

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

South Carolina Human Affairs Commission,
Plaintiff,

vs.

Yacht Cove Owners Association, Inc., and
Maria Dehart,
Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
2021- CP-32-00769

**ORDER GRANTING
MOTION TO DISMISS OF
MARIA DEHART**

THIS MATTER came before the Court on November 2, 2021, and is now ripe for adjudication. For the reasons listed below, I hereby GRANT the Motion to Dismiss of Defendant Maria Dehart (hereinafter the “Defendant” or “Dehart”), by and through counsel, with prejudice, pursuant to Rule 12(b)(6), SCRPC.

In reviewing the Amended Complaint, motions, and arguments of counsel, I find as follows:

1. Dehart was served with the Amended Summons and Complaint on May 10th, 2021, which alleged that she violated “the South Carolina Fair Housing Law by retaliating against the Aggrieved Parties because the Aggrieved Parties filed a complaint of housing discrimination against Defendants.” (Amended Complaint, ¶ 3).

2. The Amended Complaint further alleges that Dehart is “an agent and employee¹ of Defendants(s) Yacht Cove Owners Association acting as its board chair [sic].” (Amended Complaint, ¶ 3).

¹ Dehart serves as a volunteer on the Board of the homeowners association at Yacht Cove.

3. It is undisputed that Yacht Cove Owners Association, Inc. is a non-profit corporation organized under the laws of South Carolina.²

4. It is also undisputed that Plaintiff's Amended Complaint identifies Dehart as a member of the board of directors, as set forth above.

5. It is also undisputed that S.C Code Ann. § 33-31-834 provides, in pertinent part, that "[a]ll directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) [including not-for-profit corporations] are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to willful, wanton, or gross negligence."

6. It is undisputed that Plaintiff has not alleged that Dehart acted in a manner that amounts to willful, wanton, or gross negligence.

7. It is undisputed that, according to Plaintiff's own allegations, Plaintiff is suing Dehart for acts she took while acting as a member of the governing body of Yacht Cove. Indeed, Plaintiff alleges that Dehart "admitted that she, along with other members of Yacht Cove's Board, made the decision to charge the Aggrieved Parties for legal fees related to the previous housing discrimination complaint filed on or about February 27, 2020," and that "believed Article IX of Yacht Cove's Bylaws allowed the Board to assess the fees on behalf of Yacht Cove." (Amended Complaint, ¶¶ 15 and 17).

8. Indeed, Plaintiff admits that Dehart sought legal counsel prior to imposition of fees on the Aggrieved Parties. (Amended Complaint, ¶ 21).

² The Court takes judicial notice that the South Carolina Secretary of State lists "Yacht Cove Owners Association, Inc." as a domestic Non-Profit Corporation in good standing.

LEGAL STANDARD

Under Rule 12(b)(6), SCRCPP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805 (S.C. App. 2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001).

LEGAL ARGUMENT

For the reasons set forth above, the claims that Plaintiff attempts to state against Dehart must be dismissed with prejudice because they clearly run afoul of immunity provided to persons such as Dehart in S.C Code Ann. § 33-31-834.

The policy underlying S.C Code Ann. § 33-31-834 is easy to grasp. Dehart is a volunteer board member of a homeowner's association ("HOA"). Persons who volunteer to serve their neighbors as board members of an HOA should not be subject to suits seeking draconian damages from would-be plaintiffs or regulatory agencies because the board members acted within the course and scope of their volunteer service.

To the extent that Plaintiff seeks to rely on its internal "Administrative Interpretation" that individual board members of non-profit corporations are not immune from liability under the South Carolina Fair Housing Law, such reliance is unavailing. Plaintiff's internal interpretation takes no account of S.C. Code Ann. § 33-31-834, and in any event, a mere administrative interpretation may not take precedence over a statute. It is axiomatic that, where an administrative regulation – to say nothing of a mere "interpretation" – poses an irreconcilable conflict with a statute, the

administrative rule is void and unenforceable. *Brooks v. S.C. State Bd. of Funeral Serv.*, 271 S.C. 457, 247 S.E.2d 820 (1978).

In its arguments, the South Carolina Human Affairs Commission attempts to rely on its own administrative interpretations – which do not mention or consider S.C Code Ann. § 33-31-834 – in order to convince the Court to ignore the protections granted by the General Assembly to volunteer non-profit Board members like Ms. Dehart. For that reason, the case cited by Plaintiff, *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 766 S.E.2d 707, 719 (2014), actually works against its own argument. Plaintiff cites to *Kiawah* as a declaration of deference to an agency's administrative interpretation of a statute entrusted to its administration or its own regulations “unless there is a compelling reason to differ.” *Id.* at 34, 766 S.E.2d at 718. Plaintiff's argument fails for at least two reasons:

- (1) In this matter, the statute at issue – S.C Code Ann. § 33-31-834 – has not been entrusted by the General Assembly to Plaintiff's administration or its own regulations.
- (2) Moreover, the Commission has failed to account how its “interpretation” has addressed, in any meaningful way, the directives of the General Assembly as embodied in S.C. Code Ann. § 33-31-834.

Again, relying on *Kiawah*, this Court finds that the Commission's argument is “manifestly contrary to the statute.” *Id.* at 35, 766 S.E.2d at 719. The Commission – in direct contravention of S.C. Code Ann. § 33-31-834 – seeks to hold individual board members of non-profit corporations liable for acts taken squarely within the course of scope of his or her duty. In this regard, the Commission simply does not have the authority to override the General Assembly in this manner.

Plaintiff's policy arguments also fail. The South Carolina Human Affairs Commission may still attempt to convince a judge and/or jury that the Yacht Cove Owners Association, Inc. was in violation of the South Carolina Fair Housing Act in enforcing the provisions of the HOA's covenants.

Finally, to the extent Plaintiff attempts to rely on federal interpretations of federal statutes regarding housing, such an argument is also unavailing. Plaintiff is a state agency created by the General Assembly seeking to prosecute this case under a South Carolina statute. South Carolina law, and the rules of interpretation and construction applying thereto, must control. Furthermore, Plaintiff has not directed the Court to any case in which another court, state or federal, that has interpreted a statute that provides the protections to persons such as Ms. Dehart afforded by S.C. Code Ann. § 33-31-834.

CONCLUSION

For the reasons stated above, this Court GRANTS the Motion to Dismiss of Defendant Maria Dehart with prejudice, and DISMISSES the claims against her in Plaintiff's Amended Complaint, and with each side to bear its own costs and fees.

AND IT IS SO ORDERED

The Honorable H. Steven DeBerry, IV
Presiding Judge
Fifth Judicial Circuit

_____, 20____
_____, South Carolina.



Lexington Common Pleas

Case Caption: Sc Human Affairs Commission VS Yacht Cove Owners Association, Inc. , defendant, et al

Case Number: 2021CP3200769

Type: Order/Dismissal

H. Steven DeBerry, IV

Circuit Court Judge 2771