

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2305996

Raymond A Wedlake et al
PLAINTIFF(S)

Woodington Homeowners Association Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

RECEIVED
May 17 2021
SC Court of Appeals

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See Pg. 2

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/08/2021 .

Members Of Woodington Homeowners Association Inc
Woodington Homeowners Association Inc
Raymond A Wedlake for Raymond A Wedlake
Woodington Homeowners Association Inc
Raymond A Wedlake for Raymond A Wedlake

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter comes before the court on Appellants Civil Appeal of the Magistrate Court Order granting Defendants' Motion to Dismiss Plaintiff's Complaint on October 16th, 2020.

The Circuit Court, pursuant to S.C. Code §18-7-170, in Appeals from the Magistrate Court, shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties and for errors of law or fact.

After review of the return, review of the filings on record, and consideration this Court finds no error of law or abuse of discretion. Further, this Court agrees with the Magistrate Court that this lawsuit is an attempt to re-litigate the issues that have already been decided in previous actions. The decision of the Magistrate Court is affirmed.



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al VS Woodington Homeowners Association Inc , defendant, et al
Case Number: 2020CP2305996
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

EXHIBIT NOA.2

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE MAGISTRATE'S COURT

Raymond A. Wedlake, as a Member of)
Woodington Homeowners' Association,)
Inc. and on behalf of all other similarly)
situated members of Woodington)
Homeowners' Association, Inc.,)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

C.A. No. 2020CV2310201384

Plaintiffs,)

vs.)

Board of Directors of Woodington)
Homeowners' Association, Inc.,)
comprised of Mona Craigo, Edward)
Decker, and Sandra LaCroix; McCabe,)
Trotter & Beverly, P.C.; and State Farm)
Fire and Casualty Company,)

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SUMMARY COURT
SC Court of Appeals

Defendants.)

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint. A hearing on these motions was held before me on November 24, 2020, Present at the hearing were Raymond A. Wedlake, appearing *pro se*; Stephanie Kellahan of the firm McCabe, Trotter & Beverly, P.C., attorneys for McCabe, Trotter & Beverly, P.C.; Chris Smith of the firm Clarkson Walsh Coulter, attorneys for the Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for State Farm Fire and Casualty Company. Based upon the arguments of the parties, pleadings, exhibits, applicable law and the record in this case, the court hereby orders that the defendants' motions to dismiss be GRANTED with prejudice.

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Background

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association (“WHOA”) Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board titled: *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners’ Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners’ Association, Inc., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301.* On May 29, 2018, following plaintiff’s presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board’s motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff’s case. Plaintiff’s lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney’s fees. Following plaintiff’s presentation of his evidence at the trial of this case, the Court granted defendants’ motion to dismiss plaintiff’s case. Plaintiff appealed the Court’s decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. (“MTB”) in the pending appeal of that action.

In April 2018, the WHOA elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from MTB in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff’s lawsuit against the 2017 WHOA Board.

On July 14, 2018, the plaintiff filed a defamation lawsuit against individual WHOA board members, Kristine Lynch and Dawn Vonderbecke, in the Greenville County Court of Common Pleas, titled: *Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc. vs. Kristine Lynch and Dawn Vonderbecke and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10, C.A. No.: 2018-CP-23-03758*. The Clarkson Walsh Coulter law firm defended the individually named defendants in that case.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by an approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

On January 17, 2019, the plaintiff filed a complaint against the WHOA Board that consisted of Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of the Woodington Homeowners' Association, Inc., Case No. 2019-CP-23-00269.

On March 23, 2019, the plaintiff filed a lawsuit against the 2019 WHOA Board entitled: *Raymond Wedlake, as a Member of the Woodington Homeowners' Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners' Association, Inc., CA No.: 2019-CP-23-01501*. The lawsuit claimed that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by MTB and further violated their fiduciary duty by counting the ballots that had been sent out to



the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy “Yes” votes in favor of the proposed plan. These are the same exact claims that plaintiff has brought before the Magistrate’s Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions.

State Farm Fire and Casualty Company (“State Farm”) is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. The plaintiff subsequently filed the amended complaint in this action. In the amended complaint, the plaintiff amends his allegations against WHOA in an attempt, based on the plaintiff’s interpretation of the State Farm policy, to remove any potential insurance coverage afforded WHOA. Likewise, in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

Legal Standard

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the court may dismiss a claim when the defendant demonstrates the plaintiff’s “failure to state facts sufficient to constitute a cause of action” in the pleadings filed with the court. *FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). When ruling on a motion to dismiss for failure to state facts to constitute a cause of action, the court must base its decision solely upon the allegations set forth on the face of the complaint. *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The court must grant the motion if the facts

alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. *Id.*

Discussion

I. Collateral Estoppel

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In the instant case Plaintiff alleges that, due to the alleged bad acts of MTB, WHOA improperly and involuntarily paid an invoice for legal fees related to Case 2017-CP-23-06301. However, Plaintiff filed a lawsuit under that same theory in March 2020 in Case 2019-CP-23-01501¹. Specifically, Plaintiff alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in case 2017-CP-

¹ MTB was not a named party to Case 2019-CP-23-01501. However, this does not prevent MTB or any other party from asserting collateral estoppel as a bar to this suit because “modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).


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23-06301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- “The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members.” (Order, p. 6.)
- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” (Order, p. 7.)
- “Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . .” (Order, p. 7.)
- “[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.” (Order, p. 7.)
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” (Order, p. 9.)

Judge Miller’s Order in Case 2019-CP-23-01501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 2017-CP-23-6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. Plaintiff cannot seek to collaterally attack Judge Miller’s holding by seeking relief from this Court. For that reason, Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed.

II. Casting Plaintiff in False Light

Plaintiff’s amended complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a cause of action for “Casting in a False Light.” Even if the court were to interpret this claim as a cause of action for defamation, said claim is barred by the statute of limitations. A claim for libel or slander must be brought within two years. S.C. Code §15-3-

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550. The statute of limitations begins running at the time of the allegedly defamatory statement because “South Carolina has not adopted the discovery rule in libel and slander cases.” *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997). Plaintiff’s amended complaint states on its face that the allegedly defamatory statement was made September 20, 2016. While Plaintiff’s amended complaint alleges the statute of limitations cannot begin to run until Plaintiff learned MTB “acted on [its] own initiative,” Plaintiff does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. For these reasons Plaintiff’s claim for defamation must be dismissed.

III. Conspiracy

Plaintiff’s claim for conspiracy must also be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA’s covenants, are the same damages sought by Plaintiff for its Breach of Contract claim. Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRPC. As such, the conspiracy claim must be dismissed.

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IV. Plaintiff Lacks Standing to Bring a Derivative Suit

Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. Plaintiff does not fairly and adequately represent the members of WHOA, and Plaintiff's amended complaint fails to allege that he does. In fact, there is currently pending before the Court of Common Pleas for Greenville County a class action lawsuit brought by other members of WHOA alleging ²:

1. This case is about Defendant's actions of harassing his neighbors, eroding community camaraderie, and subjecting the Woodington residents to unnecessary legal expenses, using the Court system and its inherent authority to give credence to his bullying tactics. Defendant has engaged in a clear pattern of harassment through the use of the Court system and its elements through his frivolous lawsuits.

In 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors. <https://www.greenvilleonline.com/story/news/2019/04/02/sc-hoa-says-lawsuits-bankrupting-their-greenville-community/2919200002/>. Specifically, at least nine members met with the newspaper to discuss the endless lawsuits filed by Mr. Wedlake. Additionally, Plaintiff's own complaint shows that 29 members of WHOA returned ballots indicating they voted for indemnification and 32 members of WHOA returned ballots indicating they voted for the payment plan. This alone demonstrates Plaintiff's amended complaint is not representative of the position of the WHOA members. As such, he is not allowed to bring this suit derivatively.

Additionally, plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. In a derivative suit the shareholder bringing the suit is only a nominal plaintiff and the corporation is the real party in interest. *Johnson v. Baldwin*, 69 S.E.2d 585, 588

² 2020-CP-23-01458 was filed March 9, 2020 against Defendant Raymond A. Wedlake. A trial court may take judicial notice of previously entered, related court documents and consider them when ruling on a Motion to Dismiss under Rule 12(b)(6), SCRCP. See *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014).

221 S.C. 141, 149 (1952). In the instant action plaintiff is attempting to represent the corporate entity and “six similarly situated HOA members.” State law prohibits an individual from practicing law without first possessing a law license. S.C. Code § 40-5-310. While a non-lawyer is allowed to represent a corporation before the magistrate court, the corporation must first give the non-lawyer “written authorization from the entity’s president, chairperson, general partner, owner, or chief executive officer.” *In re Unauthorized Practice of Law Rules Proposed by SC Bar*, 422 S.E.2d 123, 124, 309 S.C. 304, 306 (1992). Such written authorization must be submitted to the magistrate at the time the initial pleading in the case is filed. S.C. Code § 33-1-103. Plaintiff is not a licensed lawyer and therefore may not represent his fellow HOA members in this suit. Additionally, plaintiff has not submitted written authorization from the WHOA’s chief executive officer and therefore cannot represent the corporation before this court. For these reasons I find plaintiff’s derivative claims must be dismissed.

V. Plaintiff is not a party to the State Farm Insurance Policy

In this matter, Plaintiff has asserted a breach of contract claim against State Farm, disputing whether the claims he has asserted against WHOA are covered by the terms and conditions of the State Farm policy. The State Farm policy at issue was issued to WHOA. The plaintiff is not a party to the insurance contract. Under South Carolina law, an injured person who is not a party to the insurance contract has no standing to litigate a dispute between an insurer and an insured unless he has first established liability against the insured. *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 162 S.E.2d 709, 711 (1968); *see also Erwin v. Universal Underwriters Ins. Co.*, 2007 WL 30288 (holding that injured motorcyclist lacked standing to pursue claims against tortfeasor’s insurer without obtaining judgment against tortfeasor). Here, the plaintiff has not established liability on the part of WHOA. In addition, the court is not

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aware of any dispute between State Farm and its insured, WHOA. As he is not an insured under the State Farm policy, the plaintiff has no standing to bring a breach of contract claim as to the available coverage under the policy. As such, his claims must be dismissed.

CONCLUSION

For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

FAIRVIEW-AUSTIN
DEC 28 2020
L. Saunders COURT

The Honorable Laura M. Saunders
Judge, Fairview/Austin Summary Court

Greenville, South Carolina

December 28, 2020