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Aug 11 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS

DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2021-000420

RECEIVED

Aug 13 2021

SC Court of Appeals

Donna Bell Sellers, a/k/a Donna Bell Peclet,Appellant

vs.

Grover Seaton, III,Respondent

RECORD ON APPEAL

O. W. Bannister (S.C. Bar No. 00506)
BANNISTER, WYATT & STALVEY, LLC
P.O. Box 10007
Greenville, SC 29603
Ph: 864-298-0084; Fax: 864-298-0146
Attorney for Appellant

August 11, 2021

Other Counsel of Record:

Michael B. McCall, Esq.
David Overstreet, Esq.
Earhart Overstreet
P.O. Box 22528
Charleston, SC 29413

email: mike.mccall@earhartoverstreet.com
email: david.overstreet@earhartoverstreet.com

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FINDINGS OF FACT

The Plaintiff brought this action against the Defendant asserting claims for negligent misrepresentation and fraud arising out of alleged legal advice that the Defendant gave to non-party Carroll W. Sellers, the Plaintiff's then-husband, about his divorce from the Plaintiff in 1985.

The parties have stipulated to the following facts:

1. Plaintiff Donna Bell Sellers, now known as Donna Peclet ("Donna") married Carroll W. Sellers, Jr. ("Sellers") on August 18, 1982. The parties were residing in Moncks Corner, Berkeley County, South Carolina when they separated in February, 1985. See Joint Stipulations of Fact, filed November 2, 2020 at Paragraph 1.
2. Sellers, or Sellers' father Carroll Sellers, Sr., contacted Grover Seaton, III ("Seaton") to inquire about obtaining a divorce from Donna. Id. at Paragraph 2.
3. Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic. Id. at Paragraph 3.
4. Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic. Id. at Paragraph 4.
5. Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic. Id. at Paragraph 5.
6. Sellers traveled to the Dominican Republic to obtain a divorce from Donna. Id. at Paragraph 6.
7. Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced. Id. at Paragraph 7.
8. Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic. Id. at Paragraph 8.

9. Seaton never spoke to or communicated with Donna in connection with the divorce. Id. at Paragraph 9.
10. Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce. Id. at Paragraph 10.
11. Upon receiving the divorce decree, Donna believed she was divorced from Sellers. Id. at Paragraph 11.
12. Donna relied on Sellers' statement to her that Seaton was involved in the divorce, but Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton. Id. at Paragraph 12.
13. Donna subsequently went through a marriage ceremony with Joseph Edward Peclet ("Peclet") on March 14, 1987. Id. at Paragraph 13.
14. On October 14, 2014, Donna filed for divorce from Peclet in Greenville County, South Carolina after what she believed was a twenty-seven-year marriage. Id. at Paragraph 14.
15. By Order entered May 27, 2015, Donna's divorce action against Peclet was dismissed on the ground that the Dominican Republic divorce was not recognized in South Carolina for purposes of her re-marriage to Peclet. Donna did not appeal the Order dismissing her divorce action against Peclet. Id. at Paragraph 15.
16. As a result of the dismissal of Donna's divorce action, Donna lost the ability to pursue claims for alimony, equitable division of marital properties and attorney fees, but was able to successfully partition the former marital home that she jointly owned with Peclet. Id. at Paragraph 16.

17. In March 2017, Donna filed an Amended Complaint against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce. Id. at Paragraph 17.³

CONCLUSIONS OF LAW

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRPC. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id.

Moreover, in considering a motion for summary judgment, the nonmoving party receives every benefit of the doubt. See Watters v. Terminix Service, Inc., 376 S.C. 632, 635, 658 S.E.2d 110, 111 (Ct. App. 2008). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).⁴

³ The original Summons and Complaint was filed on February 23, 2017 in Greenville County, South Carolina, Case No. 2017-CP-23-01208. A Consent Order Transferring Venue to Berkeley County was entered on March 30, 2017. The Plaintiff filed her Amended Summons and Complaint in Berkeley County on April 26, 2017. Although the April 26, 2017 Summons and Complaint is styled as an Amended Summons and Complaint, it is identical to the February 23, 2017 Summons and Complaint.

⁴ The parties have agreed the facts of this case are uncontroverted as supported by the parties’ filing of their Joint Stipulation of Facts and submission of cross-motions for summary judgment, thereby conceding the remaining issue for resolution is a question of law for the Court.

In an action for negligent misrepresentation, the Plaintiff must establish the following elements by a preponderance of the evidence:

(1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992) (quoting Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001)).

In an action for fraud, the Plaintiff must establish the following elements by clear and convincing evidence:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or 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.

Id. (quoting Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003)). "The failure to prove any element of fraud or misrepresentation is fatal to the claim." Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007).

I. There exists no genuine issue of material facts and the Plaintiff is unable to establish any actionable misrepresentation made by the Defendant to support a claim for negligent misrepresentation or fraud.

Both causes of action for negligent misrepresentation and fraud require a showing that the Defendant made a false representation to the Plaintiff. The elements of negligent misrepresentation must be proven by a preponderance of the evidence. The elements of fraud must be proven by clear and convincing evidence. The parties have stipulated that the Defendant never made any representations to Plaintiff about the divorce; that Plaintiff did not seek or receive any representations from the Defendant about the divorce; that the Defendant was not Plaintiff's

attorney and she never believed that the Defendant was her attorney; that Plaintiff never sought or received any advice from the Defendant; and that the Defendant never even spoke to or communicated with the Plaintiff about the divorce. See Joint Stipulation of Facts at Paragraphs 9-10, 12 (“Seaton never spoke to or communicated with Donna in connection with the divorce. Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce... Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.”).

Therefore, there exists no genuine issue of material fact negating the fact that Defendant made no representations to the Plaintiff regarding the divorce or its validity. Absent a false representation by the Defendant to the Plaintiff, the Plaintiff cannot sustain an action for either negligent misrepresentation or fraud. Accordingly, summary judgment is appropriate.

Plaintiff acknowledges that the Defendant made no representations to her, but the Plaintiff attempts to satisfy the representation element of negligent misrepresentation or fraud by asserting that the Defendant caused a false representation to be made when the Defendant provided the Plaintiff’s then-husband, Sellers, with divorce paperwork prepared by a law firm in the Dominican Republic. The Plaintiff asserts: “One is as responsible for doing indirectly what one is responsible for doing directly. The only reasonable conclusion from these facts is that the Defendant was getting Sellers a divorce from the Plaintiff. This conclusion is a representation of fact.” Plaintiff’s February 5, 2021 Memorandum in Support at 2.

The Plaintiff cites no authority to support this proposition. Nor can the Court discern any authority that supports the proposition that a representation made by the Defendant to a third-party in an adversarial legal proceeding constitutes a representation to the Plaintiff. The Court finds no precedent to support the Plaintiff’s theory that the act of providing divorce paperwork to Plaintiff’s

then-husband is sufficient to sustain a cause of action against the Defendant for negligent misrepresentation or fraud. Especially in light of the uncontroverted facts, by stipulation, that the Defendant made no representations to the Plaintiff. Because negligent misrepresentation requires, by a preponderance of the evidence, and fraud requires, by clear and convincing evidence, a showing that the Defendant made a false representation to Plaintiff, and because the parties have stipulated that no such representations were ever made, the Defendant is entitled to judgment as a matter of law.

Accordingly, for these reasons, the Defendant's Motion for Summary Judgment is heard and respectfully Granted.

II. There exists no genuine issue of material facts as to the Plaintiff's assertion that the Defendant owed a duty of care to the Plaintiff.

The Plaintiff seeks to hold the Defendant liable for allegedly erroneous legal advice that the Defendant gave Sellers about Sellers' divorce from the Plaintiff.⁵ The parties have stipulated that the Defendant did not represent Plaintiff, she never believed that the Defendant was her attorney, and she never sought or received any advice from the Defendant. See Joint Stipulation of Facts at Paragraphs 9-10, 12.

"Generally, 'an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.'" Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) (quoting Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). "In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of this professional activities." Gaar, 287

⁵ Although the Plaintiff's causes of action sound in the torts of negligent misrepresentation and fraud, any alleged misrepresentations made by the Defendant would be inseparable from his duty in rendering advice in his capacity as Sellers' attorney.

S.C. at 529, 339 S.E.2d at 889. The Court of Appeals in Gaar, 287 S.C. at 529, 339 S.E.2d at 889, found, “[t]he fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other.” (quoting Anderson v. Canaday, 37 Okla. 171, 131 P. 697 (1913)).

South Carolina precedent is clear that the Plaintiff cannot maintain a suit against the Defendant for allegedly giving erroneous legal advice to her then-husband about their divorce. Based on the parties stipulated facts, the Court finds that there are no genuine issues of material fact and that the Defendant cannot be held liable to Plaintiff because he did not represent her and owed no duty to the Plaintiff.⁶ Accordingly, the Defendant is entitled to summary judgment.

Moreover, the Court does not find persuasive the Plaintiff’s position that Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014), permits the Plaintiff to maintain the present action. In Fabian, the South Carolina Supreme Court recognized a very narrow, fact-specific exception to the traditional requirement of privity in a legal malpractice claim against an estate planning attorney. Id. at 491, 765 S.E.2d at 141 (“In sum, today we affirmatively recognize causes of action both in tort and in contract by a third-party beneficiary of an existing will or estate planning document against a lawyer whose drafting error defeats or diminishes the client’s intent.”). It is clear from the context of these specific facts that this exception is limited to a third-party beneficiary claim against an estate planning attorney by an individual named in the estate planning document where the client’s intent was defeated or diminished as a result of a drafting error by the attorney. Id.

Further, Fabian was not an adversarial proceeding where the third-party beneficiary had a duty and opportunity to independently protect their pecuniary interest. Arguably, the Plaintiff does

⁶ Based on the substance of the parties’ Joint Stipulation of Facts, one could infer that even if acting as Sellers’ attorney, the Defendant was at best a conduit for obtaining the divorce paperwork. Joint Stipulation of Facts at Paragraph 8 (“Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic.”).

not meet the definition of a third-party beneficiary as contemplated by Fabian. See Thompson v. Pruitt Corp., 416 S.C. 43, 57, 784 S.E.2d 679, 687 (Ct. App. 2016) (“A third-party beneficiary is a party that the contracting parties intend to directly benefit.”) (internal quotations and citations omitted). Here, the Stipulation of Facts do not support that the Defendant and Sellers intended to benefit the Plaintiff, directly or indirectly.

The present case is factually dissimilar to Fabian, and Fabian cannot be misapprehended to support eliminating the privity required under the facts of this case, where an attorney is being sued by an adverse party for advising his client in a divorce proceeding. The Plaintiff asserts that Fabian “should be a watershed case for discarding the immunity of attorneys under the privity of contract whose negligence damages a third party as in the present case.” Plaintiff’ February 5, 2021 Memorandum in Support at 3. The Court is unpersuaded by the Plaintiff’s contention, is constrained to apply precedent as articulated by the Supreme Court, and declines to expand the narrow exception carved out by Fabian.

Accordingly, the Court finds there exists no genuine issue of material fact as to whether the Defendant owed the Plaintiff a duty, and therefore whether the Defendant is immune from liability to the Plaintiff. See Pye, 369 S.C. at 564, 633 S.E.2d at 509 (“Generally, ‘an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.’”). Accordingly, summary judgment is appropriate. Therefore, for these reasons, the Defendant’s Motion for Summary Judgment is heard and respectfully Granted.

CONCLUSION

For the foregoing reasons, and pursuant to Rule 56, SCRCP, the Defendant's Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March _____, 2021
Charleston, South Carolina
At Chambers



Berkeley Common Pleas

Case Caption: Donna Bell Sellers , plaintiff, et al VS Grover Seaton III , defendant,
et al
Case Number: 2017CP0801074
Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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For the reasons contained in the Court's Order Granting Defendant's Motion for Summary Judgment, filed contemporaneously herewith, the Plaintiff's Motion for Summary Judgment is heard and respectfully Denied.²

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

March _____, 2021
Charleston, South Carolina
At Chambers

² The Defendant's Motion for Summary Judgment is addressed in a separate Order filed contemporaneously with this Order.



Berkeley Common Pleas

Case Caption: Donna Bell Sellers , plaintiff, et al VS Grover Seaton III , defendant,
et al
Case Number: 2017CP0801074
Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2021-03-24 15:20:08 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Donna Bell Sellers, a/k/a Donna Bell Peclet
Plaintiff,

C.A. No.: 2017-CP-23-_____

vs.

SUMMONS

Grover Seaton, Sr.,

Defendant.

To: The Defendant(s) Above Named:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint upon the subscriber at 401 Pettigru Street, Greenville, SC 29603, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, a judgment by default will be rendered against you for the relief demanded in the Complaint.

BANNISTER, WYATT & STALVEY, LLC

s/O. W. Bannister

O. W. Bannister
SC Bar No. 00506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
Attorney for Plaintiff

February 23, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Donna Bell Sellers, a/k/a Donna Bell Peclet

Plaintiff,

vs.

Grover Seaton, Sr.,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-23-_____

COMPLAINT

Plaintiff alleges:

1. Plaintiff and Defendants are residents of the State of South Carolina and have been for sufficient time to invoke the jurisdiction of this Court. Plaintiff is a resident of Greenville County, South Carolina. The Defendant is a resident of Berkeley County, South Carolina.
2. Grover Seaton, Sr. is an attorney licensed to practice law in the State of South Carolina and was at all times pertinent to this action.
3. In 1985 Plaintiff was married to one Carroll W. Sellers, Jr., and they resided together in Moncks Corner, South Carolina. Due to unhappy differences they separated and lived separate and apart.
4. Carrol W. Sellers, Jr. engaged Grover Seaton, Sr., the Defendant, to obtain for him a divorce. Shortly thereafter, upon the advice of Grover Seaton, Sr., the Defendant, Carroll W. Sellers, Jr. traveled to the Dominican Republic and obtained what purported to be a divorce decree.

5. Upon Carroll W. Sellers, Jr.'s return to the United States, State of South Carolina, and after additional consultation with Defendant, Grover Seaton, Sr., Plaintiff received a divorce decree from Grover Seaton, Sr. through Carroll W. Sellers, Jr.

6. Following the actions of Grover Seaton, Sr. in sending her husband to the Dominican Republic for a divorce and obtaining a written Dominican Republic divorce decree, Plaintiff reasonably believed she was divorced from Carroll W. Sellers, Jr.

7. Subsequently the Plaintiff went through a marriage ceremony with one Joseph E. Peclet.

8. Plaintiff and Joseph E. Peclet lived together as man and wife for many years during which time they acquired what would be legally considered marital property had they been married lawfully. Due to unhappy differences the parties separated in 2014. Plaintiff began a legal action for divorce.

9. Joseph E. Peclet raised the issue that the Plaintiff was not his lawful wife because both she and Carroll W. Sellers, Jr. were domiciled in the State of South Carolina when the Dominican Republic divorce was obtained at the direction of the Defendant.

10. By Order of the Honorable Harry L. Phillips, Jr., filed May 27, 2015, Plaintiff's actions for divorce against Joseph E. Peclet were dismissed pursuant to S.C. Code Ann. §20-3-430.

11. Plaintiff suffered an immediate mental breakdown and was hospitalized for a period of time upon learning that she had never been legally married to Joseph Peclet. In addition, her claim for alimony and equitable division of marital properties to include retirement funds, pensions and other assets was totally void.

FOR A FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

12. All prior allegations are realleged.
13. The Defendant made the false representation to the Plaintiff that she was divorced.
14. Upon information and belief the Defendant retained by Carroll W. Sellers, Jr. for obtaining what purported to be a divorce.
15. The Defendant, as a duly licensed attorney, owed a duty of care to see that he communicated truthful information to the Plaintiff concerning her status of being married.
16. The Defendant breached that duty of care by failing to determine that the laws of South Carolina would not recognize a Dominican Republic divorce where both parties were still domiciled in South Carolina at the time of obtaining the Dominican Republic divorce.
17. The Plaintiff justifiably relied on the representations of a licensed attorney who held himself out to be knowledgeable in matters of divorce.
18. That the Plaintiff has suffered pecuniary loss as a result of her reliance on the representation of Defendant that she was in fact divorced.
19. Plaintiff has suffered mental breakdown which occasioned large hospital bills. She had paid numerous attorney fees to pursue a divorce only to find that she was not legally married and that her divorce was void ab initio from Carroll W. Sellers, Jr. and she lost any claim to the properties acquired by her and Joseph Peclet during the many years of cohabitation.
20. As a result of Defendant's misrepresentation and breach of duty of care, Plaintiff believes she is entitled to recover her actual, consequential and punitive damages from Defendant.

FOR A SECOND CAUSE OF ACTION
(Fraud)

21. All prior allegations are realleged.
22. The Defendant represented or caused to be represented to the Plaintiff that she was legally divorced.
23. The representation was false in that South Carolina does not recognize a Dominican Republic divorce obtained while the parties were domiciled in South Carolina at the time of obtaining such divorce.
24. The representation of the Defendant was material to the Plaintiff because she went through what was purported to be a legitimate marriage to one Joseph Pecllet and lived together as man and wife for many years.
25. That the Defendant knew or should have known, or recklessly disregarded the statutes of the State of South Carolina in representing to the Plaintiff that she was legally divorced.
26. That the Defendant intended the representation that the Plaintiff was legally divorced from her husband to be acted upon as no further proceedings were ever instituted.
27. Plaintiff was ignorant of the falsity of the representations by a duly licensed practicing attorney who held himself out to be knowledgeable in matters of divorce.
28. Plaintiff relied upon the truthfulness of the representation by the Defendant as evidenced by her subsequent marriage and cohabitation for many years under the impression she was lawfully married.
29. The Plaintiff had a right to rely on the representations by the Defendant as a duly licensed and practicing attorney who held himself out to be knowledgeable in matters of domestic relations.

30. As a result of Defendant's fraudulent acts, Plaintiff has suffered damages both personal and property wise.

31. Plaintiff is entitled to recover actual, consequential and punitive damages from the Defendant.

WHEREFORE, Plaintiff prays:

- 1) That she have judgment against the Defendant for the First and Second Causes of Action, for actual, consequential and punitive damages; and
- 2) For such other and further relief as the Court may deem just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/O. W. Bannister

O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
Attorney for Plaintiff

February 23, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Donna Bell Sellers, a/k/a Donna Bell Peclet

Plaintiff,

vs.

Grover Seaton, III,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-23-01208

AMENDED SUMMONS

To: The Defendant(s) Above Named:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint upon the subscriber at 401 Pettigru Street, Greenville, SC 29603, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, a judgment by default will be rendered against you for the relief demanded in the Complaint.

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister

SC Bar No. 00506; Fed. ID No. 1184

401 Pettigru Street (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

Attorney for Plaintiff

March 22, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Donna Bell Sellers, a/k/a Donna Bell Peclet

C.A. No.: 2017-CP-23-01208

Plaintiff,

vs.

AMENDED COMPLAINT

Grover Seaton, III,

Defendant.

Plaintiff alleges:

1. Plaintiff and Defendants are residents of the State of South Carolina and have been for sufficient time to invoke the jurisdiction of this Court. Plaintiff is a resident of Greenville County, South Carolina. The Defendant is a resident of Berkeley County, South Carolina.

2. Grover Seaton, III is an attorney licensed to practice law in the State of South Carolina and was at all times pertinent to this action.

3. In 1985 Plaintiff was married to one Carroll W. Sellers, Jr., and they resided together in Moncks Corner, South Carolina. Due to unhappy differences they separated and lived separate and apart.

4. Carrol W. Sellers, Jr. engaged Grover Seaton, III, the Defendant, to obtain for him a divorce. Shortly thereafter, upon the advice of Grover Seaton, III, the Defendant, Carroll W. Sellers, Jr. traveled to the Dominican Republic and obtained what purported to be a divorce decree.

5. Upon Carroll W. Sellers, Jr.'s return to the United States, State of South Carolina, and after additional consultation with Defendant, Grover Seaton, III, Plaintiff received a divorce decree from Grover Seaton, III through Carroll W. Sellers, Jr.

6. Following the actions of Grover Seaton, III in sending her husband to the Dominican Republic for a divorce and obtaining a written Dominican Republic divorce decree, Plaintiff reasonably believed she was divorced from Carroll W. Sellers, Jr.

7. Subsequently the Plaintiff went through a marriage ceremony with one Joseph E. Peclet.

8. Plaintiff and Joseph E. Peclet lived together as man and wife for many years during which time they acquired what would be legally considered marital property had they been married lawfully. Due to unhappy differences the parties separated in 2014. Plaintiff began a legal action for divorce.

9. Joseph E. Peclet raised the issue that the Plaintiff was not his lawful wife because both she and Carroll W. Sellers, Jr. were domiciled in the State of South Carolina when the Dominican Republic divorce was obtained at the direction of the Defendant.

10. By Order of the Honorable Harry L. Phillips, Jr., filed May 27, 2015, Plaintiff's actions for divorce against Joseph E. Peclet were dismissed pursuant to S.C. Code Ann. §20-3-430.

11. Plaintiff suffered an immediate mental breakdown and was hospitalized for a period of time upon learning that she had never been legally married to Joseph Peclet. In addition, her claim for alimony and equitable division of marital properties to include retirement funds, pensions and other assets was totally void.

FOR A FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

12. All prior allegations are realleged.
13. The Defendant made the false representation to the Plaintiff that she was divorced.
14. Upon information and belief the Defendant retained by Carroll W. Sellers, Jr. for obtaining what purported to be a divorce.
15. The Defendant, as a duly licensed attorney, owed a duty of care to see that he communicated truthful information to the Plaintiff concerning her status of being married.
16. The Defendant breached that duty of care by failing to determine that the laws of South Carolina would not recognize a Dominican Republic divorce where both parties were still domiciled in South Carolina at the time of obtaining the Dominican Republic divorce.
17. The Plaintiff justifiably relied on the representations of a licensed attorney who held himself out to be knowledgeable in matters of divorce.
18. That the Plaintiff has suffered pecuniary loss as a result of her reliance on the representation of Defendant that she was in fact divorced.
19. Plaintiff has suffered mental breakdown which occasioned large hospital bills. She had paid numerous attorney fees to pursue a divorce only to find that she was not legally married and that her divorce was void ab initio from Carroll W. Sellers, Jr. and she lost any claim to the properties acquired by her and Joseph Pelet during the many years of cohabitation.
20. As a result of Defendant's misrepresentation and breach of duty of care, Plaintiff believes she is entitled to recover her actual, consequential and punitive damages from Defendant.

FOR A SECOND CAUSE OF ACTION
(Fraud)

21. All prior allegations are realleged.
22. The Defendant represented or caused to be represented to the Plaintiff that she was legally divorced.
23. The representation was false in that South Carolina does not recognize a Dominican Republic divorce obtained while the parties were domiciled in South Carolina at the time of obtaining such divorce.
24. The representation of the Defendant was material to the Plaintiff because she went through what was purported to be a legitimate marriage to one Joseph Peclat and lived together as man and wife for many years.
25. That the Defendant knew or should have known, or recklessly disregarded the statutes of the State of South Carolina in representing to the Plaintiff that she was legally divorced.
26. That the Defendant intended the representation that the Plaintiff was legally divorced from her husband to be acted upon as no further proceedings were ever instituted.
27. Plaintiff was ignorant of the falsity of the representations by a duly licensed practicing attorney who held himself out to be knowledgeable in matters of divorce.
28. Plaintiff relied upon the truthfulness of the representation by the Defendant as evidenced by her subsequent marriage and cohabitation for many years under the impression she was lawfully married.
29. The Plaintiff had a right to rely on the representations by the Defendant as a duly licensed and practicing attorney who held himself out to be knowledgeable in matters of domestic relations.

30. As a result of Defendant's fraudulent acts, Plaintiff has suffered damages both personal and property wise.

31. Plaintiff is entitled to recover actual, consequential and punitive damages from the Defendant.

WHEREFORE, Plaintiff prays:

- 1) That she have judgment against the Defendant for the First and Second Causes of Action, for actual, consequential and punitive damages; and
- 2) For such other and further relief as the Court may deem just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/O. W. Bannister

O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
Attorney for Plaintiff

March 22, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Donna Bell Sellers, a/k/a Donna Bell Peclet	)	CASE NO.: 2017-CP-08-
)	
Plaintiff,)	
)	
vs.	)	ANSWER TO AMENDED COMPLAINT
	)	(Jury Trial Demanded)
Grover Seaton, III,)	
)	
Defendant.)	

Defendant hereby responds to Plaintiff's Complaint as follows:

1. Defendant denies each and every allegation not specifically admitted herein.
2. Defendant admits only so much of the allegations contained in Paragraph 1 of Plaintiff's Complaint as indicate that Defendant is a resident of Berkeley County, South Carolina.
3. Defendant admits only so much of the allegations contained in Paragraph 2 of Plaintiff's Complaint as indicate that Defendant is an attorney licensed to practice law in the State of South Carolina and has been at all pertinent times to this action.
4. Defendant is without sufficient knowledge and information to form an opinion as to the allegations contained in Paragraph 3 of Plaintiff's Complaint.
5. Defendant admits only so much of the allegations contained in Paragraph 4 of Plaintiff's Complaint as indicate that, upon information and belief, Carroll W. Sellers, Jr. engaged Dominican Republic attorney Dr. Juan Esteban Olivero to obtain a divorce from Donna Bell Sellers.

6. Defendant is without sufficient knowledge and information to form an opinion as to the allegations contained in Paragraphs 5, 6, 7, 8, 9, 10 and 11 of Plaintiff's Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

7. In response to Paragraph 12 of Plaintiff's Complaint, Defendant repeats and re-alleges every preceding paragraph of this Answer as if restated herein verbatim.

8. Defendant denies the allegations contained in Paragraphs 13 and 14 of Plaintiff's Complaint.

9. Defendant is not required to respond to the statements or conclusions of law contained in Paragraph 15 Plaintiff's Complaint.

10. Defendant denies the allegations contained in Paragraphs 16, 17, 18, 19 and 20 of Plaintiff's Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Fraud)

11. In response to Paragraph 21 of Plaintiff's Complaint, Defendant repeats and re-alleges every preceding paragraph of this Answer as if restated herein verbatim.

12. Defendant denies the allegations contained in Paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff's Complaint.

FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

13. Venue is improper in Greenville County, South Carolina and Plaintiff's Complaint should dismissed pursuant to Rule 12(b)(3) or venue transferred to Berkeley County, South Carolina.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

14. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

15. Plaintiff's Complaint fails to plead fraud with particularity and should be dismissed pursuant to Rules 9(b) and 12(b)(6), SCRCP.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

16. Plaintiff lacks standing to pursue one or more claims against Defendant.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

17. Plaintiff's claims are or may be barred by the doctrine of res judicata or collateral estoppel.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

18. Plaintiff's claims are or may be barred by applicable statutes of limitations.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

19. Plaintiff's claims are or may be barred by the doctrine of laches.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

20. Plaintiff's claims are or may be barred by the doctrines of judicial and/or equitable estoppel.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

21. Plaintiff's Complaint should be dismissed for failure to join one or more necessary parties.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

22. Plaintiff's claims are or may be barred by the doctrine of consent and/or ratification.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

23. At all relevant times, Defendant exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

24. No act or omission of Defendant was the cause of any damages to Plaintiff.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

25. Defendant owes no duties to and is immune from liability to Plaintiff.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

26. Plaintiff's claims are or may be barred by the doctrines of release and/or accord and satisfaction.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

27. Plaintiff's claims are or may be barred by the doctrine of waiver.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

28. Plaintiff's claims against Defendant are barred to the extent relief is obtainable through other avenues and/or to the extent Plaintiff failed to pursue, waived or failed to exhaust available remedies.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

29. Plaintiff's claims are or may be barred by the doctrine of comity under international law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

30. Plaintiff has or may have failed to mitigate her damages as required by law, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

31. The damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of Plaintiff's own negligence and/or the intervening and superseding negligence or other wrongful conduct of others, and Plaintiff's recovery, if any, should be barred or reduced as provided by law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

32. Defendant is or may be entitled to such offsets that may be revealed by information obtained during the course of investigation and discovery as consistent with applicable law.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

33. Plaintiff's Complaint fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of attorney's fees.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

34. Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of punitive damages.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

35. Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendant under the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

36. Defendant reserves any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

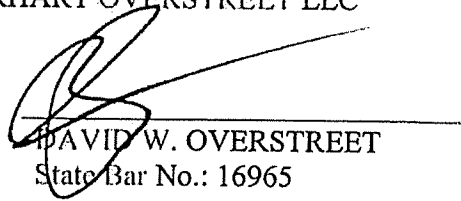
WHEREFORE, having fully answered the allegations of Plaintiff's Complaint, Defendant prays that the Complaint be dismissed with prejudice, for all costs of the action to be cast upon Plaintiff, and for such other and further relief as this Court deems just and proper.

This 10th day of April, 2017.

Respectfully submitted,

EARHART OVERSTREET LLC

By:



DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. McCALL
State Bar No.: 73028

Attorneys for Defendant

P.O. Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF BERKLEY	)	CASE NO.: 2017-CP-08-01074
)	
Donna Bell Sellers, a/k/a Donna Bell Peclet)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT'S NOTICE OF MOTION
	)	AND MOTION FOR SUMMARY
Grover Seaton, III,	)	JUDGMENT
)	
Defendant.)	
)	

PLEASE TAKE NOTICE that Defendant, by and through his undersigned counsel, moves for an Order granting summary judgment in his favor as to all claims asserted against him. This Motion is brought pursuant to Rule 56(c), SCRPC. As shown below and in the parties' Joint Stipulation of Facts attached as Exhibit A, there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law based on the following:

- (1) Plaintiff cannot identify a single representation that would support a cause of action for negligent misrepresentation or fraud; and
- (2) Plaintiff never had an attorney-client relationship with Defendant and cannot hold Defendant liable for allegedly giving bad legal advice to her then-husband about their divorce in 1985.

Plaintiff Donna Bell Sellers brought this action against Grover Seaton alleging claims for fraud and negligent misrepresentation arising out of purported legal advice that Mr. Seaton gave 35 years ago to Will Sellers, Plaintiff's then-husband, about his divorce from Plaintiff. In 1985, Will Sellers sought a divorce from Plaintiff. Mr. Seaton provided him with paperwork prepared by a law firm in the Dominican Republic about mutual consent divorces. Will Sellers traveled to the Dominican Republic and obtained a divorce from Plaintiff. Plaintiff subsequently remarried. When Plaintiff filed for divorce from her subsequent husband in 2014, he successfully moved to dismiss

the divorce action on the ground that they were never legally married because her 1985 divorce from Will Sellers was invalid. Plaintiff alleges in this action that Grover Seaton negligently or fraudulently misrepresented to her in 1985 that she was divorced from Will Sellers.

The parties have stipulated to the following facts: Mr. Seaton never made any representations to Plaintiff about the divorce; Plaintiff did not seek or receive any representations from Mr. Seaton about the divorce; Mr. Seaton was not Plaintiff's attorney and Plaintiff never believed that Mr. Seaton was her attorney; Plaintiff never sought or received any advice from Mr. Seaton; and Mr. Seaton never spoke to or communicated with Plaintiff about the divorce.

(1) Plaintiff cannot identify a single representation that would support a cause of action for negligent misrepresentation or fraud.

Plaintiff's causes of action against Mr. Seaton are for negligent misrepresentation and fraud. At the most fundamental level, both causes of actions are premised on the defendant making a false representation to the plaintiff. AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992). It is undisputed and stipulated that Mr. Seaton made no representations to Plaintiff and Plaintiff did not seek or receive any representations from Mr. Seaton. For this reason alone, Mr. Seaton is entitled to judgment as a matter of law.¹

The alleged false representation that forms the basis of Plaintiff's claims is that she was divorced from Will Sellers. The parties have stipulated that Mr. Seaton did not make that representation or any representation to her, but as an additional ground for summary judgment, such a representation would amount to a mistake of law, which is not actionable in a claim for fraud or negligent misrepresentation. Barber v. Barber, 291 S.C. 399, 353 S.E.2d 882, 883 (Ct. App. 1987) (attorney's misrepresentation to opposing party in divorce action that her prior divorce was

¹ Without a representation, it is factually impossible under the stipulated facts of this case to satisfy the remaining elements of negligent misrepresentation or fraud.

invalid, when in fact it was valid, was not actionable because “fraud cannot be predicated on misrepresentations as to matters of law, much less on mere mistake of law.”); AMA Management Corp., 420 S.E.2d 868 at 874 (representations as to matters of law not actionable as negligent misrepresentation).

- (2) **Plaintiff never had an attorney-client relationship with Defendant and cannot hold Defendant liable for allegedly giving bad legal advice to her then-husband about their divorce in 1985.**

Although Plaintiff’s claims are couched as negligent misrepresentation and fraud, Plaintiff is seeking to hold Mr. Seaton liable for alleged bad legal advice that Mr. Seaton gave his client, not Plaintiff. The parties have stipulated that Mr. Seaton did not represent Plaintiff, she never believed that Mr. Seaton was her attorney, and she never sought or received any advice from Mr. Seaton. Regardless of the theory or cause of action, an attorney cannot be liable to a non-client third-party for giving bad legal advice to his client. Our courts have long recognized that an attorney acting in the course and scope of representing a client owes no duties to non-clients and is immune from liability to third parties absent some independent duty owed to the third party. Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995); Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986).

Fundamental to this rule of law is that a non-client cannot sue an attorney for advice, good or bad, that the attorney gave his client. Gaar, 339 S.E.2d at 889 (“The fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other.”). This is precisely what Plaintiff has attempted to do in this lawsuit. Plaintiff is suing Mr. Seaton for allegedly giving bad legal advice to her then-husband

about their divorce. Mr. Seaton did not represent her. He owed no duties to her. He cannot be held liable to her.

Based on the undisputed and stipulated material facts, Defendant Grover Seaton is entitled to judgment as a matter of law for each of the above reasons.

This 1st day of November, 2020.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Michael B. McCall
DAVID W. OVERSTREET
State Bar No.: 16965
David@earhartoverstreet.com

MICHAEL B. McCALL
State Bar No.: 73028
Mike@earhartoverstreet.com

Attorneys for Defendant Grover Seaton

P.O. Box 22528
Charleston, SC 29413
843-972-9400

Exhibit 1

Joint Stipulation of Facts

February 24, 2020

The parties have agreed to stipulate to the following facts solely for the purpose of pre-trial cross motions for summary judgment in Case No. 2017-CP-08-1074. This stipulation is not admissible in the trial of Case No. 2017-CP-08-1074 or for any purpose other than pre-trial cross motions for summary judgment.

1) Donna Bell Sellers, now known as Donna Peclet ("Donna") married Carroll W. Sellers, Jr. ("Sellers") on August 18, 1982. The parties were residing in Moncks Corner, Berkeley County, South Carolina when they separated in February, 1985.

2) Sellers, or Sellers' father Carroll Sellers, Sr., contacted Grover Seaton, III ("Seaton") to inquire about obtaining a divorce from Donna.

3) Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic.

4) Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic.

5) Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic.


6) Sellers traveled to the Dominican Republic to obtain a divorce from Donna.

7) Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced.

8) Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic. *CA*

Joint Stipulation of Facts

February 24, 2020

- 9) Seaton never spoke to or communicated with Donna in connection with the divorce.
- 10) Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce.
- 11) Upon receiving the divorce decree, Donna believed she was divorced from Sellers.
- 12) Donna relied on Sellers' statement to her that Seaton was involved in the divorce, but Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.
- 13) Donna subsequently went through a marriage ceremony with Joseph Edward Peclet ("Peclet") on March 14, 1987.
- 14) On October 14, 2014, Donna filed for divorce from Peclet in Greenville County, South Carolina after what she believed was a twenty-seven-year marriage.
- 15) By Order entered May 27, 2015, Donna's divorce action against Peclet was dismissed on the ground that the Dominican Republic divorce was not recognized in South Carolina for purposes of her re-marriage to Peclet. Donna did not appeal the Order dismissing her divorce action against Peclet.
- 16) As a result of the dismissal of Donna's divorce action, Donna lost the ability to pursue claims for alimony, equitable division of marital properties and attorney fees, but 

Joint Stipulation of Facts

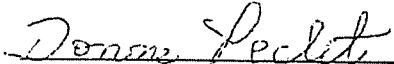
February 24, 2020

was able to successfully partition the former marital home that she jointly owned with Pecllet.

17) In March 2017, Donna filed an Amended Complaint against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce.

I SO STIPULATE

I SO STIPULATE



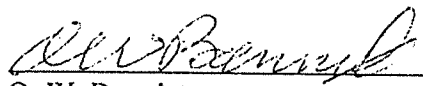
Donna Bell Sellers, n/k/a
Donna Pecllet, Plaintiff



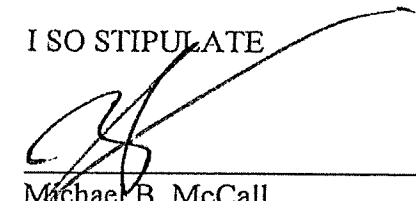
Grover Seaton, III, Defendant

I SO STIPULATE

I SO STIPULATE



O. W. Bannister
Attorney for Plaintiff



Michael B. McCall
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKLEY	)	CASE NO.: 2017-CP-08-01074
)	
Donna Bell Sellers, a/k/a Donna Bell Peclet)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT’S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR SUMMARY
Grover Seaton, III,	)	JUDGMENT
)	
Defendant.)	
)	

Defendant Grover Seaton respectfully submits this memorandum in support of his motion for summary judgment.

Plaintiff has asserted claims against Defendant for negligent misrepresentation and fraud arising out of Plaintiff’s 1985 divorce from her then-husband. The parties have stipulated to the facts and circumstances giving rise to Plaintiff’s claims. These stipulated facts show that Defendant did not make any representations to Plaintiff that would support a claim for negligent misrepresentation or fraud, and that Defendant was not Plaintiff’s attorney and cannot be held liable for allegedly giving bad legal advice to her then-husband about their divorce 35 years ago.

Stipulated Facts

The parties have stipulated to the following facts set forth in the Joint Stipulation of Facts, attached as Exhibit A to Defendants’ motion:

- Plaintiff Donna Bell Sellers, now known as Donna Peclet (“Donna”) married Carroll W. Sellers, Jr. (“Sellers”) in 1985. They separated in 1985 and were residing in Moncks Corner at the time. ¶ 1.
- Sellers, or Sellers’ father, contacted Defendant Grover Seaton, III (“Seaton”) to inquire about obtaining a divorce from Donna. ¶ 2.
- Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic. ¶ 3.

- Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic. ¶ 4.
- Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic. ¶ 5.
- Sellers traveled to the Dominican Republic to obtain a divorce from Donna. ¶ 6.
- Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced. ¶ 7.
- Upon receiving the divorce decree, Donna believed she was divorced from Sellers. ¶ 11.
- Donna subsequently married Joseph Edward Peclet (“Peclet”) in 1987. ¶ 13.
- Donna filed for divorce from Peclet in 2014. ¶ 14.
- In 2015, Donna’s divorce action was dismissed on the ground that the Dominican Republic divorce was not recognized in South Carolina for purposes of her re-marriage to Peclet. ¶ 15.
- Donna filed this action against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce. ¶ 17.

As it relates to the claims of negligent misrepresentation and fraud against Mr. Seaton, the parties have stipulated as follows:

- Seaton never spoke to or communicated with Donna in connection with the divorce. ¶ 9.
- Seaton never made any representations to Donna regarding the divorce. ¶ 10.
- Seaton did not provide any legal representation to Donna. ¶ 10.
- Donna never believed that Seaton was her attorney. ¶ 12.
- Donna never sought or received any advice or representation from Seaton. ¶ 12.
- Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic. ¶ 8.

Argument

Plaintiff’s claims against Mr. Seaton fail in two key respects: (1) Mr. Seaton never made any representations to her that could form the basis of a claim for fraud or negligent misrepresentation; and (2) Mr. Seaton owed no duties to Plaintiff as the spouse of a client seeking

a divorce, and he cannot be held liable to her or any other non-client third party while acting in the course and scope of representing his client.

1. Plaintiff is unable to show any actionable misrepresentation necessary to support a claim for fraud or negligent misrepresentation.

In a negligent misrepresentation action, a plaintiff must prove the following:

(1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992) (quoting Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001)). In a fraud action, a plaintiff must prove the following by clear and convincing evidence:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or 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.

Id. (quoting Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444-45 (Ct. App. 2003)). "The key difference between fraud and negligent misrepresentation is that 'fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement.'" Id. (quoting Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001)).

A. The parties have stipulated that no representations were made.

Both causes of action alleged in this lawsuit necessarily require a showing that the defendant made a false representation to the plaintiff. Plaintiff's claims against Mr. Seaton fail to clear this first hurdle. The parties have stipulated that Mr. Seaton never made any representations

to Donna whatsoever. Stipulation of Facts, ¶ 9 (“Seaton never spoke to or communicated with Donna in connection with the divorce”); ¶ 10 (“Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce.”); ¶12 (“... Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.”).

“The failure to prove any element of fraud or misrepresentation is fatal to the claim.” Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). In this case, Plaintiff’s claims fail on the most fundamental level: Plaintiff cannot point to a single statement or representation that would support a cause of action for fraud or negligent misrepresentation. Based on these stipulated facts, Defendant is entitled to judgment as a matter of law.

B. Misrepresentations as to matters of law are not actionable.

The alleged false representation that forms the basis of Plaintiff’s claims is that she was divorced from Will Sellers. The parties have stipulated that Mr. Seaton did not make that or any representation to her, but as an additional ground for summary judgment, such a representation would amount to a mistake of law, which is not actionable in a claim for fraud or negligent misrepresentation. Barber v. Barber, 291 S.C. 399, 353 S.E.2d 882, 883 (Ct. App. 1987).

The Barber case has some interesting parallels to the present case. In Barber, the husband obtained an annulment by default after his wife failed to answer. Id. at 833. Wife claimed that she failed to answer because her husband’s attorney fraudulently misrepresented to her that her prior divorce in Mexico was invalid. Id. The family court set aside the annulment, and husband appealed. Id. The Court of Appeals reversed, finding that opposing counsel’s alleged misrepresentation about the validity of her prior foreign divorce was insufficient to prove fraud because “fraud cannot be predicated on misrepresentations as to matters of law, much less on mere mistake of law.” Id.

(citing First National Bank of Greenville v. United States Fidelity & Guaranty Co., 207 S.C. 15, 35 S.E.2d 47 (1945). See also AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992) (noting in its discussion of negligent misrepresentation that “[t]here is no liability for . . . representations as to matters of law[.]”) (citing First National Bank of Greenville, 35 S.E.2d 47).

The matter of law or “mistake of law” at issue in Barber could not be more fitting for the present case. Plaintiff’s claims against Mr. Seaton have a more fundamental flaw in that Mr. Seaton never made any representation to Plaintiff in the first place, but even if he had, Barber makes clear that it would not amount to an actionable misrepresentation.

While Plaintiff’s claims fail for these reasons alone, it is equally problematic that Plaintiff has asserted these claims against her then-husband’s attorney for advice he provided to his client in their divorce.

2. Plaintiff never had an attorney-client relationship with Defendant and cannot hold Defendant liable for allegedly giving bad legal advice to her then-husband about their divorce in 1985.

The parties have stipulated that Mr. Seaton did not represent Plaintiff, she never believed that Mr. Seaton was her attorney, and she never sought or received any advice from Mr. Seaton. Stipulated Facts, ¶ 8 (“Sellers told Donna that Seaton was his attorney . . .”); ¶ 12 (“ . . . Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton”); ¶10 (“Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce”).

Although Plaintiff’s claims are couched as negligent misrepresentation and fraud, Plaintiff is seeking to hold Mr. Seaton liable for allegedly giving bad legal advice to his client, Plaintiff’s then-husband. Our courts have long recognized that an attorney acting in the course and scope of

representing a client owes no duties to non-clients and is immune from liability to third parties absent some independent duty owed to the third party. Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995); Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986).

Fundamental to this rule of law is that a non-client cannot sue an attorney for advice, good or bad, that the attorney gave his client. Gaar, 339 S.E.2d at 889 (“The fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other.”). This is precisely what Plaintiff has attempted to do in this lawsuit. Plaintiff is suing Mr. Seaton for allegedly giving bad legal advice to her then-husband about their divorce. Mr. Seaton did not represent her. He owed no duties to her. He cannot be held liable to her.

CONCLUSION

Based on the stipulated facts and applicable law, Defendant Grover Seaton respectfully submits that summary judgment should be granted in his favor.

[SIGNATURE PAGE FOLLOWS]

This 7th day of December, 2020.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Michael B. McCall
DAVID W. OVERSTREET
State Bar No.: 16965
David@earhartoverstreet.com

MICHAEL B. McCALL
State Bar No.: 73028
Mike@earhartoverstreet.com

Attorneys for Defendant Grover Seaton

P.O. Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Donna Bell Sellers, a/k/a Donna Bell Peclet

Plaintiff,

vs.

Grover Seaton, III,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-08-01074

**MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

FACTUAL BACKGROUND

In 1985 the Plaintiff was married to Carroll W. Sellers, Jr. and the couple lived in Moncks Corner. Due to unhappy differences Carroll W. Sellers, Jr. went to attorney Grover Seaton, III for a divorce. Seaton advised Carroll W. Sellers, Jr. to go to the Dominican Republic for a fast divorce which Sellers did.

Upon return Carroll W. Sellers, Jr. presented Plaintiff with a Dominican divorce procured on the advice and with the assistance of Attorney Grover Seaton, III.

Believing she was divorced, Plaintiff remarried. After years of believing she was divorced and lawfully remarried, Plaintiff began divorce proceedings only to have the family court in Greenville County determine that she was never legally divorced from Carroll W. Sellers, Jr. pursuant to S.C. Code Ann. §20-3-430 which holds that South Carolina will not recognize a foreign divorce if both spouses are domiciled in South Carolina.

Plaintiff charged attorney Grover Seaton, III with negligent misrepresentation and what amounts to constructive fraud for advising Carroll W. Sellers, Jr. that he could get the parties a valid divorce by going to the Dominican Republic.

Summary judgment should be refused for the following reasons:

1. Currently the Plaintiff has a motion to compel discovery responses before the Court. In Interrogatories from the Plaintiff the Defendant refused to answer interrogatories that asked if he or his firm obtained or assisted Carroll W. Sellers, Jr., or Carroll W. Sellers, Sr. is procuring documents purporting to be a divorce, if so, what documents and did he assist others in obtaining what purported to be a Dominican divorce.

Without the answer to these questions, the discovery is incomplete. As was said in Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, “Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.”

The facts of this controversy present a novel issue in South Carolina. May one effected by the erroneous advice of an attorney given to his client maintain a law suit against that attorney? Novel issues should be decided on a full record to include a full recall of what acts the attorney performed or what advice he or she gave. Until the Defendant is required to answer as to his acts, the full record cannot be developed.

The tort of false representation required (1) a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the false representation [Proof that the statement was made in the course of defendant’s profession is sufficient to show he had a pecuniary interest in making it, although he receives no consideration for it. AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992)]; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation as (6) the plaintiff suffered a pecuniary loss as the proximate result of her reliance upon the representation.

In the life most favorable to Plaintiff, her husband engaged the Defendant to represent him in divorcing the Plaintiff. No property division or alimony was at issue. By its very nature divorce involves ending the legal status of two spouses and their lawful obligation to each other. In many ways both spouses to a divorce are beneficiaries of the proceedings. One of the benefits is that they are free to remarry.

The Defendant was the lawyer for the Plaintiff's spouse and his family. (See Affidavit of Delores Dupre, sister of the Plaintiff's ex-husband.¹)

The Defendant advised or arranged for the husband to go to the Dominican Republic and obtain a divorce not recognized in South Carolina. The Plaintiff received a copy of the Dominican divorce from her husband with knowledge that the Defendant had helped orchestrate the purported divorce. In fact, the Dominican divorce was no divorce at all because South Carolina will not recognize a foreign divorce obtained by spouses living in South Carolina at the time of the divorce. As the family lawyer and the lawyer for the husband, the Defendant was acting within his profession to give legal advice on divorces.

The Defendant argues he owed no duty of care to the Plaintiff because he did not represent her. This is an astonishing claim for a lawyer to make!

If allowed, a lawyer can give advice contrary to law which he can foresee will be conveyed to another party who will act on it to her detriment and the lawyer will be immune from the consequences. If this is the law then one is reminded of Charles Dickens' character, Mr. Bumble, who famously said, "Does the law say that? Then the law is an ass!" (Dickens, Charles, *Oliver Twist*, Dodd, Mead & Co., 1941).

¹ Plaintiff obtained a divorce after this action began.

In the context of the duty a lawyer owes to third party beneficiaries, the Supreme Court has recently considered the liability the drafter of wills or trusts who disinherit an intended beneficiary by error.


In Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014), in a matter of a first impression, the Supreme Court held that an erroneously disinherited beneficiary may recover from the attorney who made the drafting error under legal malpractice or breach of contract theories. Prior to Fabian, suits against lawyers for what amounted to malpractice required privity regardless of how the tort was characterized.

In Fabian, at pp. 484, 485, the Supreme Court recognized the test for allowing a plaintiff not in privity of contract with a lawyer involves a matter of balancing of various factors. These factors include (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to her, (3) the degree of certainty that the plaintiff suffered injury, and (4) the closeness of the connection between the defendant's conduct and the injury, and the policy of preventing future harm.

In light of the alleged facts in this factual situation, the Plaintiff's case meets all the criteria of Fabian even though it is not a will case.

For these reasons, summary judgment should be denied.

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister (SC Bar No. 506)
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
owbannister@bannisterwyatt.com
Attorney for Defendant

January 2, 2018

STATE OF SOUTH CAROLINA

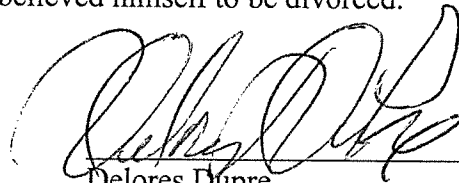
COUNTY OF BERKELEY

**AFFIDAVIT OF
DELORES DUPRE**

PERSONALLY APPEARED before me, Delores Dupre the undersigned, who being duly sworn says:

1. My name is Delores Dupre and I am the sister of Carol W. Sellers, Jr., and the daughter of Carol W. Sellers, Sr., who is deceased.
2. My brother was married to Donna Sellers and at some point many years ago they separated with the intention of being divorced.
3. My father told me that he had gone to Grover Seaton, along with my brother, and had paid for Grover Seaton to arrange for my brother to go to the Dominican Republic and get an instant divorce.
4. I am aware that my brother went to the Dominican Republic and came back with some type of divorce decree.
5. I am aware that my brother Carol W. Sellers, Jr. did not have the money to go to the Dominican Republic and get a divorce on his own. While he never remarried, it is my understanding that he believed himself to be divorced.

Further, Deponent saith not.



 Delores Dupre

SWORN TO before me this
7th day of September, 2017

NOTARY PUBLIC for South Carolina

Printed Name of Notary:

JOHN KIRKPATRICK

My Commission Expires: 08-21-2023



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
Donna Bell Sellers, a/k/a Donna Bell Peclet

Plaintiff,

vs.

Grover Seaton, III,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-08-01074

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

**TO: GROVER SEATON, III, DEFENDANT, AND DAVID W. OVERSTREET, ESQ.,
HIS ATTORNEY:**

YOU WILL PLEASE take notice that the Plaintiff, by and through her undersigned counsel, moves for an Order granting summary judgment in her favor as to all claims asserted against the Defendant. This motion is brought pursuant to Rule 56(c), S.C.R.C.P. As shown below and in the parties' Joint Stipulation of Facts attached as Exhibit A, there is no genuine issue as to any material fact and Plaintiff is entitled to judgment or liability as a matter of law.

Plaintiff will also rely on a Memorandum in Support of the Motion for Summary Judgment to be filed herewith.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister
O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
Attorney for Plaintiff

December 8, 2020

Joint Stipulation of Facts


February 24, 2020

The parties have agreed to stipulate to the following facts solely for the purpose of pre-trial cross motions for summary judgment in Case No. 2017-CP-08-1074. This stipulation is not admissible in the trial of Case No. 2017-CP-08-1074 or for any purpose other than pre-trial cross motions for summary judgment.

- 1) Donna Bell Sellers, now known as Donna Pecelet ("Donna") married Carroll W. Sellers, Jr. ("Sellers") on August 18, 1982. The parties were residing in Moncks Corner, Berkeley County, South Carolina when they separated in February, 1985.
- 2) Sellers, or Sellers' father Carroll Sellers, Sr., contacted Grover Seaton, III ("Seaton") to inquire about obtaining a divorce from Donna.
- 3) Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic.
- 4) Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic.
- 5) Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic.
- 6) Sellers traveled to the Dominican Republic to obtain a divorce from Donna.
- 7) Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced.
- 8) Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic *cm*

Joint Stipulation of Facts

February 24, 2020

- 9) Seaton never spoke to or communicated with Donna in connection with the divorce.
- 10) Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce.
- 11) Upon receiving the divorce decree, Donna believed she was divorced from Sellers.
- 12) Donna relied on Sellers' statement to her that Seaton was involved in the divorce, but Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.
- 13) Donna subsequently went through a marriage ceremony with Joseph Edward Peclet ("Peclet") on March 14, 1987.
- 14) On October 14, 2014, Donna filed for divorce from Peclet in Greenville County, South Carolina after what she believed was a twenty-seven-year marriage.
- 15) By Order entered May 27, 2015, Donna's divorce action against Peclet was dismissed on the ground that the Dominican Republic divorce was not recognized in South Carolina for purposes of her re-marriage to Peclet. Donna did not appeal the Order dismissing her divorce action against Peclet.
- 16) As a result of the dismissal of Donna's divorce action, Donna lost the ability to pursue claims for alimony, equitable division of marital properties and attorney fees, but 

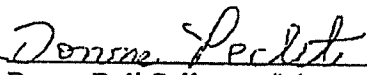
Joint Stipulation of Facts

February 24, 2020

was able to successfully partition the former marital home that she jointly owned with Peclet.

17) In March 2017, Donna filed an Amended Complaint against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce.

I SO STIPULATE




Donna Bell Sellers, n/k/a
Donna Peclet, Plaintiff

I SO STIPULATE



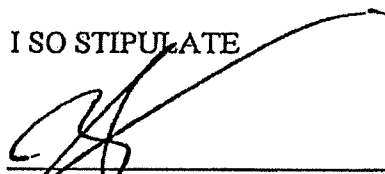
Grover Seaton, III, Defendant

I SO STIPULATE



O. W. Bannister
Attorney for Plaintiff

I SO STIPULATE



Michael B. McCall
Attorney for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Donna Bell Sellers, a/k/a Donna Bell Pecket

Plaintiff,

vs.

Grover Seaton, III,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-08-01074

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

STANDARD OF REVIEW

The current standard of review for grants of summary judgment was stated in The Kitchen Planners, LLC v. Samuel Friedman and Jane Bryer Friedman and Branch Banking and Trust, Appellate Case No. 2017-001522, Advance Sheet No. 47, Daniel E. Shearhouse,

“When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 36, 637 S.E.2d 560, 561-62 (2006). “Summary judgment is appropriate when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 354-55, 650 S.E.2d 68, 70 (2007) (quoting Rule 56(c), SCRCP). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (Ct. App. 2018) (quoting *M&M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008)). “When evidence is susceptible to more than one reasonable inference, the issue should be

submitted to the jury.” *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009).

This gist of the Plaintiff’s case is that the Defendant, an attorney, caused a divorce proceeding which was not legally recognized in this state. The Plaintiff relied on the void divorce to her damage. She sued the Defendant for negligent representation and fraud.

The Defendant relies on the *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986) in which the court held, “an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.” He also points out there was no privity of contract with Plaintiff.

The very definition of a tort is a civil wrong caused by a breach of duty the law imposes on persons who stand in a particular relation to one another. Negligence representation is a common law tort.

The elements of negligent representation are:

If the damage alleged is a pecuniary loss, the plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).

At the outset the court should recognize that marriage is a unique relationship governed by laws of this state and in some instances by the United States Constitution. Divorce severs that legal relationship and of necessity affects both spouses.

While it is correct that Defendant never made a representation directly or in person to the Plaintiff, the Defendant caused representations to be made to the Plaintiff which turned out to be false. As Stipulation of Fact No. 3 demonstrates, the Defendant procured Dominican Republic divorce paperwork and had Plaintiff's then husband deliver that paperwork to her for her signature. One is responsible for doing indirectly what one is responsible for doing directly.

The second element of negligent misrepresentation is that the defendant had a pecuniary interest in making the statement. Pecuniary interest is not limited solely to monetary gain. "However, if defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful enquiry, the law places on him a duty of care with respect to representations made to plaintiff. (citation omitted) Proof that the statement was made in the course of the defendant's business, profession or employment is sufficient to show he has a pecuniary interest in making it, although he receives no consideration for it." Winburn v. Ins. Co. of North America, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985).

The third element of negligent misrepresentation is that the Defendant owed a duty of care to see he communicated truthful information to the Plaintiff.

In the recent case of Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014) the Supreme Court recognized the right of the third-party beneficiary to maintain a suit for malpractice against an attorney who negligently drafted a will that damaged the third-party beneficiary. The Court held that the question of a duty owed to the third-party beneficiary was a question of law for the court. The Court further noted that the courts are relieving the privity of contract rule in estate cases.

It is hard to argue that being provided a divorce from one's spouse does not make you a third-party beneficiary of a lawyer's efforts. Compared to inheriting some estate or having a legal relationship of marriage severed the recipient of a divorce comes out ahead.

At the outset the court should recognize that marriage is a unique relationship governed by laws of this state and in some instances by the United States Constitution. Divorce severs that relationship and of necessity affects both spouses.

Fabian should be a watershed case for discarding the immunity of attorneys whose negligence damages a third party.

The next element of negligent misrepresentation is that the Defendant breached a duty of care by failure to exercise due care. The Defendant is an attorney and as such charged with special skill to know when a divorce is valid. He should have known that South Carolina does not recognize a divorce obtained by two residents from a foreign jurisdiction which domesticated in this state. S.C. Code §20-3-340.

The next element is that the Plaintiff was justified in relying on the false representation. As the Joint Stipulation of Facts makes plain, the Defendant provided the Dominican paperwork to the Plaintiff through her husband and later received the intended result, a Dominican divorce. The Plaintiff had no reason to doubt she was validly divorced.

Finally, without question, the Plaintiff suffered damages from the invalid divorce.

The factual situation in this controversy is unique. However, it presents the court an opportunity to expand the reach of justice and fairness as was done in Fabian in regards to estate beneficiaries. Justice Pleicones stated what should be recognized by this court in his concurring opinion in Fabian, "... a lawyer owes a duty to a non-client when the lawyer knows that a client

intends as one of the primary objectives of the representation that the lawyer's services benefit a non-client.”

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister (SC Bar No. 506)

401 Pettigru Street (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

owbannister@bannisterwyatt.com

Attorney for Plaintiff

December 16, 2020

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Donna Bell Sellers, a/k/a Donna Bell Peclet

C.A. No.: 2017-CP-08-01074

Plaintiff,

vs.

**AMENDED MEMORANDUM IN
SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Grover Seaton, III,

Defendant.

This matter is before the Court on cross motions for summary judgment. The parties have stipulated the essential facts which are as follows:

The Plaintiff, Donna Sellers, was married to Carroll Sellers when the parties separated in 1985. They were longtime residents of Moncks Corner and domiciled in this State.

Carroll Sellers went to the Defendant, Grover Seaton, III, a local lawyer in Moncks Corner, to obtain a divorce from Donna. Seaton furnished Carroll Sellers with paperwork to obtain a divorce in the Dominican Republic. Donna signed the paperwork and Carroll Sellers went to the Dominican Republic and obtained a Dominican Republic divorce from Donna.

Unfortunately, S.C. Code §20-3-420 declares, "a divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled in this State at the time the proceedings for the divorce was commenced."

Believing she was legally divorced, Donna Sellers remarried. After twenty-seven (27) years of living with a man she believed was her lawful husband, Donna Sellers learned she did

not have a divorce recognized by the State of South Carolina. Thus, she had no right to alimony, equitable division or suit costs.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 650 S.E.2d 68 (2007).

ARGUMENT

The Plaintiff alleged negligent misrepresentation. The elements of negligent representation are:

If the damage alleged is a pecuniary loss, the plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).

While it is correct that Defendant never made a representation directly to the Plaintiff, the Defendant caused representations to be made to the Plaintiff which turned out to be false. As Stipulation of Fact No. 3 demonstrates, the Defendant procured Dominican Republic divorce paperwork and had Plaintiff's then husband deliver that paperwork to her for her signature. One is as responsible for doing indirectly what one is responsible for doing directly. The only reasonable conclusion from these facts is that the Defendant was getting Carroll Sellers a divorce from the Plaintiff. This conclusion is a representation of fact.

The second element of negligent misrepresentation is that the Defendant had a pecuniary interest in making the statement. Pecuniary interest is not limited solely to monetary gain.

“However, if defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful enquiry, the law places on him a duty of care with respect to representations made to plaintiff. (citation omitted) Proof that the statement was made in the course of the defendant’s business, profession or employment is sufficient to show he has a pecuniary interest in making it, although he receives no consideration for it.” Winburn v. Ins. Co. of North America, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985). A lawyer such as Defendant has expertise and special knowledge.

The third element of negligent misrepresentation is that the Defendant owed a duty of care to see he communicated truthful information to the Plaintiff.

In the recent case of Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014) the Supreme Court recognized the right of the third-party beneficiary to maintain a suit for malpractice against an attorney who negligently drafted a will that damaged the third-party beneficiary. The Court held that the question of a duty owed to the third-party beneficiary was a question of law for the court. The Court further noted that the courts are relieving the privity of contract rule in estate cases. The instant case is one in tort, not contract. It is an injustice to allow a contract rule of privity to permit tortious conduct in this set of facts.

Fabian should be a watershed case for discarding the immunity of attorneys under the privity of contract whose negligence damages a third party as in the present case.

The next element of negligent misrepresentation is that the Defendant breached a duty of care by failure to exercise due care. The Defendant is an attorney and as such charged with special skill to know when a divorce is valid. He should have known that South Carolina does not recognize a divorce obtained by two residents from a foreign jurisdiction while domesticated

in this state. S.C. Code §20-3-420. The Plaintiff should not be the sole person to suffer from the Defendant's acts.

The next element is that the Plaintiff was justified in relying on the false representation. As the Joint Stipulation of Facts makes plain, the Defendant provided the Dominican paperwork to the Plaintiff through her husband and later received the intended result, a Dominican divorce. The Plaintiff had no reason to doubt she was validly divorced.

Finally, without question, the Plaintiff suffered damages from the invalid divorce.

Defendant's Motion for Summary Judgment asserts there was not a "single representation" that would support a cause of action for negligent misrepresentation. In the Joint Stipulation of Facts No. 3, the Defendant provided Carroll Sellers the paperwork to obtain a divorce in the Dominican Republic. Donna was required to sign those papers and she did so.

Divorce papers from a lawyer's office are "representations" that a lawyer is obtaining a divorce for his client. Without being facetious one spouse cannot be divorced while the other spouse remains married. The representation was that Donna Sellers was being lawfully divorced from Carroll Sellers through the Dominican Republic divorce.

The Defendant asserts that such representation was a mistake of law if made and as such is not actionable. He cites Barber v. Barber, 291 S.C. 399, 353 S.E.2d 882 (Ct. App. 1987) for his position. In Barber, the wife obtained a Mexican divorce from a prior husband and then married Barber who years later sued for an annulment. The wife did not answer and the marriage was annulled. Wife then moved to set aside the annulment which the family court granted.

On appeal the Court of Appeals reversed the grant of annulment with this statement, "We hold the evidence fails to prove fraud by the husband and, therefore, reverse the order vacating

the annulment.” The fraud was the husband’s lawyer telling the wife her Mexican divorce was invalid. The Court of Appeals held that the wife’s reliance on the misrepresentation was unjustified in her failure to answer the husband’s complaint.

The Court of Appeals cited two cases in support of the proposition that fraud cannot be predicated on misrepresentation as to matter of law, much less on mere mistake of law.

The first case cited was First National Bank of Greenville v. United States Fidelity & Guaranty Co., 207 S.C. 15, 353 S.E.2d 47 (1945). That case stated (p. 30):

Furthermore, it is a recognized and long established principle of law that generally fraud cannot be predicated on *misrepresentation* as to matters of law, much less on mere mistake of law. There are indeed some exceptions to this rule, but we do not think this case could be deemed to come within any of them. 23 Am.Jur. 809; 37 C.J.S., Fraud, § 55, p. 323; Koon v. Pioneer-Pyramid Life Ins. Co., 175 S.C. 117, 178 S.E. 503.

Thus the First National Bank case noted there were exceptions to the rule and cited Koon v. Pioneer-Pyramid Life Ins. Co., 175 S.C. 117, 178 S.E. 503 (1935). In Koon the Court held at p. 118:

As contended by the appellant, fraud cannot be predicated, as a general rule, upon misrepresentations as to matters of law; but it will be noted that there are exceptions to the rule. See 12 R. C. L. 296; White v. Harrigan, 77 Okl. 123, 186 P. 244, 9 A. L. R. 1041. In the case at bar, it appears that the peculiar and undisputed facts and circumstances bring any such misrepresentations by the company within the exceptions to which reference is made.

In the White case cited in Koon, the Supreme Court of Oklahoma set out a number of exceptions to the general rule that fraud or misrepresentation cannot be based on the misrepresentation of law as a mistake of law. The Supreme Court quoted with approval the following:

Generally speaking, a misrepresentation of law affords no ground of redress or relief; the misrepresentation should be of fact. The ground upon which this rule rests is often said to be that all men are presumed to know the law. ‘Ignorantia legis neminem excusat.’ But this is not quite satisfactory. It may be doubted if

the maxim was ever intended to excuse fraud; its more natural explanation is that it was intended not so much as a bar to the innocent as a warning to the guilty, and as a rule for upholding the performance of contracts and of written instruments. The law is a special branch of learning, like the higher mathematics; and to know its peculiar features one must make one's self a specialist in the subject. It is not, however, universally true that a misrepresentation of the law is not binding upon the party who made it. Indeed, where one has had superior means of information, professes a knowledge of the law, and thereby obtains an unconscionable advantage of another who is ignorant, and has not been in a situation to become informed, the injured party is entitled to relief as well as if the misrepresentation had been concerning matter of fact.

As a general rule fraud cannot be predicated upon misrepresentations as to matters of law, nor upon opinions on questions of law based on facts known to both parties alike. Reasons given for this rule are that every one is presumed to know the law, both civil and criminal, and is bound to take notice of it, and hence has no right to rely on such representations or opinions, and will not be permitted to say that he was misled by them. The rule that fraud cannot be predicated upon misrepresentations as to matters of law may be rendered inapplicable by the existence of peculiar facts and circumstances. The same is true where one who himself knows the law deceives another by misrepresenting the law to him, or, knowing him to be ignorant of it, takes advantage of him through such ignorance, or where the person to whom the representations are made relies upon the supposed superior knowledge and experience of the other party and on his statement that it is unnecessary or inadvisable for him to consult a lawyer. [Emphasis added.]

The stipulated facts fit the above exception. It should also be pointed out that the Defendant's participation in an invalid divorce is composed of two parts. The representation that a Dominican divorce was legal (opinion) and a physical Dominican Republic Divorce Decree which was a fact.

In Fabian v. Lindsay, the Supreme Court relaxed the rule that a third party cannot sue an attorney with whom that third party is not in privity of contract in cases of estate planning documents. The Court discussed the concept of privity. 482.

“‘Privity’ denotes [a] mutual or successive relationship to the same rights of property.” *Thompson v. Hudgens*, 161 S.C. 450, 462, 159 S.E. 807, 812 (1931) (citation omitted); see also *Black's Law Dictionary* 1394 (10th ed. 2014) (defining “privity” as “[t]he connection or relationship between two parties, each having a

legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interests”).

This Court can extend “privity” to a divorce from marriage as a connection or relationship between two parties, each having a legally recognized interest in the same subject matter limited to the unusual facts of this case. Otherwise, the Plaintiff has no remedy.

For the above reasons the Plaintiff urges the Court to grant the Plaintiff summary judgment.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister
O. W. Bannister (SC Bar No. 506)
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
owbannister@bannisterwyatt.com
Attorney for Plaintiff

February 5, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKLEY	)	CASE NO.: 2017-CP-08-01074
)	
Donna Bell Sellers, a/k/a Donna Bell Pecelet)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT’S REPLY MEMORANDUM
	)	IN SUPPORT OF DEFENDANT’S
Grover Seaton, III,	)	MOTION FOR SUMMARY JUDGMENT
)	
Defendant.)	
)	

Defendant Grover Seaton respectfully submits this reply memo in support of his motion for summary judgment.

ARGUMENT

By way of procedural background, the parties have filed cross-motions for summary judgment on stipulated facts, which essentially ask the Court to determine one way or another whether the stipulated facts support Plaintiff’s causes of action against Mr. Seaton for fraud and negligent misrepresentation. Defendant incorporates the arguments and authorities set forth in his motion and supporting memorandum previously filed on November 2, 2020 and December 7, 2020.

- 1. Plaintiff is unable to show any actionable misrepresentation necessary to support a claim for fraud or negligent misrepresentation.**

Respectfully, Plaintiff’s memorandum asks this Court to significantly expand tort liability in South Carolina in a manner that can only be accomplished by disregarding the fundamental elements of fraud and negligent misrepresentation and by misapplying precedential case law. Specifically, Plaintiff seeks to hold Mr. Seaton liable for fraud and negligent misrepresentation, despite Mr. Seaton having never communicated with her, much less making any statement or

representation to her about her divorce 35 years ago. As the parties have stipulated, Mr. Seaton did not represent Plaintiff in the divorce; Plaintiff never believed Mr. Seaton was her attorney; Mr. Seaton did not make any statements or representations to her; Plaintiff did not seek or receive any advice or representations from Mr. Seaton. To find that Plaintiff has a viable claim against Mr. Seaton based on these stipulated facts would require eliminating the fundamental element on which both causes of action are premised – that the defendant made a false representation to the plaintiff.

Although the parties have stipulated that no such representations were made, the Court of Appeals' decision in Barber v. Barber, 291 S.C. 399, 353 S.E.2d 882 (Ct. App. 1987), makes clear that a misrepresentation about the validity of a foreign divorce is a mistake of law, which is not actionable in a claim for fraud or negligent misrepresentation. Despite Plaintiff's attempts to distinguish Barber, the holding could not be more on point: whether an attorney mistakenly represented to his client's wife that her foreign divorce was valid or that it was invalid, it is still a mistake of law that cannot form the basis of a claim for fraud or negligent misrepresentation.

2. **Plaintiff never had an attorney-client relationship with Defendant and cannot hold Defendant liable for allegedly giving bad legal advice to her then-husband about their divorce in 1985.**

Finally, there is no support for Plaintiff's position in Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014). Our Supreme Court in Fabian recognized a very narrow, fact-specific exception to the traditional requirement of privity in a legal malpractice claim against an estate planning attorney. The exception is limited to a claim against an estate planning attorney by an individual named in the estate planning document whose inheritance was reduced or eliminated as a result of a drafting error by the attorney. The Court in Fabian crafted the exception to apply

only in situations where the attorney's client is deceased, where allowing the claim to proceed absent privity is the only mechanism to enforce the client's intent. Id.

There is absolutely no reading of Fabian that could ever support eliminating privity under the facts of this case, where an attorney is being sued by an adverse party for advising his client in a divorce. Plaintiff was not Mr. Seaton's client. She cannot sue him for advice, good or bad, that Mr. Seaton gave his client. Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). ("The fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other."). This is precisely what Plaintiff has attempted to do in this lawsuit.

CONCLUSION

Based on the parties' stipulated facts and the arguments above and in Defendant's motion and memorandum, Defendant respectfully submits that he is entitled to judgment as a matter of law.

This 8th day of February, 2021.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Michael B. McCall
DAVID W. OVERSTREET
State Bar No.: 16965
David@earhartoverstreet.com

MICHAEL B. McCALL
State Bar No.: 73028
Mike@earhartoverstreet.com

Attorneys for Defendant Grover Seaton

P.O. Box 22528
Charleston, SC 29413
843-972-9400

Joint Stipulation of Facts


February 24, 2020

The parties have agreed to stipulate to the following facts solely for the purpose of pre-trial cross motions for summary judgment in Case No. 2017-CP-08-1074. This stipulation is not admissible in the trial of Case No. 2017-CP-08-1074 or for any purpose other than pre-trial cross motions for summary judgment.

- 1) Donna Bell Sellers, now known as Donna Peclet ("Donna") married Carroll W. Sellers, Jr. ("Sellers") on August 18, 1982. The parties were residing in Moncks Corner, Berkeley County, South Carolina when they separated in February, 1985.
- 2) Sellers, or Sellers' father Carroll Sellers, Sr., contacted Grover Seaton, III ("Seaton") to inquire about obtaining a divorce from Donna.
- 3) Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic.
- 4) Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic.
- 5) Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic.
- 6) Sellers traveled to the Dominican Republic to obtain a divorce from Donna.
- 7) Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced.
- 8) Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic *cm*

Joint Stipulation of Facts

February 24, 2020

- 9) Seaton never spoke to or communicated with Donna in connection with the divorce.
- 10) Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce.
- 11) Upon receiving the divorce decree, Donna believed she was divorced from Sellers.
- 12) Donna relied on Sellers' statement to her that Seaton was involved in the divorce, but Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.
- 13) Donna subsequently went through a marriage ceremony with Joseph Edward Peclet ("Peclet") on March 14, 1987.
- 14) On October 14, 2014, Donna filed for divorce from Peclet in Greenville County, South Carolina after what she believed was a twenty-seven-year marriage.
- 15) By Order entered May 27, 2015, Donna's divorce action against Peclet was dismissed on the ground that the Dominican Republic divorce was not recognized in South Carolina for purposes of her re-marriage to Peclet. Donna did not appeal the Order dismissing her divorce action against Peclet.
- 16) As a result of the dismissal of Donna's divorce action, Donna lost the ability to pursue claims for alimony, equitable division of marital properties and attorney fees, but 

Joint Stipulation of Facts


February 24, 2020

was able to successfully partition the former marital home that she jointly owned with Pecelet.

17) In March 2017, Donna filed an Amended Complaint against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce.

I SO STIPULATE

I SO STIPULATE



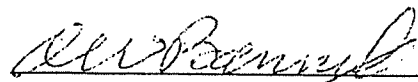
Donna Bell Sellers, n/k/a
Donna Pecelet, Plaintiff



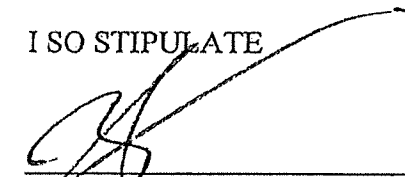
Grover Seaton, III, Defendant

I SO STIPULATE

I SO STIPULATE



O. W. Bannister
Attorney for Plaintiff



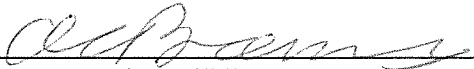
Michael B. McCall
Attorney for Defendant

Certificate of Counsel

The undersigned certifies that this Record on Appeal complies with Rule 209(b), *SCACR*, and further, complies with Supreme Court Order dated April 15, 2014, regarding personal identifiers and sensitive information.

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BANNISTER, WYATT & STALVEY, LLC


O. W. Bannister (SC Bar No. 506)
24 Cleveland Street, Suite 100 (29601)
Post Office Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084
Fax: (864) 298-0146
Email: owbannister@bannisterwyatt.com

Attorney for the Appellant