

2019-CP-10-0067

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)

Alan G. Nix)
)
Plaintiff,)

vs.)

Churchill Park, Churchill Park Homeowners')
Association, Inc, Churchill Park at Park)
West Association, Inc., et all)
Defendant.)

SUMMONS

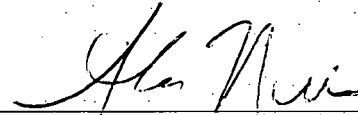
FILE NO.

FILED
2019 JAN -4 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Charleston, South Carolina



Plaintiff/Attorney for Plaintiff

Dated: January 4, 2018

Address: 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
FOR THE NINTH JUDICIAL CIRCUIT

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

Case No.: 2019-CP-10-0067

Plaintiff,)

COMPLAINT

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.)

- (Breach of Fiduciary Duty)
- (Aiding and Abetting Breach of Fiduciary Duty)
- (Breach of Contract)
- (Breach of Contract by Fraudulent (t))
- (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 -4 PM 5:55
JULIE J. ANASTON
CLERK OF COURT

Defendants,)

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 preceeding paragraphs as though fully set forth herein

FOR A SEVENTENTH CAUSE OF ACTION

(Unjust Enrichment)

(As to Defendants:)

17. Plaintiff incorporates all preceeding 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 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**

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

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

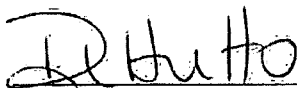
I hereby certify that a copy of the herein listed Defendants David and Catherine Brown's Motion to Dismiss was served upon all counsel of record by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on May 24, 2019 as follows:

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

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***

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.***

By: 
Renee Hutto, Paralegal

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ALAN NIX, NORMA J. NIX, THE)
 ESTATE OF NORMA J. NIX,)
)
 Plaintiffs,)
)
 vs.)
)
 CHURCHILL PARK, CHURCHILL)
 PARK AT PARK WEST, INC.,)
 CHURCHILL PARK HOMEOWNERS)
 ASSOCIATION, INC., DAVID BROWN,)
 AND CATHERINE BROWN, *et al.*,)
)
 Defendants.

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2019-CP-10-0067

**MEMORANDUM IN SUPPORT OF
 DEFENDANT DAVID BROWN AND
 DEFENDANT CATHERINE BROWN'S
 MOTION TO DISMISS**

2019 SEP 05 AM 10:07
 JUDGE: J. J. ...
 CLERK: ...
 AB

COME NOW Defendant Catherine Brown and Defendant David Brown (hereinafter “Defendants Brown”), by and through their undersigned counsel, submit the following memorandum in support of their Motion to Dismiss.

FACTS

Plaintiff filed this action (2019-CP-10-0067) on January 4, 2019. Not one single fact has been alleged in Plaintiffs’ Complaint. As such, there are no facts to reiterate in this Memorandum.

Upon information and belief, Defendants Brown presume that this fact-less Complaint is in reference to other pending litigation involving Plaintiffs. Specifically, Plaintiff references “consolidation” with Charleston County civil action number 2014-CP-10-05407 at the conclusion of his fact-less Complaint, which, as a matter of public record, appears to be a foreclosure action involving Defendant Churchill Park and Plaintiffs. Defendants Brown have not been nor are they parties to that action.

Defendants Brown are, however, involved in litigation with Plaintiff, entitled *Alan Nix v. Churchill Park, Churchill Park at Park West, Inc., Churchill Park Homeowners Association, Inc., David Brown, and Catherine Brown*, also pending in Charleston County Common Pleas as civil action number 2018-CP-10-03315, an Appeal from an action originally adjudicated by Charleston County Small Claims Court in 2017. That particular action stems from a fence dispute between Plaintiffs and Defendants Brown.

STANDARD OF LAW

Defendants move to dismiss Plaintiff's Complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(6), which allows a moving party to challenge a complaint where a plaintiff has failed "to state facts sufficient to constitute a cause of action." *Id.* To survive a motion to dismiss, when considering the claims in the light most favorable to the plaintiff, the complaint must state a valid claim which entitles the plaintiff to relief. *See Gentry v. Yonce*, 522 S.E.2d 137, 139 (S. C. 1999). In order for the court to consider a Motion to Dismiss under South Carolina Rule of Civil Procedure 12(b)(6), a ruling must be based "solely upon the allegations set forth on the face of the complaint. The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory." *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). A civil court judge may dismiss a claim when a party demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the filed pleadings. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). The court must consider whether the complaint states any valid claim for relief under the light most favorable to the plaintiff. *Toussiant v. Ham*, 292 S.C. 415, 416, 357 S.E.2d, 8, 9 (1987).

Further, if this Court does not bar this Complaint under SCRCP 12(b)(6), Defendants Brown also assert that it must be barred under the doctrine of *res judicata*. “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 those parties.” *S.C. Pub. Interest Found. v. Greenville Cty.*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2013) (quoting *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). “[T]he fundamental purpose of res judicata . . . is to ensure that ‘no one should be twice sued for the same cause of action.’” *Judy*, 393 S.C. at 173, 712 S.E.2d at 414 (quoting *First Nat’l Bank v. United States Fidelity & Guaranty Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)). There are three essential elements to *res judicata*: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *See Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992). Upon showing the same, res judicata bars any subsequent action by the same parties when the claim or claims arise from the same transaction or occurrence that has already been litigated upon between those parties. *See Sub-Zero Freezer Co. v. R.J. Clarkson, Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992).

ANALYSIS

First and foremost, as previously stated, there are no facts whatsoever in Plaintiffs’ Complaint. In viewing the Complaint in the light most favorable to Plaintiffs, the only determination that can be made is that “Plaintiff is a resident of Charleston County, South Carolina”, which in and of itself does not even establish personal jurisdiction, subject matter jurisdiction, or venue in the pending action. *See* SCRCP 12(b)(1) – (3). Further, that same sentence does not state a claim under which relief may be granted to Plaintiffs. It does not even state which “Plaintiff” is a resident of the County of Charleston. As this Court is aware, it is not sufficient to

simply state the names of causes of actions in a list. South Carolina Rule of Civil Procedure 8(a) sets forth that a pleading which includes any cause of action shall contain:

(1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. *Id.*

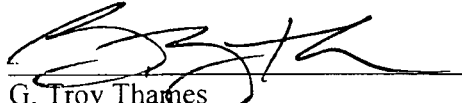
This Complaint includes zero facts or statutes and is frivolous on its face. This pleading is wasteful of all Defendants' time as well as this Court's resources.

Further, if, in fact, Plaintiffs are complaining of Defendants Brown through the same facts and circumstance which have already been adjudicated originally through Charleston County Small Claims Court by Judge Turner. *See* Order of Disposition April 18, 2017. Further, Plaintiffs' motions regarding the same have continually been denied by this Court with the most recent Order by Judge Murphy on September 12, 2019. *See* Judgment in a Civil Case Sept. 12, 2019.

If Plaintiffs are not complaining of those same facts as the case adjudicated with Defendants Brown in 2017, but rather, intend for Defendants Brown to now be part of the two civil actions referenced on page five of Plaintiffs' Complaint, then Plaintiffs, procedurally, have failed to properly join these Defendants to the prior action. *See* SCRCF 19. In addition, collateral estoppel precludes Plaintiffs from this action since those issues have previously been adjudicated as well. It is impossible to know what the basis is for Plaintiffs' Complaint though, since no factual allegations are made in the Complaint. Defendants Brown may only speculate as to the basis of this new Complaint because of the deficiencies of the subject Complaint.

WHEREFORE, Defendants Brown respectfully request this Court dismiss Plaintiffs' Complaint with prejudice and award attorney's fees, costs, and any other relief this Court deems appropriate.

WILLSON JONES CARTER & BAXLEY, P.A.



G. Troy Thames

SC Bar No.: 69440

421 Wando Park Boulevard, Suite 100

Mount Pleasant, SC 29464

Telephone: (843) 284-0832

Facsimile: (843) 606-3300

E-mail: tthames@wjlaw.net

Mt. Pleasant, South Carolina
September 25, 2019

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

State of South Carolina)
County of Charleston)

In The Court of Common Pleas
Ninth Judicial Circuit
2019-CP-10-00067

Alan G. Nix,)
Plaintiff,)
vs.)
Churchill Park, et al.,)
Defendants.)

Transcript of Record

September 26, 2019
Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge

A P P E A R A N C E S:

Alan G. Nix
Self-represented Plaintiff

Andrew W. Countryman, Esquire
Attorney for Defendants McCabe, Trotter, and
Beverly, PC, et al.

G. Troy Thames, Esquire
Attorney for Defendants Brown and Brown

ALSO PRESENT:

William Chase McNair, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	46

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: This is before the Court on defendant -- I
2 don't know which defendant's motion to -- well, actually,
3 let me look at this right quick -- motion to dismiss. This
4 is before the Court on the defendant McCabe, Trotter, and
5 Beverly, PC; Stephanie Trotter; Ryan McCabe; and Jamie
6 McSweeney's motion to dismiss filed 1/14/19. And bear with
7 me, my other motion.

8 (A PAUSE.)

9 THE COURT: And it looks like defendant's motion to
10 dismiss by David and Catherine Brown filed 5/24/19. Who is
11 appearing on behalf of McCabe, Trotter, and Beverly, PC;
12 Stephanie Trotter; Ryan McCabe; and Jamie McSweeney?

13 MR. COUNTRYMAN: I am, Your Honor. Andy Countryman.

14 THE COURT: Okay, Mr. Countryman.

15 And who is appearing on behalf of the defendants David
16 and Catherine Brown?

17 MR. THAMES: I am, Your Honor. I'm Troy Thames.

18 THE COURT: And are other folk just here to spectate?
19 Who's here?

20 MR. McNAIR: No, Your Honor, Chase McNair. Chase
21 McNair, and I'm here on behalf of four defendants in this
22 action. And we actually filed a similar motion to dismiss
23 back on May 24th of 2019.

24 THE COURT: It's not -- yeah, it's not scheduled for
25 today.

1 MR. McNAIR: Yeah and, Your Honor, if I could go into
2 that briefly as a matter of housekeeping? I'm not sure why
3 it wasn't included, but our motion was heard -- was
4 scheduled to be heard along with the codefendant's motion
5 on June 4th of this year by Judge Knie. Prior to the
6 hearing on those motions, the plaintiff in this action
7 filed a motion for a continuance, along with a motion for
8 change of venue.

9 THE COURT: Okay.

10 MR. McNAIR: When those motions were continued, for
11 some reason ours wasn't continued with the other two. So,
12 I would argue that ours is ready to be heard today, and
13 then the plaintiff ---

14 THE COURT: I don't have -- it's purely an
15 administrative matter. I just don't have time to hear it
16 today. I, I'm -- I only have the ability to hear what's
17 scheduled.

18 MR. McNAIR: I understand that.

19 THE COURT: And it probably got on a different track
20 once it got continued. It got rolled on to the different
21 docket and then it's probably scheduled.

22 Now, there is an order regarding the plaintiff's
23 change in venue, which was filed July 10th of 2019. So,
24 apparently that got heard at some time, and your motion
25 probably should have been rescheduled to have been -- oh,

1 no. That was heard ---

2 MR. McNAIR: No, no.

3 THE COURT: --- on June 4th by Judge Knie.

4 MR. McNAIR: Correct, Your Honor, and that ---

5 THE COURT: The other one was continued.

6 MR. McNAIR: So, our motions were the same motion to
7 dismiss, substantially similar as what's going to be argued
8 before you. So, I would actually argue in judicial
9 economy, I'm most likely just going to rely on the motion
10 -- the arguments advanced by cocounsel for the defendants.
11 So -- and again, the order was on the plaintiff's motion
12 for continuance and motion to change venue. That was the
13 date that was originally scheduled for our motion to
14 dismiss to be heard. So, while I agree with you that it's
15 some administrative issue, I think in the interest of time,
16 it could be heard today.

17 THE COURT: I'll see.

18 MR. McNAIR: Thank you, Your Honor.

19 THE COURT: I got a full docket.

20 Yes, sir. You wanted to say something to me?

21 MR. NIX: Only if -- I'm fine, thank you.

22 THE COURT: I'm sorry. I couldn't hear you.

23 MR. NIX: I'm fine. Thank you.

24 THE COURT: Okay. Is there anybody else here
25 representing anybody else that I've left out?

1 MR. COUNTRYMAN: I don't believe so, Your Honor.

2 THE COURT: Okay. All right. So, I've got Mr.
3 Countryman. Got Mr. Thames.

4 MR. NIX: Yes, Your Honor. Alan Nix.

5 THE COURT: I'm sorry, I didn't hear you.

6 MR. NIX: Alan Nix.

7 THE COURT: Alan with one -- A-L-A-N?

8 MR. NIX: Yes, ma'am.

9 THE COURT: Okay. Nicks, N-I-C-K-S?

10 MR. NIX: N-I-X.

11 THE COURT: N-I-X. And you represent?

12 MR. NIX: Myself. Thank you.

13 THE COURT: Oh, okay. All right. Need to make sure
14 my record was clear.

15 Now, I have the defendant. I'll hear them in the
16 order they were filed, which is the defendants McCabe,
17 Trotter, Beverly; Stephanie Trotter; Ryan McCabe; and Jamie
18 McSweeney's motion to dismiss filed January 4th, 2019.

19 MR. COUNTRYMAN: May it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. COUNTRYMAN: Andy Countryman for the defendants
22 that you just named.

23 THE COURT: Yes, sir.

24 MR. COUNTRYMAN: This is probably going to be one of
25 the easier motions to dismiss that you'll hear. But in

1 conjunction with the motion to dismiss, I also ask the
2 Court for a gatekeeper order and for sanctions against the
3 pro se plaintiff. My brief is incorporated into my motion,
4 which, as you know, was filed back in January, and that was
5 scheduled to be heard here in June, but that was continued
6 while Judge Knie -- or Judge Knie, I forget how she
7 pronounces her name, but while she considered ---

8 THE COURT: Knie.

9 MR. COUNTRYMAN: --- the plaintiff's motion to
10 continue. That has been denied, and so my motion is, is
11 ripe to be heard along with the motion of these other
12 defendants.

13 By way of some brief background, Your Honor, Mr. Nix
14 is a pro se plaintiff, but he is no stranger to litigating
15 in our courts here in Charleston. He's involved in
16 numerous cases as both a pro se defendant and plaintiff.
17 This is, in fact, the third case in which I've represented
18 McCabe, Trotter, and its lawyers on cases that Mr. Nix has
19 brought just in the past year and a half or so.

20 All these issues essentially relate to problems Mr.
21 Nix has with his HOA and with some of his neighbors. Mr.
22 Nix owns a property on which sits his house in Park West.
23 McCabe, Trotter represented Mr. Nix's HOA and pursued a
24 lien foreclosure action against him in magistrate court
25 based on his failure to pay HOA assessments, failure to pay

1 fines, and other similar costs and charges.

2 Mr. Nix, meanwhile, also sued his next door neighbors,
3 the Browns, regarding a fence issue. That issue was
4 litigated, I believe, in magistrate's court but it's made
5 its way to this court. There are also multiple cases
6 pending with the Court of Appeals that Mr. Nix has filed
7 where he's representing himself *pro se*. And again, this is
8 the third case that I'm representing my clients on.

9 If you actually look at the complaint, Your Honor, it
10 contains not a single factual allegation. Mr. Nix filed
11 the complaint on January 3, 2019, naming thirty-five
12 defendants, including multiple lawyers, law firms,
13 individuals, a construction company, all kinds of folks.
14 He must have obtained some copy of a template complaint
15 from somewhere because the complaint says:

16 The plaintiff's complaining of the defendants
17 would respectfully show unto the Court the
18 following.

19 And the only allegation it contains is that the
20 plaintiff is a resident of Charleston County. The
21 remainder of the complaint is blank, except for listing
22 causes of action. If you go to the final page of the
23 complaint.

24 THE COURT: I'm listening.

25 MR. COUNTRYMAN: Okay.

1 THE COURT: I'm a woman. I can do twenty things at
2 one time.

3 MR. COUNTRYMAN: I just wanted to make sure, Your
4 Honor. I wasn't looking up there, so I ---

5 THE COURT: I can listen with this ear, talk. Yeah, I
6 can do a lot of things at one time.

7 MR. COUNTRYMAN: Well, included in the prayer for
8 relief is a brief sentence that says:

9 The complaint is being filed due to the ongoing
10 pattern of mismanagement of cases 2014-05407 and
11 2017-04031 by Charleston County from a period
12 starting March 2016 to the present. And to
13 ensure that the statute of limitations are ---
14 Which is a typo, I believe.

15 --- preserved for relevant claims which could be
16 construed during that January -- or January 4,
17 2019.

18 And then it says:

19 The case should be consolidated with
20 2014-CP-10-05407 once that case is properly
21 restored.

22 That's the only allegation of any substance whatsoever
23 in this complaint which was filed in January of this year.

24 And as a matter of course, I need to note that my
25 clients still have not been served with the complaint. And

1 I don't know that any of the defendants named in this
2 lawsuit has been served. I filed and served notice of my
3 motion to dismiss approximately ten days after Mr. Nix
4 filed this complaint. He's never made any motion to amend;
5 he's never responded in any manner to the motion to
6 dismiss. And again, if you look at my motion, it asks for
7 a gatekeeper order asking this Court to issue an order
8 precluding Mr. Nix from -- or precluding our court here
9 from accepting any further ---

10 THE COURT: I don't think I can do that.

11 MR. COUNTRYMAN: --- *pro se* filings.

12 THE COURT: Only the Supreme Court can do that or the
13 chief administrative judge. And I have people who have
14 filed one hundred -- I have a fellow right now that has
15 filed a hundred lawsuits. So, he's probably, you know, in
16 terms of relative filing and being litigious, I have inmate
17 litigants that have filed more lawsuits.

18 MR. COUNTRYMAN: Is that ---

19 THE COURT: The case law -- generally when you
20 preclude someone from filing lawsuits, it is done by the
21 chief administrative judge or -- and they're reticent to do
22 it. But generally the Supreme Court generally would handle
23 that in precluding a person from filing additional
24 lawsuits. I -- as troubling as it is and as inconvenient
25 as it may be, I just think anybody would be reticent to do

1 that.

2 MR. COUNTRYMAN: Does that mean I shouldn't argue
3 anything regarding the gatekeeper order?

4 THE COURT: No, you can argue it, but I don't -- I, I
5 just am, I just am really reticent about precluding someone
6 from filing lawsuits. And I, I guess my barometer might be
7 a little different because having been chief judge, I've
8 dealt with it a lot, but I can -- and having dealt with
9 inmate litigation, it's, it's problematic to tell someone
10 they can't file any more lawsuits. But you can go ahead
11 and make your, make your argument. I'm not going to ---

12 MR. COUNTRYMAN: Yes, Your Honor.

13 THE COURT: --- preclude you from making your
14 argument.

15 MR. COUNTRYMAN: Well, I've been doing this for a long
16 times as well, and I've never filed a motion like that
17 because I understand exactly what you're saying. But I've
18 never been a situation like this where I've had to deal
19 with a client who has been aggravated and bothered and,
20 frankly, threatened in so many various ways by someone who
21 apparently is doing it basically for sport.

22 Mr. Nix lost his underlying case where his HOA sued
23 him to foreclose on the lien for failing to pay his
24 assessments. Now, the underlying balance in that case was
25 approximately \$1000, but his HOA via its lawyers, McCabe,

1 Trotter, obtained a judgment of over \$20,000 against him,
2 which is pending a foreclosure sale with Judge Scarborough.
3 Judgment over \$20,000 essentially resulted from legal fees
4 having to fight these issues with Mr. Nix.

5 Now, Mr. Nix has since filed multiple motions and
6 appealed to the Court of Appeals. He's threatened to sue
7 Judge Lockemy. He's threatened to sue Julie Armstrong.
8 He's threatened to sue Judge Scarborough. He's threatened
9 to ---

10 THE COURT: I get sued all the time. I've been sued
11 -- this person who that's filed a hundred lawsuits, he's
12 served me twenty times. I mean, it's just ---

13 MR. COUNTRYMAN: I'm sorry to hear that.

14 THE COURT: I get sued in federal court all the time.
15 I don't know because they never serve me. I mean, it's
16 just -- we don't take it -- I mean, we're public officials.
17 It happens, I mean.

18 MR. COUNTRYMAN: Well, also as part of my motion, I'm
19 asking for sanctions against the plaintiff for filing this
20 particular complaint. And I would argue that his actions
21 with respect to filing the complaint and inaction after the
22 filing of my motion, which was more than eight months ago
23 now, indicate a clear intent to merely bother, harass, and
24 abuse not only my clients but the court system by the
25 filing of this lawsuit, which contains not a single factual

1 allegation. And I would submit to the Court an affidavit
2 of attorney's fees that I would appreciate the Court
3 reviewing.

4 THE COURT: Have you given Mr. Nix a copy?

5 MR. COUNTRYMAN: I will do so right now. I just filed
6 it this morning, Your Honor, and it's current as of
7 yesterday. May I approach?

8 THE COURT: Yes, sir.

9 MR. COUNTRYMAN: Thank you. This affidavit relates to
10 the fees generated in the other two cases which were
11 actually filed in this court ---

12 THE COURT: But you haven't ---

13 MR. COUNTRYMAN: --- which I removed to federal court.

14 THE COURT: --- generated \$27,000 on this case.

15 MR. COUNTRYMAN: On this case, it's a little ---

16 THE COURT: So, why would I award ---

17 MR. COUNTRYMAN: --- over \$11,500, Your Honor.

18 THE COURT: --- fees from other cases?

19 MR. COUNTRYMAN: I wouldn't, and I'm not asking for
20 that. I'm just giving that as some context. Paragraph
21 4 ---

22 THE COURT: And you need -- you can't just do an
23 affidavit. You're going to have to do a detailed listing
24 of what your fees are and how you incurred them because ---

25 MR. COUNTRYMAN: I'm happy ---

1 THE COURT: --- he has the right to challenge it.

2 MR. COUNTRYMAN: Sure. I'm happy to do whatever the
3 Court would require, but I would ask for some sort of ---

4 THE COURT: And under what theory would you be
5 entitled to fees?

6 MR. COUNTRYMAN: Rule 11, Your Honor, filing the
7 pleadings, pleadings ---

8 THE COURT: So, you're asking for sanctions ---

9 MR. COUNTRYMAN: I am. .

10 THE COURT: --- as fees?

11 MR. COUNTRYMAN: Absolutely.

12 THE COURT: Did you serve him under Rule 11? Under
13 Rule 11, there are requirements for me to order fees, one
14 of which -- I've had this come up a lot lately. You have
15 -- did you do the certification and serve him with it?

16 MR. COUNTRYMAN: I did.

17 THE COURT: That this was of no avail to -- I forget
18 what the requirements are. And when did you do that?

19 MR. COUNTRYMAN: January -- well, that's with my
20 motion to dismiss, which was filed January 14, 2019. It
21 includes a filed certificate of service. I served Mr. Nix
22 at his home in Mt. Pleasant on January 10, 2019, and I've
23 received no response whatsoever. No motion to amend, no
24 voluntary withdrawal of their dismissal, no opposition to
25 my motion to dismiss.

1 THE COURT: You may continue your argument.

2 MR. COUNTRYMAN: I don't know that I have anything
3 more unless the Court has any questions.

4 THE COURT: No, I don't have any.

5 Is there anyone else that -- Mr. McNair, who do you
6 represent?

7 MR. McNAIR: Your Honor, I represent Churchill Park;
8 Churchill Park West, Inc.; Churchill Park at Park West
9 Association, Inc.; and Stephen Sumner individually. And
10 with regard to the motion to dismiss, my arguments are
11 identical to Mr. Countryman's. So, I would not require any
12 further of the Court's time.

13 THE COURT: Well, I need to ask. Mr. Nix, do you have
14 any objection to Mr. McNair's motion, that being of
15 Churchill Park; Churchill Park at Park West, Inc.;
16 Churchill Park at Park West Association, Incorporated; and
17 Stephen Sumner's motion being heard today?

18 MR. NIX: Yes, Your Honor, I do, for two reasons.

19 THE COURT: Uh-huh.

20 MR. NIX: First of all, it's not on the docket.
21 Second of all, at least two of his clients are definitely
22 not South Carolina corporations; it's unclear where they're
23 incorporated, but clearly not South Carolina. I've asked
24 multiple times for a -- for them to clarify what state
25 they're incorporated in. I'm yet to receive a response on

1 that topic.

2 THE COURT: Okay. He would have to consent to the
3 motion being heard because he did not get notice of it
4 being heard today.

5 MR. McNAIR: I understand that, Your Honor. I believe
6 he had notice back in ---

7 THE COURT: He had to get notice of it being on the
8 docket today. Not ---

9 MR. McNAIR: I understand.

10 THE COURT: --- being served with the motion.

11 MR. McNAIR: I understand.

12 THE COURT: He has to have been served, and
13 unfortunately I don't know why it was not reset. I have no
14 clue. I would imagine it was just volume of paper. I have
15 no idea. I'd have to ask the docketing clerk. That's not
16 my lane.

17 MR. McNAIR: Sure.

18 THE COURT: You'd have to find out. But when
19 something's not on the docket, he would have had to have
20 been -- well, he either consents to it being heard and
21 waives his ten-day notice, even if it's being rescheduled.
22 And if he doesn't waive it, he's entitled to notice to be
23 prepared for it to be heard.

24 MR. McNAIR: I understand.

25 THE COURT: So, I would direct the clerk's office to

1 set that motion on the next available nonjury roster, and I
2 don't know why it wasn't set, and I'm sorry. I don't have
3 any explanation for you.

4 MR. McNAIR: I understand, Your Honor.

5 MR. COUNTRYMAN: Your Honor, if I can beg the Court's
6 indulgence?

7 THE COURT: Sure.

8 MR. COUNTRYMAN: There's one other thing that I wanted
9 to mention, if you don't mind. Just as another matter of
10 some context, the two cases I referenced previously where
11 Mr. Nix sued in this court, I removed those two cases to
12 federal court based on the Fair Debt Collection Practices
13 Act. Judge Gergel dismissed both of those cases and issued
14 judgments against Mr. Nix which I filed in this court which
15 have been paid. Subsequently shortly either before or
16 after the judgments were paid, Mr. Nix filed this action.
17 And again, this action does not contain a single factual
18 allegation, but it certainly lines up to show that this is
19 some sort of act of retribution related to his failure to
20 succeed in those two underlying cases.

21 THE COURT: Mr. Thames, be glad to hear from you.

22 MR. THAMES: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. THAMES: Your Honor, I apologize. I did put
25 together a very short memo that I filed this morning that's

1 not going to be in your file. I have an extra copy if
2 you'd like it.

3 THE COURT: Was it emailed to us? Did we receive it
4 this morning?

5 MR. THAMES: No, Your Honor. I just filed it this
6 morning. If you'd like me to bring it ---

7 THE COURT: Sure. Yeah, if it's not in the system, I
8 definitely need to see it.

9 MR. THAMES: Thank you.

10 THE COURT: Thank you.

11 MR. THAMES: Excuse me and, Your Honor, I'll be very
12 brief because most of my arguments are the same as Mr.
13 Countryman's arguments. But I represent David and
14 Catherine Brown, who are neighbors with Mr. Nix. They were
15 sued in, in another lawsuit by Mr. Nix involving a fence
16 dispute that has worked its way up to this court and is an
17 appeal. It's under advisement by Judge Murphy right now.

18 THE COURT: What? Say that for me one more time.

19 MR. THAMES: He, he sued my clients back in 2017 for a
20 dispute over a fence.

21 THE COURT: Okay.

22 MR. THAMES: That case, after various motions got
23 appealed, came up to circuit court. The appeal was heard.

24 THE COURT: So, it was done in magistrate's court?

25 MR. THAMES: Yes, Your Honor.

1 THE COURT: And it's up on review in circuit court?

2 MR. THAMES: Right.

3 THE COURT: And Judge ---

4 MR. THAMES: Judge Murphy.

5 THE COURT: --- Murphy has it under advisement?

6 MR. THAMES: That's correct.

7 THE COURT: Okay.

8 MR. THAMES: That's correct.

9 THE COURT: I just wanted to be clear about it. I
10 didn't hear everything you were saying.

11 MR. THAMES: Yes, ma'am. But as, as to this
12 particular case, it's -- I'll refer to it as the 2019 case
13 that's before you today. Our motion, I filed a motion to
14 -- not only 12(b)(6) motion but 12(b)1, 2, 3, and 6. The
15 complaint, after you review it, has absolutely no facts in
16 it whatsoever. It is just headings. Rule 8(a) states that
17 a pleading shall contain a short, plain statement of the
18 grounds, including facts and statutes upon which the
19 Court's jurisdiction depends, and, and a short, plain
20 statement of the facts showing that a pleader is entitled
21 to relief, et cetera. None of that is complied with in
22 this complaint.

23 And, Your Honor, he filed this back in January, on
24 January 3rd as previously stated. It's been nine months
25 since it was filed. It's been four months since I filed a

1 motion to dismiss on behalf of my clients, the Browns. And
2 I believe my clients may be the only parties that have
3 actually been served. They advised they received a copy by
4 certified mail, although no affidavit of service has ever
5 been filed in the record. But when they received it, I
6 filed a motion to dismiss that is now before you.

7 In the time that I -- from when I filed my motion at
8 the end of May, the plaintiff has taken no steps whatsoever
9 to amend this so-called complaint. The -- my clients are
10 simply asking that they be dismissed from this current
11 action, from this. It's factless, it's procedurally
12 defective, and it's a frivolous action; it should be
13 dismissed, Your Honor.

14 And I know in considering these motions, the Court
15 looks at the four corners of the pleadings, but I would
16 point out to the Court that a cursory review of the
17 Charleston County public index that I ran this morning
18 shows that Mr. Nix has approximately thirteen lawsuits
19 currently pending. He can't be allowed to use the excuse
20 of being a *pro se* litigant any longer. Clearly he knows
21 how to, to initiate an action, and so this defective action
22 should be dismissed. My clients join in under Rule 10(c)
23 and adopt the arguments made by our cocounsel, and other
24 than that, I have nothing else to say, Your Honor. Thank
25 you.

1 THE COURT: Thank you, Mr. Thames.

2 (A PAUSE.)

3 THE COURT: Sir, you may proceed.

4 MR. NIX: May I provide you with a copy of just ---

5 THE COURT: Sure. Did you file it already?

6 MR. NIX: It's not filed. I was ---

7 THE COURT: Is that your original?

8 MR. NIX: That is the original. It's ---

9 THE COURT: You might want to hold on to it and file
10 it then.

11 MR. NIX: I just have ---

12 THE COURT: And I'll read it later once it's been
13 filed because once I get it, you don't get it back and you
14 need to file it.

15 MR. NIX: Yeah. I was a little concerned about
16 leaving the courtroom and filing it this morning.

17 THE COURT: I'm sorry, I didn't hear you.

18 MR. NIX: I said I was a little worried about leaving
19 the courtroom earlier this morning and filing it.

20 THE COURT: Yeah, you can go downstairs and file it
21 after today's hearing because appeals by the appellate
22 court are considered on what is in writing. Argument is to
23 benefit the Court, so if you want something considered, you
24 need to make sure you file that.

25 MR. NIX: Yes, ma'am.

1 THE COURT: And I don't want to have your original and
2 you be deprived of the ability to file that. I'll be glad
3 to hear from you, sir, in response.

4 MR. NIX: Yes. Yes. Thank you very much.

5 THE COURT: You're welcome.

6 MR. NIX: So, Mr. Countryman and Mr. Thames have
7 chosen the path of leading this strictly related to this
8 filing, which I understand their -- that preference. But
9 Mr. Countryman started off the conversation about the piece
10 of information in the, in the original file. This is
11 strictly -- this, this whole file and most of what Mr.
12 Countryman complains of is only related to poor judiciary
13 conduct by Judge Scarborough back in 2014, 2015 -- or 2016
14 in particular. If that trial had been held properly, none
15 of this would be required, point one.

16 Point two, and what is in the filing with this is the
17 60(b) motion filed on November the 13th related to case
18 2014-5407. The piece of information that's in the
19 complaint related to CP-5407 was with the expectation that
20 it would be restored based on the 60(b) motion being heard
21 timely. So, the 60(b) motion for 5407 was filed on 13
22 November 2018, and to Mr. Countryman's dismay -- I share
23 the same -- it's showing how it made the schedule to be
24 heard.

25 THE COURT: I'm confused, sir. What -- and I don't

1 mean to be slow.

2 MR. NIX: No, no. This is ---

3 THE COURT: But you've kind of lost me ---

4 MR. NIX: --- very complicated for all ---

5 THE COURT: --- as to what you're, what you're, what
6 you're saying.

7 MR. NIX: So, the only reason this ---

8 THE COURT: I'm a little confused.

9 MR. NIX: Yes. I'll, I'll be very frank. The only
10 reason this was filed was two, twofold. One, to, to toll
11 -- so, the statute of limitations for a thing that should
12 have been filed previously. And two, put everybody on
13 notice of what was coming with the expectation that this
14 could be amended once 5407 was restored to the docket
15 properly. 5407, 60(b) motion filed 13 November 2018 ---

16 THE COURT: Are you saying that you had a previous
17 cause of action that was struck from the docket and you're
18 seeking to have it restored? I'm trying to follow along,
19 and again I'm not, I'm not ---

20 MR. NIX: Yeah. Unfortunately, it's more ---

21 THE COURT: --- trying to be slow.

22 MR. NIX: --- complicated than that.

23 THE COURT: I, I really am trying to understand what
24 you're saying.

25 MR. NIX: So, 5407 was filed -- well, see, 2014-5407

1 was filed on September the 4, 2014, by Mr. Countryman's
2 clients.

3 THE COURT: Was that filed against you?

4 MR. NIX: Correct.

5 THE COURT: Okay.

6 MR. NIX: Myself and my deceased wife.

7 THE COURT: Okay.

8 MR. NIX: Foreclosure action.

9 THE COURT: Yeah, that's to foreclose on the judgment
10 they had to have your -- to have the amount of money they
11 have -- they've gotten a judgment, and so they're trying to
12 get their money.

13 MR. NIX: So ---

14 THE COURT: That's the HOA fees, right?

15 MR. NIX: I would be very careful about using the word
16 HOA. There is no, literally no evidence to support Mr.
17 Countryman's ---

18 THE COURT: If there's an order and it hasn't been
19 appealed, it's the law of the case and I have to refer to
20 it as it is captioned. And according to that order that
21 they're seeking a foreclosure, it's for attorney's fees and
22 HOA, unpaid HOA fees that were granted to them.

23 MR. NIX: So, it has been appealed.

24 THE COURT: Okay. So, it's on appeal?

25 MR. NIX: It's currently on a writ of certiorari with

1 the Supreme Court.

2 THE COURT: Okay, but have you filed for a stay of
3 some sort to stop them from getting their money judgment
4 satisfied?

5 MR. NIX: Well, first they have to hear the 60(b)
6 motion.

7 THE COURT: Who is supposed to hear that?

8 MR. NIX: It's filed with this Court.

9 THE COURT: Okay, but I need you to get to the heart
10 of these motions to dismiss.

11 MR. NIX: Yes. So ---

12 THE COURT: And one of the arguments that you need to
13 address that has been raised by Mr. Countryman in his, in
14 his motion is that you have failed to file an expert
15 affidavit fee as -- expert affidavit as required by statute
16 to support your legal malpractice cause of action because
17 you sued a law firm, and you're saying that they engaged in
18 their professional capacity in some malfeasance of some
19 sort. And state law requires that when you're doing that,
20 if it's outside the ambit of common knowledge, you need an
21 expert affidavit or your pleadings have to be struck.

22 MR. NIX: So, that's not his client, first of all.
23 Second of all, that is related to ---

24 THE COURT: Well, it's a law -- well, McCabe, Trotter,
25 and Beverly, what is it? What kind of business is that?

1 MR. COUNTRYMAN: It's a law firm, Your Honor, and the
2 individuals I represent were lawyers at that law firm
3 during the time at issue.

4 THE COURT: Yeah, it requires an expert affidavit,
5 yeah. Just like when you sue a doctor, it requires an
6 expert affidavit.

7 MR. NIX: Understood, so that's actually related to
8 the law firm Hyatt, Stubblefield in Atlanta, Georgia.
9 That's only because his clients chose to go down a path of
10 questionable motive related to claiming that Churchill Park
11 Homeowner Association, Incorporated was never the real
12 homeowners association because the article of incorporation
13 said Greenville, South Carolina instead of Charleston,
14 South Carolina. However ---

15 THE COURT: That still doesn't tell me why you didn't
16 file an expert affidavit in compliance with the statute.

17 MR. NIX: I mean, I hate to say this, Your Honor. I'm
18 not following how that applies to his clients.

19 THE COURT: Because they're a law firm and they're
20 lawyers.

21 MR. NIX: And I'm not accusing them of being
22 malpractice -- I'm accusing them of being an agent of
23 fraud.

24 THE COURT: But they were working in their official
25 capacity as lawyers, weren't they?

1 MR. NIX: Under somebody's purview. They get to, to
2 produce ---

3 THE COURT: That's malpractice. You need somebody to
4 say that they've committed some unprofessional activity or
5 that they committed this activity within their professional
6 ability and that they have somehow fallen short of that.
7 And the average person cannot form that opinion without the
8 advice and without someone with expertise saying that this
9 is the duty and it's been breached. Or that this is --
10 they committed these acts wrongfully.

11 MR. NIX: I understand, Your Honor, and I would have
12 no, I would have no cause of action against them personally
13 because ---

14 THE COURT: The law -- even if you're suing the law
15 firm. Same thing.

16 MR. NIX: Well, well, what I'm saying is I have no --
17 they had no duty to me personally. So, I would have no
18 problem ---

19 THE COURT: What are you saying they did wrong?

20 MR. NIX: They engaged in multiple counts of fraud,
21 conspiracy to defraud.

22 THE COURT: But they were acting as lawyers for their
23 law firm while they were -- you allege they were doing it.

24 MR. NIX: And that would make them liable both
25 personally and then the law firm.

1 THE COURT: Which brings us back to my original
2 question, which is did you -- there is no affidavit, and I
3 need to know why you did not procure that.

4 MR. NIX: Let me come back to this and to reframe this
5 slightly, if you don't mind.

6 THE COURT: Sure.

7 MR. NIX: Due to Judge Scarborough's conduct -- and
8 I'll leave it at that at the moment -- multiple things went
9 wrong between March 23, 2016, when he filed a fraudulent
10 form 4A dismissing the case for -- and a supposed 40(j)
11 until at least ---

12 THE COURT: Well, I need you to step very gingerly
13 because he is my colleague. I have immense respect for
14 him, and when you say he has committed fraud, that's a very
15 heavy, heavy statement, and it needs to be supported by
16 some substantial, objective facts.

17 When judges sign form 4s, we don't have a dog in the
18 fight. If we sign an order, we've done it in good faith.
19 And I have known him when he -- before he was ever a judge.
20 He practiced before me as a lawyer on many instances, and I
21 never had an instance where I had to question his word.

22 Now, there's some folk whose word I do question. I
23 trust but I verify everything they say to me because they
24 don't mean to sort of skirt the rules, but they do. That's
25 every profession. I don't think they have any malicious

1 intent. I just think sometimes they get a little -- they
2 just go a little overboard in advocacy. That doesn't
3 necessarily make them dishonest. It just means they get a
4 little tunnel vision sometimes. So, I have to trust but
5 verify.

6 Now, I have never had an instance where Judge
7 Scarborough has ever been dishonest with me; I've never had
8 to go behind him to verify anything he's ever said to me.
9 He is a judicial officer, and I would have no reason, based
10 on the file that I have reviewed, that he has done anything
11 dishonest or outside of his responsibility as a judicial
12 officer.

13 So, I need you to be -- it's one thing when a judge
14 issues an order and you disagree with it. That's
15 reasonable. You know, nobody ever -- you know, I figure
16 when everybody leaves unhappy, I've done my job because
17 I've done -- I've been fair and impartial. Everybody is a
18 little unhappy. That means nobody got everything they
19 wanted, which is, you know, what a judge does. They don't
20 have a dog in the fight; they don't have anybody to reward
21 or punish. So, I always assume when an order is issued,
22 somebody is going to be unhappy, and the remedy for that is
23 an appeal. That means you had either, you know, a
24 difference about your interpretation of the law. In a
25 nonjury context, you have a difference of opinion about the

1 facts the judge may have found, but that doesn't mean they
2 were dishonest in issuing an order.

3 And so I would assume that if you had some quibble
4 with Judge Scarborough's order, that you've appealed it,
5 which is your right, and nobody ever holds an appeal
6 against somebody. I think you were in the courtroom. You
7 heard me say to the lawyers we don't get it right all the
8 time. That's why we have folk appeal our -- you know,
9 review what we do because none of us are perfect.

10 MR. NIX: Yes, Your Honor, and I appreciate those
11 comments and I understand where you're coming from and
12 please ---

13 THE COURT: So, I'm going to take what you've said as
14 you had a difference in opinion with Judge Scarborough, not
15 that he fraudulently issued an order, because that's what I
16 think you said.

17 MR. NIX: I did and I ---

18 THE COURT: Yeah.

19 MR. NIX: I will reiterate that. It's actually quite
20 simple. He issued a order on March 23, 2016, stating that
21 case 2014-CP-10-5047 had been dismissed for a 40(j). There
22 is no 40(j) agreement in writing; there never has been a
23 40(j) agreement in writing. When asked to produce that,
24 Mr. Countryman's clients chose not to produce that. When
25 my previous attorney was asked about it, he chose not to

1 produce it. When Judge Scarborough asked him about it, he
2 said it was on the record. Case -- Rule 40(b) -- sorry,
3 Rule 40(j) does not allow it to be done on the record but
4 requires it to be in writing by all, by all parties.

5 The only piece of, piece of evidence related to case
6 2014-5407 that supports Judge Scarborough's order of 23
7 March, 2016, is a transcript. That transcript has three
8 lines on it. In July of 2017, it was determined the first
9 two lines or the statements in the transcript were not
10 accurate, leaving one line which has Judge Scarborough
11 saying: I'll take it. No matter how you look at it ---

12 THE COURT: And I, and I don't mean to interrupt you,
13 but I need to redirect your argument because I need you to
14 address the motion to dismiss, and everything you're
15 telling me right now is not in response to that.

16 What Mr. Countryman has said, he has filed a motion
17 pursuant to 12(b)(6). 12(b)(6) is a motion that, in
18 essence, says you have failed to state a cause of action.
19 He has said that your pleadings are summary in nature, that
20 they allege no facts. And while a pleading is a short,
21 concise statement, it does need to put him on notice as to
22 what you're suing him for. And I'm looking at your summons
23 and complaint and it simply says:

24 For first cause of action, breach of fiduciary
25 duty as to the defendants. One, plaintiff

1 incorporates all preceding paragraphs as fully
2 set forth herein.

3 Well, there are no preceding paragraphs, and you do
4 that basically as to cause of action two, three, four,
5 five, six, seven, eight, nine, ten, all the way through
6 cause of action 17. And there are absolutely no facts
7 alleged, and I need to know.

8 MR. NIX: So ---

9 THE COURT: Like I said, it just has to be concise,
10 but there's -- there are absolutely no facts alleged in
11 this summons. If I read this, I wouldn't know what you
12 were suing about.

13 MR. NIX: And so I agree with you, Your Honor, and I,
14 I fully appreciate the situation. Once again, this was
15 filed for two specific reasons. One, there had been a
16 60(b) motion, technically two, outstanding since early
17 November 2018. Had never been scheduled. Even though you
18 can make the case 2017-4031 should not have been scheduled
19 because of the appeal -- and that's a different issue with
20 the Court of Appeals -- you cannot make the same case that
21 the case 2014, the 60(b) motion for 2014-5407 had not been
22 scheduled to be heard.

23 THE COURT: I still don't know how that relates to Mr.
24 Countryman. I really need you to address Mr. Countryman's
25 argument ---

1 MR. NIX: And ---

2 THE COURT: --- which has nothing -- I mean, those are
3 -- this is a separate case ---

4 MR. NIX: And ---

5 THE COURT: --- you're talking about.

6 MR. NIX: And the full expectation was that 5407 would
7 be restored and that this would be amended at that time to
8 incorporate it into 5407. This was filed with the full
9 expectation of maintaining the statute of limitations,
10 putting the parties on notice, and waiting for 540 -- the
11 60(b) motion for 5407 in 2014 to be scheduled.

12 THE COURT: So, you thought that the pleadings in 54
13 -- 5047 and these pleadings were supposed to be read
14 together?

15 MR. NIX: So, here's -- the issue is this.

16 THE COURT: I'm just trying to understand what you're
17 saying to me, and I think that's what you just said to me.

18 MR. NIX: Well, but the -- given the way things have
19 been managed or mismanaged for the previous year and a
20 half, really two and a half years, it was clear that there
21 was a process going on, going around the statute of
22 limitations, and there was already indications that
23 multiple parties were not maintaining evidence properly
24 that would be useful once 5407 was restored. This is on
25 the cause ---

1 THE COURT: So, you filed this with the intention of
2 dismissing it once 5047 was restored? Is that what you're
3 saying?

4 MR. NIX: That, or, or bringing the two together, yes.

5 THE COURT: But you'd still have to plead facts.

6 MR. NIX: I understand, Your Honor. You know, the
7 fact that 5 -- the 60(b) motion has never been heard or
8 ruled on is a problem.

9 THE COURT: No, the problem is you haven't alleged any
10 facts in the summons and complaint.

11 MR. NIX: And, and I understand, Your Honor.

12 THE COURT: Yeah.

13 MR. NIX: Having said that, we can -- I mean, we have
14 multiple ways of managing this but ---

15 THE COURT: I'm sorry. I couldn't hear you.

16 MR. NIX: I said, I said, I said we have multiple,
17 multiple ways of managing this, but these are the main
18 issues.

19 THE COURT: Okay.

20 MR. NIX: There have been multiple cases of misconduct
21 in these proceedings.

22 THE COURT: Do you have thirteen lawsuits pending in
23 the court?

24 MR. NIX: I do not have thirteen lawsuits. I may have
25 thirteen that have been filed or dismissed, but I don't

1 have thirteen pending.

2 THE COURT: You don't have -- how many do you have
3 pending?

4 MR. NIX: I do not know. Probably three, two, three,
5 and none, none of them should have been required, by the
6 way.

7 THE COURT: I'm sorry?

8 MR. NIX: I said none of them -- or all but one should
9 have never been required. Only required ---

10 THE COURT: You said all but what now? I didn't ---

11 MR. NIX: I'm saying, what I'm trying to explain is
12 the only one of those that should have ever been required
13 is 5 -- 2014-5407.

14 THE COURT: Did you pay the judgment that Judge Gergel
15 entered against you in federal court?

16 MR. NIX: I did.

17 THE COURT: How much was that judgment?

18 MR. NIX: \$400 times two.

19 MR. COUNTRYMAN: It was \$800.

20 THE COURT: It was \$800?

21 MR. NIX: Yes.

22 THE COURT: Okay. Yes, sir.

23 MR. NIX: So, these, these multiple issues only arise
24 because of the mismanagement -- and I will just reframe --
25 the intentional mismanagement of 2014-5407 by Judge

1 Scarborough, Ms. Dukes Beck, and to some degree the clerk
2 of court's office. That has necessitated multiple,
3 additional litigation attempting to either resurrect it or
4 save the statute of limitations.

5 THE COURT: He has four cases pending according to the
6 public index.

7 MR. NIX: Beyond that, as an aside -- because I'm not
8 an attorney, I did not know this until a couple months ago
9 max -- is multiple of these issues most likely rise to a
10 level of federal mail fraud, federal wire fraud, and
11 federal honest services fraud. Those things have been
12 reported to the appropriate authorities, at least by me.
13 So, this is complicated by the fact that things are not
14 getting done properly nor timely.

15 Having said that as well, I'd like to raise to the
16 Court's attention that one of the exhibits that you will
17 see is a filing in Richland County in 2011. And that
18 filing is of Mr. Countryman's cocounsel's law firm, which
19 was actually his firm, his current client's employer at the
20 time. It's the same type of issues. So, Mr. Countryman
21 should be on notice based on his, based on his own
22 cocounsel, that these issues have been going on for a very
23 long time.

24 And unfortunately for Mr. Thames, Mr. Thames has been
25 kind of caught up in that other issue with the appeal from

1 Judge Turner related to the small claims case, of which he
2 essentially was procuring a improper order to appoint him
3 to that case. So, we have multiple issues arising out of
4 an ongoing pattern of questionable conduct by members of
5 the court.

6 This right here I would recommend still be put on hold
7 until the 60(b) motion be heard and ruled on, and/or the
8 writ of -- and the *writ of certiorari* is ruled on. It was
9 not done, as Mr. Countryman suggested, to be retribution.
10 There is no, there is no facts support that his clients
11 represented a homeowners association. There are facts that
12 his clients engaged in multiple counts of misconduct.
13 There is no fact that Churchill Park is an HOA. There are
14 no facts that Mr. ---

15 I apologize. What was your name?

16 MR. McNAIR: McNair.

17 MR. NIX: McNair's client even exists, certainly not
18 in South Carolina. Those things have been raised to his
19 cocounsel multiple times. No, no response there. And to
20 kind of prove the fact that I had a valid concern about
21 this, the 60(b) motions have never been scheduled. They've
22 never been heard. Never been ruled on, and now certain
23 companies seem to be going out of business, and properties
24 seem to be getting sold all of a sudden, et cetera.

25 So, I'm not saying this was the, the most ideal way of

1 trying to solve the problem, but clearly Charleston County
2 is not helping me solve the problem, first of all. So, you
3 know, with this being scheduled to be heard for a
4 dismissal, I can understand that being done at some level.
5 That being done before the 60(b) motions that, that would
6 assist with restoring the cases properly, these court cases
7 -- court -- these types of actions being properly held
8 against the parties it should have been the first time is
9 the issue at hand.

10 So, as much as I can understand everybody's
11 displeasure with the situation we're -- we find ourselves
12 in, no more, more -- no more so than myself, this is still
13 premature because we don't have the underlying case
14 restored to, to properly bring these court cases, causes of
15 action in the original case. And as Mr. Countryman alluded
16 to, there are valid causes of actions against multiple
17 parties he represented -- or he mentioned, no more so,
18 quite frankly, than Charleston County and Judge
19 Scarborough.

20 I will say on the record I find it interesting that
21 we're sitting here today, 26 September. 2017, exactly two
22 years after the alleged hearing of 2017-4031, which most
23 likely -- once again, the statute limitations was not an
24 issue in my mind.

25 So, I'm not an attorney. I'm not perfect. I'm far

1 from being spiteful, but what I do not tolerate is
2 attorneys, judges, or public officials doing the wrong
3 thing for the wrong reasons. And I'm afraid that once
4 those things are properly documented, whether prosecuted at
5 a federal level, criminally or civilly, most of everything
6 that Mr. Countryman is complaining of is going to be a, a
7 moot point.

8 What will likely be a problem, though, is that based
9 on his own cocounsel's knowledge and involvement, he had no
10 -- he had to be on -- of knowledge that the same things
11 were occurring elsewhere, and they're not frivolous. So,
12 this was a last ditch effort trying to make sure nobody
13 could say I didn't, didn't deal with the statute of
14 limitations properly. But based on this, this, on the
15 court system, Charleston County court system's lack of
16 dealing with a 60(b) motion properly brought us to this
17 point.

18 Similarly, what's being brought to the Supreme Court
19 by writ of, *writ of certiorari* is the ongoing pattern of
20 denial of allowing 60(b) motions being filed in this court
21 by the Court of Appeals, which once again can only be
22 construed as being ---

23 THE COURT: I'm sorry, I don't understand the last
24 part of what you said. Repeat that, please.

25 MR. NIX: I said the *writ of certiorari* to the Supreme

1 Court is actually specifically related to actions by the
2 Court of Appeals for continuously refusing to allow 60(b)
3 motions to be filed in this court.

4 THE COURT: How does the Court of Appeals prevent
5 somebody from filing a 60(b) motion? I'm confused.

6 MR. NIX: If it's appealed, you have to ask their
7 permission to file a 60(b) motion before you can file it.

8 THE COURT: Yeah, because once you file the appeal,
9 you divest us of jurisdiction. Yeah, so we don't have --
10 yeah. Okay. Now I understand ---

11 MR. NIX: But they can grant ---

12 THE COURT: --- what you're saying.

13 MR. NIX: --- the right to file a 60(b) motion.

14 THE COURT: Okay. I just misunderstood what you were
15 saying.

16 MR. NIX: Yeah.

17 THE COURT: I needed clarity.

18 MR. NIX: And that was requested multiple times and
19 denied multiple times with various ---

20 THE COURT: In this case?

21 MR. NIX: Well, in, in 2017-4031, which Judge
22 Scarborough may or may not have had jurisdiction of on
23 20 ---

24 THE COURT: That's separate from 5047.

25 MR. NIX: Correct.

1 THE COURT: Okay.

2 MR. NIX: Well, yes, it's two different numbers. So,
3 these matters are actually very complex, but only because
4 people did the wrong thing for the wrong reason on an
5 ongoing basis. And I do apologize for bringing that type
6 of, that type of accusation in a courtroom, but I only do
7 it because it's very simple. There isn't anything to back
8 up Judge Scarborough's 23 March 2016 40(j) ruling. Mr.
9 Countryman's own client refused to produce that
10 information, and Judge Scarborough said that that's who
11 requested it, but that's not true either. So, we have a
12 fraudulent transcript, and we have a fraudulent order which
13 starts the whole thing on 23 March 2016.

14 So, what I would request is let this lie until the
15 60(b) motions for 5407 are heard and ruled on. At that
16 time, I'll either withdraw it if it's properly denied, or I
17 will amend it properly to work with the revised 540 --
18 2014-5407 case.

19 One last thing I'll mention about Mr., Mr. Countryman.
20 He said that I have not communicated with him. That's not
21 true. I actually went to his office, and he threatened to
22 call the police on me if I came back there without -- came,
23 ever came back there. So, I have attempted to communicate
24 with him, but apparently he needs police protection to have
25 a conversation with me. So, that's not true.

1 Mr. Thames is caught up in this. Unfortunately, it
2 was related to Judge Turner and the 25 September 2017 --
3 2018 order for -- 2018, that's 3315. That's going to be a
4 problem going forward. And not that we're actually hearing
5 it today, but ---

6 I apologize. I apologize.

7 MR. McNAIR: McNair.

8 MR. NIX: Mr. McNair's clients either don't exist or
9 are not incorporated in South Carolina. So, even though
10 I'm not an attorney, I'm far from being spiteful, and I'm
11 also far from being dumb, and these things are going to get
12 sorted out some way or another. But at the moment, it
13 looks like there's probably some issues at a federal level
14 related to mail fraud, wire fraud, honest services fraud,
15 conspiracy of the same, et cetera, that is going to be
16 problematic for these issues, these, these areas.

17 So, you know, I would request that, given the
18 circumstances, the 60(b) motion be heard and ruled on, and
19 then allow this to either be dismissed by me voluntarily
20 based on that process or be amended at that time as part of
21 the 5407 case.

22 THE COURT: Thank you, sir.

23 I'll take the matter under advisement. If you all
24 can provide me with proposed orders within five days of
25 today ---

1 MR. COUNTRYMAN: If I may put ---

2 THE COURT: --- citing any -- huh?

3 MR. COUNTRYMAN: I didn't mean to cut you off. I want
4 to make a quick statement for the record to...

5 THE COURT: For what purpose?

6 MR. COUNTRYMAN: Well, because I raised an argument in
7 my brief that has come to fruition. I'm sorry, in my
8 motion ---

9 THE COURT: About the?

10 MR. COUNTRYMAN: It's a procedural issue.

11 THE COURT: I'm listening.

12 MR. COUNTRYMAN: Failure to serve. I raised as a
13 motion for ---

14 THE COURT: I -- yeah.

15 MR. COUNTRYMAN: --- basically as a failure to serve.
16 Mr. Nix says, at least in his complaint, that he thinks the
17 statute ran or could run on January 4, 2019. Rule 302 says
18 if a lawsuit is filed within the statute, it must be served
19 within ---

20 THE COURT: 120 days.

21 MR. COUNTRYMAN: --- 120 days. It has not been
22 served. It's been over 264 days at this point.

23 THE COURT: Was that in your written motion?

24 MR. COUNTRYMAN: Yes, ma'am.

25 THE COURT: Okay.

1 MR. COUNTRYMAN: The 264 days was not because the
2 motion was filed in January, but the issue of failure to
3 serve was, and that's what I wanted to clarify for Your
4 Honor today.

5 THE COURT: If you both would provide the Court with
6 proposed orders within five days of today with any --
7 making any appropriate findings of fact and conclusions of
8 law supported by the record.

9 Sir, do you have an email address that you would like
10 for them to send that to you at the same time that they
11 send it to my office?

12 MR. NIX: I believe they have that probably, Your
13 Honor.

14 THE COURT: You want to make sure just in case?

15 MR. NIX: It's my name, A-L-A-N, dot G, dot N-I-X at
16 gmail.com.

17 THE COURT: Okay. Sir, at the same time that they
18 forward that to my office, they will send it to you; once
19 an order has been issued, you will likewise receive a copy
20 of it. Also, I'm directing that Mr. Countryman within five
21 days also supplement the record with his detailed billing
22 that should have accompanied his affidavit of attorney's
23 fees so that you can have an opportunity to review that as
24 well.

25 Thank you all very much. You have a good day.

1 MR. COUNTRYMAN: Thank you, Your Honor.

2 MR. THAMES: Thank you, Your Honor.

3 THE COURT: You're welcome, and send that -- make
4 sure, and make sure your staff is clear. Do not send that
5 to me directly. It needs to be sent to
6 DJeffersonSC@SCcourts.org. If they try to send it to me
7 directly, I will not receive it.

8 MR. COUNTRYMAN: Yes, ma'am.

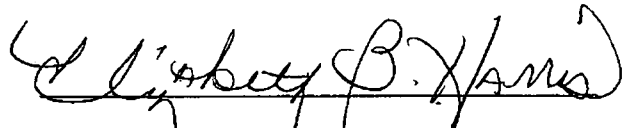
9 THE COURT: It will not come to me, so I need to make
10 sure they send it to the correct email address:
11 DJeffersonSC@SCcourts.org in Word format. Thank you very
12 much.

13 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF SEPTEMBER, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 19TH, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ALAN NIX, NORMA J. NIX, THE)
 ESTATE OF NORMA J. NIX,)
)
 Plaintiffs,)
)
 vs.)
)
 CHURCHILL PARK, CHURCHILL)
 PARK AT PARK WEST, INC.,)
 CHURCHILL PARK HOMEOWNERS)
 ASSOCIATION, INC., DAVID BROWN,)
 AND CATHERINE BROWN, *et al.*,)
)
 Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2019-CP-10-00067

**ORDER GRANTING DEFENDANT
 DAVID BROWN AND DEFENDANT
 CATHERINE BROWN'S MOTION TO
 DISMISS**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	<i>Pro Se</i>
Defendant's Attorney:	G. Troy Thames, Esq.
Date of Hearing:	September 26, 2019
Court Reporter:	Elizabeth Harris

FILED
 2019 OCT 17 PM 4:27
 JULIE J. AMOS, CLERK OF COURT

This matter was before the Court on September 26, 2019 upon Defendants David Brown and Catherine Brown's Motion to Dismiss. Counsel for Defendants David Brown and Catherine Brown, G. Troy Thames, Esquire, was present and *pro se* Plaintiff, Alan Nix, was present.¹ The Court heard oral arguments from all parties pertaining to the Motion and additionally took into consideration the pleadings and pertinent South Carolina Rules of Civil Procedure, specifically SCRCP 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6).

¹ Chase McNair, Esq. appeared on behalf of Defendants Churchill Park, Churchill Park at Park West, Inc., Churchill Park at Park West Association, Inc., and Stephen Summer. However, their Motion to Dismiss, filed May 24, 2019 was not scheduled for the current docket by the clerk's office. Further, the Plaintiff did not consent to a waiver of the requisite notice. As a result the Motion was not heard. Counsel was instructed to consult the Clerk's non-jury coordinator regarding scheduling.

¹ *Handwritten initials/signature*

FINDINGS OF FACT

Plaintiffs filed their Complaint on January 4, 2019. Plaintiffs name seventeen (17) causes of action in their Complaint. Under the heading for each cause of action, Plaintiffs simply state, "Plaintiff incorporates all preceding paragraphs as though fully set forth herein." Plaintiffs offer absolutely no facts to support any of their causes of actions, and make no statements upon which the court's jurisdiction depends, other than that Plaintiff is a citizen of Charleston County.

The only substantive assertion Plaintiffs includes in their Complaint states, "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." Further, at the hearing, Plaintiff Alan Nix stated he had only three purposes in filing this lawsuit: to toll the applicable statute of limitations, to put the parties on notice of "what is to come," and to restore case 2014-CP-10-05407 to the docket.

Based upon the Complaint and oral arguments, Defendants' Motion to Dismiss is heard and respectfully Granted.

CONCLUSIONS OF LAW

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] 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." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint

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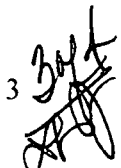
should not be dismissed merely because the court doubts the plaintiff will prevail in the action.”

Id.

Further, a ruling must be based “solely upon the allegations set forth on the face of the complaint. The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory.” Charleston County School Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). This Court may dismiss a claim when a party demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the filed pleadings. Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

Additionally, Rule 8 (a), SCRPC requires that a pleading shall contain a short and plain statement of the grounds, including facts and statutes, upon which the court’s jurisdiction depends, a short and plain statement of the facts showing that the pleader is entitled to relief, and a prayer for relief to which he deems himself entitled.

Finally, S.C. Code Ann. § 15-36-100 requires that in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina, the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. At the hearing, Plaintiffs could not provide an explanation as to why they failed to include an affidavit of an expert witness in filing the Complaint. However, S.C. Code Ann. § 15-36-100 (C)(2) provides an exception that the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the

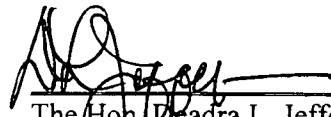
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defendant. Plaintiffs have not plead any allegation seeking an exception to the requirement namely that the contemporaneous filing requirement of subsection (B) is not required because the subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. Plaintiffs have not moved the Court for leave to file an expert affidavit outside of the time period prescribed in the statute. The Complaint is therefore subject to dismissal under S.C. Code Ann. § 15-36-100.

In reviewing Plaintiffs' Complaint and in considering the oral arguments before the Court, the Court finds that the Complaint is factually and legally insufficient pursuant to Rules 8 (a) and 12 (b)(6), SCRCPP, and S.C. Code Ann. § 15-36-100, and does not provide for relief under any theory of the law. Plaintiffs' Complaint also fails to state any fact establishing jurisdiction or venue under the law. Finally, Plaintiffs' Complaint is frivolous on its face without facts to support any cause of action and/or relief upon which Plaintiffs Complaint may be granted. Even in viewing the Complaint in the light most favorable to Plaintiffs, this Court must dismiss Plaintiffs' claims because Plaintiffs allege no facts sufficient to constitute any cause of action.


Accordingly, Defendants David Brown and Catherine Brown's Motion to Dismiss is Granted, and Plaintiffs' Complaint is dismissed with prejudice.

IT IS SO ORDERED.



The Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
October 17, 2019

4 

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, David Brown, Stephen Sumner, Richard Riccoboni, Rick Cumberland, Park West Amenity Association, Inc., C. Richard Dobson Builders, Inc., D.R. Horton, Inc., Brian Gardner, Dodds & 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

ORDER GRANTING MOTION TO DISMISS OF DEFENDANTS MCCABE, TROTTER & BEVERLY, PC, STEPHANIE TROTTER, RYAN MCCABE AND JAMIE MCSWEENEY

2019 OCT 17 PM 4: 27
JULIE J. ARNSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Counsel for Plaintiffs:
Counsel for Defendants:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Pro Se
Andrew Countryman, Esq.
September 26, 2019
Elizabeth Harris

This matter came before the Court on September 26, 2019 for a hearing on Defendants McCabe, Trotter & Beverly, PC, Stephanie Trotter and Ryan McCabe and Jamie McSweeney's (hereinafter "Defendants") Motion to Dismiss, filed January 14, 2019. A hearing took place in Charleston, South Carolina on September 26, 2019. Andrew Countryman, Esq. appeared on behalf of Defendants, and Plaintiff Alan Nix appeared *pro se*.¹ After considering the pertinent pleadings, arguments of counsel and Plaintiff, and for the reasons set forth below, Defendants' Motion to Dismiss is Granted and Plaintiffs' claims are dismissed with prejudice.

FINDINGS OF FACT

Plaintiffs filed this *pro se* Summons and Complaint on January 4, 2019. Plaintiffs have not filed any affidavit of service of the Summons and Complaint, nor is there any evidence of service on any of these Defendants as of the date of the hearing. On January 14, 2019, counsel for Defendants filed a Motion to Dismiss, which was served upon Plaintiffs on or about January 10, 2019.

The initial hearing for the Motion to Dismiss was set for June 4, 2019, in front of Judge Knie, at which time she was also set to hear Plaintiffs' Motion to Change Venue, filed May 24, 2019. Judge Knie heard the Motion to Change Venue and decided not to hear the Motion to Dismiss until she ruled on the Motion to Change Venue. She entered an Order denying the Motion to Change Venue on July 10, 2019. This Motion to Dismiss was then set for a hearing before the Court on September 26, 2019. At no point did Plaintiffs did file a responsive pleading to the Motion to Dismiss. Plaintiffs have not moved the Court or asked for leave to amend the Complaint.

¹ Chase McNair, Esq. appeared on behalf of Defendants Churchill Park, Churchill Park at Park West, Inc., Churchill Park at Park West Association, Inc., and Stephen Summer. However, their Motion to Dismiss, filed May 24, 2019 was not scheduled for the current docket by the clerk's office. Further, the Plaintiff did not consent to a waiver of the requisite notice. As a result the Motion was not heard. Counsel was instructed to consult the Clerk's non-jury coordinator regarding scheduling.

The Complaint contains no factual allegations and is comprised of only headings, a conclusory statement and prayer for relief. It names over thirty-five (35) Defendants and seventeen (17) purported causes of action. Under the heading for each cause of action, Plaintiffs simply state, "Plaintiff incorporates all preceding paragraphs as though fully set forth herein." Plaintiffs plead no supporting facts within the body of the Complaint which to constitute any of their causes of actions, and make no statements upon which the Court's jurisdiction depends, other than that Plaintiff is a citizen of Charleston County.

The only substantive assertion Plaintiffs include in their Complaint states, "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." Further, at the hearing, Plaintiff Alan Nix stated he had only three (3) purposes in filing this lawsuit: to toll the applicable statute of limitations, to put the parties on notice of "what is to come," and to restore case 2014-CP-10-05407 to the docket.

STANDARD OF REVIEW

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] 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." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action."

Id.

Further, a ruling must be based “solely upon the allegations set forth on the face of the complaint. The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory.” Charleston County School Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). This Court may dismiss a claim when a party demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the filed pleadings. Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001).

Rule 12(b)(5), SCRPC provides that a defendant may move for dismissal for insufficiency of service of process. Additionally, Rule 8(a), SCRPC provides that a pleading setting forth a cause of action “shall contain (1) a short and plain statement of the grounds, including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.”

CONCLUSIONS OF LAW

- 1. The Complaint is facially deficient under SCRPC's Rules of pleading and fails to state a claim upon which relief can be granted.**

Plaintiffs' Complaint fails on its face to comply with any of the Rules of pleading, including SCRPC 12(b) and 8(a). The document does not state any factual allegations. It only lists headings of various causes of action against the Defendants. No reading of the Complaint gives any notice to the Defendants as to the substance of Plaintiffs' claims against them. No reading of the Complaint, even in the light most favorable to the Plaintiffs, and with every doubt resolved in their behalf, gives rise to the basis of their claims against these Defendants.

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These Defendants filed and served their Motion to Dismiss approximately nine (9) months ago, and Plaintiffs have made no effort to amend or otherwise formally respond to the Motion. The Complaint is subject to dismissal for failure to state facts sufficient to constitute a cause of action against these Defendants pursuant to SCRCP 12(b)(6).

2. The Complaint is subject to dismissal for failure to perfect service of process on these Defendants.

Rule 3(a), SCRCP provides that a civil action is commenced when the summons and complaint are filed with the clerk of court if (1) they are served within the statute of limitations; or (2) if not served within the statute, actual service must be accomplished no later than 120 days after filing. Rule 5(d), SCRCP provides that a proof of service shall be filed within ten days of service of the summons and complaint. Upon failure to serve the summons and complaint, the court may dismiss the action on its own initiative or upon application of any party. Id.

Plaintiffs filed the Complaint on January 4, 2019. The Complaint includes a paragraph on the final page indicating the statute of limitations “could be construed to run out on January 4, 2019.” Plaintiffs also represented at the hearing of this matter that he filed the lawsuit to preserve the statute of limitations.

Plaintiffs have not filed an affidavit or proof of service nor has he presented evidence he served any of these Defendants with the Summons and Complaint. These Defendants filed their Motion to Dismiss on January 14, 2019, and raised failure to perfect service as a basis for dismissal. It has been over 265 days since the filing of the Summons and Complaint, and Plaintiff has failed to serve these Defendants. This lawsuit is therefore subject to dismissal pursuant to Rules 3(a) and 5(d), SCRCP.

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3. Plaintiffs' Complaint is subject to dismissal pursuant to S.C. Code Ann. § 15-36-100.

S.C. Code § 15-36-100 provides that a complaint alleging professional negligence requires the contemporaneous filing of an affidavit of a qualified expert witness identifying at least one negligent act or omission of the professional defendant and the factual basis for each claim based on the evidence available at the time of the filing. S.C. Code Ann. § 15-36-100 (B). This Code Section specifically applies to South Carolina lawyers. S.C. Code Ann. § 15-36-100 (G)(2). The contemporaneous filing is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendant. S.C. Code Ann. § 15-36-100 (C)(2). If a plaintiff fails to file an expert affidavit in compliance with the statute, and the defendant raises this issue via a motion to dismiss, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100 (C).

The contemporaneous filing requirement does not apply to a case in which the statute of limitations will expire, or where there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten (10) days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five (45) days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after a hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100 (C)(1). However, S.C. Code

Ann. § 15-36-100 (C)(2) provides an exception that the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

While Plaintiffs' Complaint here contains no factual allegations, it does name these Defendants. Of them, McCabe, Trotter & Beverly, P.C. ("MTB") is a law firm, and Ryan McCabe, Stephanie Trotter and Jamie McSweeney are or were lawyers at MTB. The firm, through those lawyers, represented Plaintiff's homeowners' association in a lien foreclosure action referenced in the Complaint. In addition to naming these Defendants, the pleading names two other law firms (Rogers, Townsend & Thomas, PC and Dodds & Hennessy, LLP). The pleading also contains references to causes of action sounding in professional negligence, including negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligent supervision, and negligent misrepresentation.

Plaintiffs did not file an expert affidavit specifying a negligent act or omission of any of the lawyers or law firms Plaintiffs named in the case. Plaintiffs failed to do so contemporaneously with the Complaint or any time thereafter. Further, Plaintiff has not included any allegation seeking an exception to the requirement namely that the contemporaneous filing requirement of subsection (B) is not required because the subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. Plaintiffs have not moved the Court for leave to file an expert affidavit outside of the time period prescribed in the statute. The Complaint is therefore subject to dismissal under S.C. Code Ann. § 15-36-100.

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4. The Complaint fails to allege the elements necessary to establish a claim against these Defendants.

To survive a Rule 12 (b)(6) motion on a claim against a lawyer for malpractice, a plaintiff 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. Id. 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 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).

These Defendants are a law firm and lawyers that work or worked there, and the Complaint purports to maintain claims based on professional negligence against them. The Complaint does not allege these Defendants represented the Plaintiffs, who admitted no attorney client relationship existed during the hearing of this Motion. The Complaint also fails to allege what, if anything, these lawyers did outside of the scope of their representation of a client. Such information is necessary for Plaintiffs to pursue a claim against these lawyers, who did not represent him. The Complaint is therefore subject to dismissal.

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5. No basis for claims against individually named Defendants.

While the Complaint does not state facts underlying any claim against these Defendants, it does reference two other cases, 2014-CP-10-05407 and 2017-CP-10-04031. Those cases are actually the same matter, Churchill Park v. Nix. This is the case in which MTB represented Plaintiff Alan Nix's Homeowners' Association in the pursuit of various amounts he allegedly owed to the Association. A cursory review of the pleadings shows that Case Number 2014-CP-10-05407 was dismissed pursuant to SCRCP 40(j) and subsequently restored as Case Number 2017-CP-10-04031. Mr. Nix failed to prevail in Case Number 2017-CP-1004031 and filed an appeal. The Court of Appeals affirmed² the lower Court's ruling, and Mr. Nix has since filed a pending petition for a writ of certiorari with the Supreme Court.

Stephanie Trotter, Ryan McCabe and Jamie McSweeney are or were lawyers at MTB during the time period when MTB represented the Homeowners' Association the above-referenced case(s) against Mr. Nix. The Complaint contains no allegation that any of these individually-named Defendants were acting outside their scope as lawyers at any time pertinent to this case. They are, therefore, improper Defendants in this case. Plaintiffs' claims against Ryan McCabe, Stephanie Trotter and Jamie McSweeney are therefore subject to dismissal.

6. Improper Plaintiffs

In addition to Alan 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." Norma Nix is deceased. She is therefore not a proper party to any legal action.

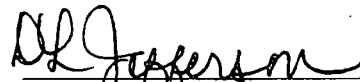
² Appellate Case No. 2018-000056, November 13, 2018.

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[Signature]

Norma Nix' Estate could theoretically 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. To the extent the Complaint brings claims on behalf of Norma Nix and her Estate, those claims fail as pled for these reasons.

Conclusion

Accordingly, Defendants McCabe, Trotter & Beverly, PC, Stephanie Trotter and Ryan McCabe and Jamie McSweeney's Motion to Dismiss is Granted, and Plaintiffs' Complaint is dismissed with prejudice.



Hon. Deadra L. Jefferson,
Presiding Judge
Ninth Judicial Circuit

October 17, 2019
Charleston, South Carolina

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10/17/19
