

Exhibit 'A'

ELECTRONICALLY FILED - 2020 Sep 23 2:04 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2304057

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Amir Afshar,)
)
Plaintiff,)
)
vs.)
)
Farhana Javed and Mian Javed)
Ikram,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2019-CP-23-04057

ORDER GRANTING
SUMMARY JUDGMENT

RECEIVED
MAR 09 2021
SC Court of Appeals

This matter is before the Court upon the Defendants' motion for summary judgment. The Court heard this matter on September 1, 2020 via WebEx pursuant to the South Carolina Supreme Court orders on operations of courts during the COVID-19 pandemic. The Plaintiff appeared pro se and has not been represented in this matter. The Defendants appeared with their attorney, Rustin B. Duncan of King Law Offices, PLLC. The Court has considered fully the motion and materials presented in support and opposition, the memoranda submitted by the parties and the arguments of counsel and the pro se Plaintiff. For the reasons set forth in this Order, the Court grants the motion.

FACTUAL BACKGROUND

Farhana Javed immigrated to the United States from Pakistan in 2013 (Compl. ¶ 2, July 9, 2019). In order to do so, she was required to show specific documentation to the United States Department of State, including an Affidavit of Support, also known as an I-864 (Answer ¶ 2-3, August 4, 2019). Mrs. Javed asked Plaintiff, Amir Afshar, to provide this document, which he did (*Id.* at ¶ 3). Mrs. Javed also provided any other documents the United States Embassy in Islamabad required, including pictures as evidence of her relation to Mr. Afshar (*Id.* at ¶ ¶ 3 & 7).

Mrs. Javed agreed to provide Mr. Afshar with an Affidavit of Support if he was ever in need of one in return for his help in providing the Affidavit of Support for her immigration to the

United States (*Id.* at ¶ 2). In May 2019, Mr. Afshar asked if Mrs. Javed would fill out an Affidavit of Support so his fiancé could immigrate to the United States (Compl. ¶ 10). Mrs. Javed replied that she would, but she needed some information in order to completely fill out the form (Answer ¶ 10). Mr. Afshar wanted the I-864 sent to him partially unfilled (*Id.*). Mrs. Javed refused to send the I-864 without the completed information (*Id.*). See attached I-864 form that Plaintiff requested that Defendants sign with incomplete information.

On July 9, 2019, Amir Afshar filed a complaint alleging that Mrs. Javed committed fraud against him, as well as against the Department of State (Compl. ¶ 2). Mr. Afshar claims that no evidence exists to prove that he is related to Mrs. Javed, and so she defrauded the Department of State by providing falsified documentation of such a relationship (*Id.* at ¶ ¶ 6-8). See attached affidavit of Defendant's Father regarding the family relationship.

Mr. Afshar also claims that he was defrauded by Mrs. Javed, arguing that he was financially burdened by the refusal of Mrs. Javed to provide Mr. Afshar with an Affidavit of Support (*Id.* at ¶ 14).

LEGAL STANDARD

I. SCRPC Rule 56(c)

Summary judgment is appropriate when there is no genuine dispute of any material fact and the moving party is entitled to judgment under the law. Rule 56(c), SCRPC. When determining if there is a genuine issue of material fact, the court must view "the evidence and all inferences that can be reasonably drawn from the evidence" in a light most favorable to the nonmoving party. *Sapp v. Ford Motor Co.*, 386, S.C. 143, 146, 687 S.E.2d 47, 48 (2009).

“Once the party moving for summary judgment meets the initial burden of showing the absence of a genuine issue as to any material fact, the nonmoving party may not simply rest on the mere allegations contained in the pleadings.” *Grant v. Mt. Vernon Mills, Inc.*, 370 S.C. 138, 142, 634 S.E.2d 15, 17 (Ct. App. 2006). “Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* (quoting *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). “A complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79,85 (Ct. App. 2008). “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868,874 (2001).

DISCUSSION

I. Plaintiff Does Not Have Standing to Bring a Fraud Charge Related to the Department of State.

Plaintiff lacks standing to bring a charge of fraud on behalf of the United States Department of State. In order to be able to present a case in a South Carolina court, “a party must have a personal stake in the subject matter of the lawsuit.” *Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284 S.C. 81, 96, 326 S.E.2d 395, 404 (1984) (citing *Furman Univ. v. Livingston*, 244 S.C. 200, 136 S.E.2d 254 (1964)). Mr. Afshar does not have a personal stake in determining whether Mrs. Javed committed fraud against the Department of State. That matter would be explicitly between the Department of State and Mrs. Javed. In addition, Mr. Afshar does not provide any tangible evidence that Mrs. Javed did commit fraud against the Department of State.

II. Summary Judgment in Favor of the Defendants is Proper.

Summary judgment is proper in favor of the Defendants in this matter. In order to establish a claim for fraud in the inducement to enter a contract, a party must establish the following by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *M.B. Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 384, (1980).

Mrs. Javed has not denied that she made a representation to Mr. Afshar that she would write an Affidavit of Support for him if he was ever in need (Answer ¶ 3 and Defendant affidavit attached). However, Mrs. Javed does dispute the second element of fraud, which is the claim that this representation was false. *Kahn Const. Co.*, 275 S.C. at 384, 271 S.E.2d at 415. Mrs. Javed did plan to provide the Affidavit of Support; however, she was unwilling to do so without filling out all of the information beforehand (*Id.* at ¶ 10 and affidavit). U.S. Citizenship and Immigration Services requires the I-864 form to be completely filled out by the person who is making promises to provide support to the immigrating party if it becomes necessary (*Instructions for Affidavit of Support Under Section 231 of the INA*, U.S. Citizenship and Immigration Services (Feb. 27, 2020), <https://www.uscis.gov/i-864>). Mrs. Javed was simply following the rules required for filling out the form.

Regarding the third element of fraud, the materiality of the claim, Mrs. Javed understands that by not providing Mr. Afshar with the Affidavit of Support it will be difficult for Mr. Afshar's fiancé to immigrate to the United States (Answer ¶ 11). However, Mrs. Javed disputes the fourth

element of fraud because she did not know, nor should she have known that her statement was false because she intended to comply with the agreement to give Mr. Afshar the Affidavit of Support (*Id.* at ¶ 12). Mrs. Javed simply felt that she could not complete the forms without filling in all the information, as is required by law (*Id.*).

The fifth element is an intent that the representation be acted upon. *Kahn Const. Co.*, 275 S.C. at 384, 271 S.E.2d at 415. Both Mr. Afshar and Mrs. Javed intended to act upon this agreement because it was mutual (Answer ¶ 3). The sixth through the eighth elements include the hearer's ignorance of its falsity, the hearer's reliance on the truth, and the hearer's right to rely on the statement. *Kahn Const. Co.*, 275 S.C. at 384, 271 S.E.2d at 415. Neither Mr. Afshar nor Mrs. Javed were ignorant of the statement's falsity and both relied, and had a right to rely, on the statement because it was true when the parties agreed to this promise (Answer ¶ 3; Compl. ¶ 3). The final element is the hearer's consequent and proximate injury. *Kahn Const. Co.*, 275 S.C. at 384, 271 S.E.2d at 415. While Mr. Afshar was unable to obtain the Affidavit of Support from Mrs. Javed, he indicated in an email to a third party that the Affidavit of Support was no longer necessary for the immigration of his fiancé (Answer ¶ 10 and affidavit). Thus, Mr. Afshar has no claim to any injury by Mrs. Javed.

Mr. Afshar does not have standing to make a claim on behalf of the United States Department of State because he does not have a personal stake in such a claim. In addition, Mr. Afshar failed to prove several elements of a claim for fraud; thus, the charge must altogether fail.

Further, nothing created a contractual or binding agreement between the parties. Thus, liability for fraud is impossible. However, even if there was a binding obligation on the part of the Defendants to the Plaintiff, it is not reasonable to ask the Defendants to fill out a blank affidavit of support for the Plaintiff's fiancé, whom the Defendants do not know.

Further, the Plaintiff has produced no evidence that any fraudulent activity on the part of the Defendants.

CONCLUSION

For the reasons stated above, summary judgment under Rule 56, SCRPC, is hereby granted in favor of the Defendants.



Greenville Common Pleas

Case Caption: Amir Afshar vs: Mian Javed Ikram , defendant, et al
Case Number: 2019CP2304057
Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2020-09-23 12:34:35 page 7 of 7