

I. Factual and Procedural History

This action arises from a foreclosure action against the Plaintiff (Case No. 2018-CP-30-578) in which his former property was sold at public auction presided over by the Defendant, Reid Cox, acting in his capacity as Special Referee.² The Plaintiff contests the manner in which the public auction was conducted. Much to the frustration of the Plaintiff, the land was then sold to Defendant Tim Mahon of TM Properties, LLC.

Upon losing his former property at this foreclosure auction, the Plaintiff then attempted, unsuccessfully, to appeal this matter to the S.C. Court of Appeals. That appeal was ultimately dismissed. Then, the Plaintiff filed this action seeking to have the sale set aside and requesting that his Court issue a judgment naming him as “the rightful legal owner.” (Complaint, Prayer for Relief ¶ 2).

This matter is before the Court on several motions which were filed by the Plaintiff in which he seeks a default judgment against the Defendant Special Referee. Additionally, the Defendant has raised affirmative defenses in his Answer requesting that the Plaintiff’s Complaint be dismissed under Rule 12(b)(6), SCRCF, for failing to state any claim upon which relief may be granted and, secondly, for a dismissal under the doctrine of judicial immunity.

At the last hearing which occurred on August 25, 2020, at which Mr. Burnside and counsel for the Defendants were all personally present, the Court instructed counsel for the Defendant Special Referee to prepare a brief for the Court framing the Special Referee’s position on the issues before the Court in anticipation of this hearing. The Plaintiff, appearing *pro se*, was also given an opportunity to prepare and file a similar brief for the Court or obtain legal

² The Court takes judicial notice of the adjudicative facts found in the record of the underlying foreclosure dispute (Case No. 2018-CP-30-578) and the appeal which followed pursuant to Rule 201(c), SCRE.

counsel prior to this hearing who would assist him in doing so. The Special Referee's brief was prepared and electronically filed prior to the hearing. The Plaintiff elected not to prepare any additional submissions to the Court.

The issues now before the Court are dispositive. Should the Court grant the Plaintiff's request for a default judgment against the Special Referee? Should the Court grant the Special Referee's request to dismiss the Plaintiff's action?

II. Legal Standard & Analysis

A. Default Judgment

The South Carolina Rules of Civil Procedure provide that a Defendant should serve an Answer "30 days after the service of the complaint upon him..." Rule 12(a), SCRCP. The Plaintiff's Complaint may be served upon the Defendant by "registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt." Rule 4(d)(8), SCRCP. This Rule also provides "Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant." Id. Where service is effected by certified mail, and the Defendant is usually required to file a responsive pleading within 30 days, "five days shall be added to the prescribed period" under Rule 6(e), SCRCP, so that the Defendant should have a total of thirty-five (35) days to respond to the Plaintiff's Complaint, exclusive of the date of service.

The Plaintiff filed this action on January 29, 2020. The Complaint which was filed simultaneously with a certification of service indicates that a copy was left at the Defendant Special Referee's office at 107 E. Laurens Street, Laurens, SC that same day. However, it appears the Plaintiff actually attempted to serve the Defendant Special Referee by mail. This

mail was purportedly delivered to his office by the US Postal Service on January 31, 2020; however, the Plaintiff has never produced a proof of receipt bearing the Defendant's signature as required by Rule 4(d)(8), SCRCF.

Further, even if the Plaintiff had properly served the Defendant, the Defendant's response was timely made and filed. Since the Plaintiff acknowledges in his filing entitled "Declaration for Entry of Default Judgment" that the Defendant Special Referee did not receive his mailing until January 31, 2020, then according to the applicable rules, the Defendant's Answer would have been timely as long as it were filed before March 7, 2020. In actuality, according to the electronic filing system, it appears the Defendant filed his Answer on February 28, 2020.

Accordingly, consistent with the finding of this Court's Order of September 28, 2020 that the Special Referee "timely filed and served an Answer to the Plaintiff's Complaint," this Court finds that the Defendant Special Referee is not in default, he never has been, and the Plaintiff's claims for relief based upon any alleged default are improper and must be dismissed.

B. Rule 12(b)(6) and Rule 9(b), SCRCF

a. Rule 12(b)(6), SCRCF

Any litigant seeking relief before a Court must "state facts sufficient to constitute a cause of action," or his Complaint is subject to dismissal under Rule 12(b)(6), SCRCF. The factual analysis for any Court considering whether to grant relief under a Rule 12(b)(6) motion is "confined to the four corners of the Complaint." See Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006). 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 under Rule 12(b)(6) is improper. See, e.g., Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most

favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. See Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Here, the Plaintiff’s claims against the Defendant Special Referee allege various acts of wrongdoing, but even taking the facts as alleged by the Plaintiff (and only those contained in the Complaint) in the light most favorable to him, the Plaintiff has pled no causes of action upon which the Court could grant any relief. While the Plaintiff alleges that the Special Referee’s actions were “illegal” (Complaint ¶8.E) and that he “aided and abetted in the defrauding of the Plaintiff,” (Complaint ¶8.D), no elements of any cause of action are pled, and the only cause of action pled, “fraud,” has not been pled with the specificity required by Rule 9, SCRPC (as set forth more fully below). No monetary damages have been claimed. To the extent declaratory relief has been sought, no legal basis for any such relief has been pled.

The Defendant Special Referee raised this Rule 12(b)(6) affirmative defense in his Answer which was properly filed with this Court and served upon the Defendant. To this day, the Plaintiff has not amended his pleadings nor has he sought legal counsel to aid him in correcting any of these deficiencies despite having more than seven months to do so since he received the Special Referee’s Answer.

b. Rule 9(b), SCRPC

Rule 9(b), SCRPC, requires that “In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity,” while allowing that the elements of “Malice, intent, knowledge, and other condition of mind of a person may be averred generally.”

The Plaintiff states in Paragraphs 7 and 8(d) of his Complaint that the Defendant Special Referee conducted an action that was “fraudulent” and that he “defrauded” the Plaintiff. However, the Plaintiff makes no allegation as to any malice, intent, knowledge, or condition of mind on the part of the Defendant, nor does he plead any other element of the cause of action for fraud, either generally or with particularity, as required by Rule 9(b), SCRCF.

Accordingly, this Court finds that the Plaintiff has failed to comply with the pleading requirements of the South Carolina Rules of Civil Procedure, and specifically, that he has failed to state a claim upon which relief may be granted or plead fraud in such a way as would be sufficient to put the Defendant on notice of the allegations against him.

C. Judicial Immunity

The doctrine of judicial immunity as set forth in Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007), “serves as a bar to litigation against a judicial officer in certain circumstances.” This doctrine of judicial immunity serves to protect special referees as judicial officers since, according to Rule 53(c), SCRCF, “the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.”

The Plyler Court clarified that this immunity is not absolute and does not apply where “(1) [the judicial officer] did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” Id. at 645. However, the opposite must also be true. Where a judicial officer has the proper jurisdiction to act, where the action concerned was in service of his judicial function, and where the potential suit against him is for purely retrospective, remedial relief, he is immune from civil liability and suit.

In this case, the actions complained of by the Plaintiff were a clear exercise of his authority as Special Referee, and this is clearly acknowledged by the Plaintiff throughout his Complaint by his

repeated references to Reid Cox as “Special Referee.” Further, there is no allegation that the Defendant was acting in any capacity outside of his role as Special Referee, nor that there was any other condition or circumstance which would nullify the immunity to which he would otherwise be entitled as a judicial officer. Accordingly, any relief sought by the Plaintiff against the Defendant Special Referee is barred by the doctrine of judicial immunity.

D. Rule 53(e) and Rule 59, SCRPC, and the Doctrine of *Res Judicata*.

In addition to the deficiencies in the Plaintiff’s pleadings identified above, this Court agrees with the Defendant Special Referee that the Plaintiff has waived his ability to seek relief against the Defendant concerning the underlying facts of this matter under the Doctrine of *Res Judicata*. According to Rule 59(b), any party wishing to be granted a new trial or to be relieved from the final judgment of the Court in a non-jury action must file a motion “not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action.” Additionally, any such motion should have been made and served upon the judge [or special referee] “within ten (10) days after filing the motion.” *Id.* Further, any appeal of any order of judgment of a special referee or master “shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.” Rule 53, SCRPC.

Even if any of the errors alleged by the Plaintiff had occurred, then the proper legal relief from the Special Referee’s order/judgment must have been sought by way of an appeal of the order/judgment resulting from the proceedings to the Court of Appeals filed within ten (10) days of the entry of the order of the Special Referee. This did not occur.

Following the entry of the Amended Order of the Special Referee on November 12, 2018, the Plaintiff filed what purported to be an appeal on December 13, 2018, well after the time limit imposed by Rule 59, SCRPC. The S.C. Court of Appeals notified the Plaintiff that his appeal did

not meet the requirements of various appellate court rules, gave him an opportunity to comply with these rules. He did not. As a result, the Court of Appeals ultimately dismissed his appeal in an Order which was entered on August 26, 2019 and filed with the Laurens County Clerk of Court on September 17, 2019. Subsequently, the Special Referee filed a Report on Sale and Disbursement on October 22, 2019, and no further action was taken by the Plaintiff until he filed this case in January 2020.

The relief sought by the Plaintiff in this action, i.e., setting aside the judgment of the Special Referee, a declaratory judgment naming him the rightful owner of the subject real property, and the adjudication as to certain “facts,” are all items of relief which would result from adjudication of this matter through the appellate process. However, since the Plaintiff did not properly appeal the underlying controversy, despite being specifically instructed to do so by the SC Court of Appeals, these claims are barred by the doctrine of *res judicata*.

Our courts have held that subsequent actions are barred when “the claims arise out of the same transaction or occurrence that was the subject of the prior action between those parties.” Reidman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 469, 419 S.E.2d 217 (1992). In this matter, the parties are the same, the relief sought by the Plaintiff involves the same occurrence that he improperly appealed to the Court of Appeals, and indeed the relief he sought from the Court of Appeals was identical. That appeal was ultimately dismissed, and the judgment of the Special Referee was allowed to stand.

Accordingly, this Court finds that the Plaintiff's claims are barred by the doctrine of *res judicata*.

III. Conclusion

NOW, THEREFORE, in light of the findings of fact and conclusions of law set forth above, this Court finds that the Plaintiff's claims and this action must be dismissed, with prejudice.

IT IS SO ORDERED!

Done this _____ Day of
_____, 2020.

At Anderson, S.C.

Honorable J. Cordell Maddox, Jr.
S.C. Circuit Court Judge
Sitting in the Eighth Judicial Circuit



Laurens Common Pleas

Case Caption: Anthony Bernard Burnside VS W Reid Cox, as Special Referee Jr. ,
defendant, et al
Case Number: 2020CP3000111
Type: Order/Dismissal

So Ordered

s/ J. Cordell Maddox Jr.