on the pleadings, affidavits, and arguments of counsel, the Court finds that the Defendants have made the requisite showing that Plaintiff's motions and filings are frivolous and unduly burdensome acts.

IT IS THEREFORE ORDERED that the Clerk of Court of Charleston County shall refrain from filing any additional Complaints or other Pleadings related to the matters set forth in Civil Action No. 18-CP-10-03315, until such time that Plaintiff has retained legal counsel, licensed in the State of South Carolina.

IT IS SO ORDERED.


The Honorable Maité Murphy

Sept - 20, 2019.

St. George, South Carolina

RECEIVED

Sep 25 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Deadra Jefferson, Circuit Court Judge

Maite Murphy, Circuit Court Judge

Appellate Case No. 2019-001951

Alan G. Nix, Norma J. Nix
and the Estate of Norma J.

Nix.....Appellants

v.

Churchill Park, Churchill Park HOA, Churchill Park Homeowners' Association, Inc., Churchill at Park West Association, Inc., Churchill Property Owners Association, Churchill Park Property Owners Association, Churchill Park at Parkwest, Inc., Churchill Park at Park West Association, Inc., Churchill Park @ Park West Association, Inc., Southern Community Services, LLC, Park West Development Corp., LPPM, Inc., **McCabe, Trotter & Beverly, PC**, Dobson Builders, **Stephanie Trotter, Ryan McCabe, Jaime McSweeney**, Larry Riddlehoover, Mike Hurd, Sheri Cothran, David Brown, Catherine Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Master Association, Inc., Park West Amenity Association, Inc., C. Richard Dobson, Builders, Inc., DR Horton, Inc., Brian Gardner, Venture Management of South Carolina, Inc., Dodds & Hennessey, LLP, Kim Atkeson, Jennifer Williamson, Jessica Turner, Kevin Steelman, Landtech Development, LLC, Landtech Incorporated of South Carolina, Land Tech Charleston, LLC, Rogers, Townsend & Thomas, PC, Henry Munn, Charleston County (Christine Smith), Judge Mikell Scarborough, Sandlapper Reporting, LLC, William H. Sloan, Sloan Law Firm, Individual Agents, Assigns, Attorneys, Accountants, Employees, Officers, Directors,

Independent Contractors, Investors, Successors,
Predecessors, Insurers, Representatives, Parents, Sister
and Affiliated Entities, Partners, Members of all Persons
Who Might be Liable..... Respondents.

PROOF OF SERVICE

I certify I have served the Motion to Dismiss/Strike of Respondents McCabe, Trotter & Beverly, PC, Stephanie Trotter, Ryan McCabe and Jaime McSweeney on all parties/their counsel in this case via email addressed as follows:

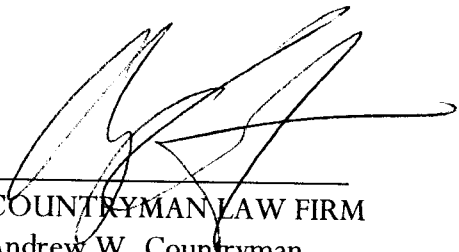
Alan G. Nix
Estate of Norma J. Nix
1401 Densmore Circle
Mt. Pleasant, SC 29466
agnix1@hotmail.com
alan.g.nix@gmail.com
Pro Se Appellant(s)

G. Troy Thames
Wilson, Jones, Carter & Baxley
421 Wando Park Blvd.
Mt. Pleasant, SC 29464
tthames@wjlaw.net
aemclaren@wjlaw.net
**Counsel for David Brown and Catherine
Brown**

Kevin W. Mims
Luzuriaga Mims, LLP
50 Immigration St., Ste. 200
Charleston, SC 29403
kmims@lmlawllp.com
kmixson@lmlawllp.com
**Counsel for Churchill Park, Churchill
Park at Park West, Inc., Churchill Park
at Park West Association, Inc., and
Stephen Sumner**

[signature page to follow]

September 25, 2020



COUNTRYMAN LAW FIRM


Andrew W. Countryman

S.C. Bar No. 72700

321 Wingo Way, Ste. 102

Mt. Pleasant, SC 29464

**Counsel for Respondents McCabe,
Trotter & Beverly, PC, Stephanie
Trotter, Ryan McCabe and Jaime
McSweeney**

From: Andrew Countryman awc@countrymanlawfirm.com 

Subject: Nix v. MTB, et al., appellate case 2019-001951; Motion to Dismiss/Strike

Date: September 25, 2020 at 1:16 PM

To: kmims@lmlawllp.com, Alan Nix agnix1@hotmail.com, alan.g.nix@gmail.com, Troy Thames tthames@wjlaw.net, Amy E. McLaren aemclaren@wjlaw.net

Cc: wood@rtt-law.com, Suzannah Countryman sgc@countrymanlawfirm.com, kmixson@lmlawllp.com

I attach for service upon you pursuant to the Supreme Court's May 29, 2020, Order, a copy of my clients' Motion to Dismiss/Strike, filed via upload to the Court's online filing system today.

Andy
Andrew W. Countryman
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
843-253-4477
awc@countrymanlawfirm.com
*Certified S.C. Circuit Court Mediator



9.25.20
MTDS.pdf

COUNTRYMAN LAW FIRM

Litigation ♦ Mediation

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, South Carolina 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477 office
844-644-3165 fax

September 25, 2020

South Carolina Court of Appeals
Attn.: Clerk, Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Sep 25 2020

SC Court of Appeals

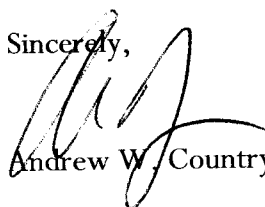
Re: Nix v. Churchill Park, *et al.*
Appellate Case No.: 2019-001951
CLF: 000006 – 000050

Dear Jenny:

I represent Respondents McCabe, Trotter & Beverly, P.C., Stephanie Trotter, Ryan McCabe and Jaime McSweeney in this case. I enclose a Motion to Dismiss/Motion to Strike on behalf of my clients (with Proof of Service), as well as a check for the \$50 filing fee. I uploaded the Motion through the Court's OneDrive for Business application and served the Appellants and counsel for the other Respondents via email pursuant to the Supreme Court's Order of May 29, 2020 (as evidenced by the Proof of Service).

I am not including copies of the Motion (also pursuant to the Supreme Court's Order of May 29, 2020). Please let me know if you need copies, and I will send them immediately. Thanks for your assistance, and please let me know if you have any questions.

Sincerely,



Andrew W. Countryman

AWC/sgc

Enclosures

Cc: Appellants, counsel of record for other Respondents