

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Ahmad Mazloom and ARM Quality Builders, LLC,) Civil Action No. 2020-CP-32-03441
)
)

Plaintiffs,)

vs.)

First Citizens Bank,)

Defendant.)

**ORDER GRANTING FIRST
CITIZENS BANK'S MOTION TO
DISMISS**



Jan 28 2022



This matter came before the Court on Defendant First Citizens Bank's ("First Citizens") Motion to Dismiss, which was heard before the undersigned on December 01, 2021. After carefully reviewing the Motion to Dismiss, memoranda, the pleadings, applicable case law, and hearing argument of counsel, this Court **GRANTS** First Citizens' Motion to Dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs assert that First Citizens was served with a court subpoena on or about October 25, 2017 in prior litigation entitled *Arm Quality Builders LLC v. Joseph and Lycia Golson*, Civil Action No. 2017-CP-32-0220 ("the Underlying Case"), requiring Plaintiffs' checking account records to be produced by November 10, 2017. (Complaint ¶¶ 4 and 5; Pla's Brief in Opp. To Motion to Dismiss P.1). Plaintiffs further allege that Plaintiffs filed a Motion to Quash the subpoena on November 6, 2017 (Complaint ¶ 5). By the time Plaintiffs notified First Citizens of its objections to the subpoena and desire to seek to quash it, First Citizens had already produced the bank records. Plaintiffs allege that the production of Plaintiffs' bank records by First Citizens in response to a non-party subpoena was premature in violation of SCRCP 45 and therefore was negligent. (Complaint ¶ 7).

First Citizens moved to dismiss the suit, arguing that the actions as alleged in the Complaint fail to state facts sufficient to state a cause of action upon which relief can be granted, South

Carolina law does not recognize a duty not to disclose financial records pursuant to a subpoena, and Rule 45 of the SCRCP does not prohibit producing records prior to the specified return date.

ANALYSIS

In order to plead a cause of action for negligence, a plaintiff must first show that the defendant owed plaintiff a duty. *See Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 757 S.E.2d 695 (2014). Plaintiffs here allege that Defendants owed a duty not to disclose their financial records. Even if such a duty were recognized in South Carolina, a valid subpoena would supersede any duty not to disclose. In *Rycroft v. Gaddy*, the plaintiff sued a bank for claims, including negligence, for disclosing records in response to a subpoena. *See* 281 S.C. 119, 314 S.E.2d 39 (S.C. Ct. App. 1984). The South Carolina Court of Appeals dismissed the claims, reasoning that “[plaintiff] is claiming that the bank had no right to reveal his private records to a member of the public. However, the subpoena[s] were proper on their face and the bank had no choice but to comply.” *Id.* at 123–124.¹ In response to the negligence claim, the court held “[s]ince the subpoena[s] were valid on their face, the bank had *no duty* to inquire into the circumstances behind the subpoena[s] as a bank cannot refuse to give information concerning an account when questioned in response to a lawful subpoena.” *Id.* at 123. (emphasis added). Later South Carolina cases have followed *Rycroft* as controlling authority. *See Arthur State Bank v. Broom*, No. 2015-UP-092, 2015 WL 793120 (S.C. Ct. App. 2015) (“The principle for which the trial court cited *Rycroft* [remains valid]...the disclosure of Defendants’ private banking information was ‘permitted by law’ because it was in response to a subpoena.”).

¹ In this case, there is no allegation in the Complaint that the subpoena to First Citizens was not valid and proper on its face nor any allegation that the subpoena was not enforceable.

Plaintiffs have alleged that First Citizens responded to a lawful subpoena when it produced Plaintiffs' bank records. This Court therefore cannot find that First Citizens negligently disclosed Plaintiff's bank records, because there is no duty to refuse to disclose such records in response to a subpoena under South Carolina law.

Plaintiffs further argue that Rule 45 of the SCRPC prohibits parties from responding to a subpoena prior to the date and time specified on the subpoena. The Court disagrees. Firstly, there is no private cause of action for an alleged violation of the Rules of Civil Procedure. Further, the contention that premature disclosure of subpoenaed documents constitutes negligence has no basis under South Carolina law.

Even if Plaintiffs were correct and the production of documents in response to a subpoena prior to the due date is a violation of Rule 45, this does not create a private cause of action in negligence to be asserted in a subsequent and independent lawsuit. Plaintiffs have cited to no case, from any jurisdiction, which creates such a cause of action and the Court has found none also. If there is a violation of Rule 45, parties are provided remedies. The remedies must be sought in the case in which the subpoena is issued. The court from which the subpoena was issued can provide relief by way of motions to quash and broad powers to issue protective orders under Rule 45 and 26(c). In fact, Plaintiffs did seek the available remedies in the Underlying Case. In an Order on May 18, 2018 addressing discovery issues, including the subpoena at issue, the Court noted that "[t]he parties . . . agreed to resolve an ancillary discovery matter relating to Plaintiff's objection to Defendants' subpoena to First Citizens Bank" and that Counsel for Plaintiff "agreed and confirmed on the Record that Plaintiff withdraws its objection to the Subpoena" (May 18, 2018 Order pp. 2-3).² The Court

² Reference to and reliance on court orders and court records in an underlying case does not convert the motion to dismiss into one for summary judgment. *Doe v. Bishop of Charleston*, 407

went on to conclude “[a]ll records relating to any personal bank accounts maintained by Ahmad Mazloom and produced by First Citizens Bank in response to Defendant’s subpoena are discoverable [and subject to the confidentiality order]” A party cannot seek monetary damages in a new later lawsuit for a perceived violation of the South Carolina Rules of Civil Procedure in prior litigation and cannot seek to collaterally challenge the ruling of the court on the discovery issues in that prior litigation.

Additionally, the mere early production of documents in response to a subpoena does not create civil liability. In *Estate of Watson v. Babb*, the appellant argued that the trial court erred in not granting a motion to quash because the documents were delivered prior to the date specified in the subpoena. No. 2007-UP-329, 2007 WL 8327913 (S.C. Ct. App. 2007). The court noted, “[W]e perceive no prejudice to Babb in the allegedly premature furnishing for the records by the bank inasmuch as he does not contend that the records were not discoverable. Thus, the bank’s release of them before the deadline set out in the letter to Babb, does not give rise to reversible error.” *Id.* at *4. The Court in the Underlying Case found that the records were discoverable. Production of discoverable records in response to a subpoena valid on its face does not cause prejudice or harm.

Finally, the Court notes that an essential element of a claim for negligence is damages proximately caused by the alleged actions. See *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 757 S.E.2d 695 (2014). Plaintiffs here have failed to allege damages on the face of the complaint. (Complaint ¶ 8).

S.C. 128, n.1, 754 S.E.2d 494 (2014) (noting that court records are properly subject to judicial notice and may be considered in ruling upon a Rule 12(b) motion).

CONCLUSION

Based on the foregoing, plaintiffs' Complaint fails to state facts sufficient to state a cause of action upon which relief can be granted. Accordingly, the Court concludes the lawsuit must be dismissed. This Court **GRANTS** First Citizens Bank's Motion to Dismiss with prejudice.

IT IS SO ORDERED.

Hon. Debra R. McCaslin, Circuit Court Judge

December ____, 2021

Lexington, South Carolina



Lexington Common Pleas

Case Caption: Ahmad Mazloom , plaintiff, et al VS First Citizens Bank

Case Number: 2020CP3203441

Type: Order/Dismissal

So Ordered

Debra R. McCaslin