



Wall v. Enterprise Holding Inc.

2019 | Cited 0 times | D. South Carolina | January 30, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA
Kanisha Anne Shani Wall,

Plaintiff, vs. Enterprise Leasing Company - Southeast, LLC.,

Defendant.

C/A No.: 3:18-1225-TLW-SVH

REPORT AND RECOMMENDATION

Kanisha Anne Shani Wall (Plaintiff) filed this case alleging claims of slander and intentional infliction of emotional distress against Enterprise Leasing Company Southeast, LLC (Defendant). This matter comes before the court on Defendant s motion to dismiss [ECF No. 43] and Plaintiff s motion to amend [ECF No. 53]. The motions having been fully briefed [ECF Nos. 54, 55, 57], they are ripe for disposition.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(g) (D.S.C.). For the following reasons, the undersigned recommends Defendant s motion to dismiss be granted and Plaintiff s motion to amend be denied as futile. I. Factual and Procedural Background Plaintiff s mother rented a car from Defendant for Plaintiff s use. [ECF No. 1 at ¶ 9]. On December 28, 2017, Plaintiff visited Defendant to extend her

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rental with a coupon. Id. at ¶¶ 9 10. Upon arriving, Plaintiff was advised that her rental car did not qualify for the coupon. Id. at ¶¶ 11 12. Plaintiff agreed to switch to another car, but she and the attendant began arguing about the price of the rental. Id. at ¶¶ 12 13. During the argument, another employee entered the area and stated loudly that Plaintiff s prior rental was smoked out. Id. Plaintiff denied having smoked in the car. Id. She believed the employees were trying to extort money from her by threatening to call the police, and Plaintiff knew she had an arrest warrant outstanding. Id. at ¶¶ 14 15. Plaintiff ultimately agreed to pay the higher price. Id. at ¶ 16. She left Defendant s store, and returned with two money orders. Id. Plaintiff alleges the employee took the money orders from her in



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a bullish manner, and Plaintiff snatched the money orders back from the employee and threw them in the air and walked out. Id. at ¶ 17. Defendant later called Plaintiff's mother to inform her the police had been advised the rental car had been stolen. Id. at ¶¶ 18-19. Plaintiff called Defendant's headquarters to advise the car was not stolen, but she could no longer access it to return it because the doors were locked. Id. Defendant towed the car the following morning. Id. Plaintiff visited the store again, and a manager provided her with a receipt. Id. at ¶ 20. Plaintiff did not believe she was provided with the correct

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refund and began yelling in a rage. Id. at ¶¶ 25-26. Plaintiff states she lifted up her shirt exposing her sports bra and beg[an] laughing at the employees for stealing her money because she did not want to date any of them. Id. She further claims that she bent over in a threat to pull down her high waist jeans and that she pulled down her jeans to her waist to make fun of the situation, but that she never exposed her rear end. Id. at ¶ 27. Plaintiff claims Defendant advised the police that she was on the run and that it pressed an indecent exposure charge on her. Id. at ¶ 28. The incident was subsequently reported by several news outlets. Id. Plaintiff's complaint contains causes of action for extortion, receiving funds of extortion, intentional infliction of emotional distress, slander, and false advertising. [ECF No. 1]. After Defendant filed its motion to dismiss on November 15, 2018 [ECF No. 43], Plaintiff filed a motion to amend her complaint on November 26, 2018. [ECF No. 53]. In her proposed amended complaint, Plaintiff eliminated her claims for extortion, receiving extorted funds, and false advertising, pursuing only claims for slander and intentional infliction of emotional distress. II. Discussion

A. Standard on Motion to Dismiss To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a

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claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is not required to accept as true the legal conclusions set forth in a plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Indeed, [t]he presence of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot support the legal conclusion. *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001). Furthermore, in analyzing a Rule 12(b)(6) motion to dismiss, a court may consider documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

B. Analysis Because Plaintiff filed a motion to amend her complaint after Defendant filed its motion to dismiss, the undersigned addresses the arguments contained in the motion to dismiss as applying



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to both the operative complaint [ECF No. 1] and Plaintiff's proposed amended complaint [ECF No. 43]. See, e.g., *Monster Daddy, LLC v. Monster Cable Prods., Inc.*, C/A No. 6:10-1170-HMH, 2010 WL 4853661, at *3 (D.S.C. Nov, 23, 2016); 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1476 (3d ed. 2011) ([D]efendants should not be required to file a new motion to dismiss

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simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in their original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading [because to] hold otherwise would be to exalt form over substance.). However, because Plaintiff's proposed amended complaint omits her claims relating to extortion and false advertising and she presents no argument on these claims, the undersigned considers those claims abandoned and recommends they be dismissed. 1. Intentional Infliction of Emotional Distress

Under South Carolina law, a plaintiff must establish the following elements to recover for intentional infliction of emotional distress: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Hansson v. Scalise Builders of South Carolina*, 650 S.E.2d 68, 70 (S.C. 2007). As explained by the *Hansson* court, the court plays a significant gatekeeping role to prevent claims for intentional infliction of emotional distress from becoming a panacea for wounded feelings rather than

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reprehensible conduct[.] *Id.* at 72 (internal quotations and citations omitted). The *Hansson* court noted that a plaintiff alleging an emotional distress claim bears a heightened standard of proof. *Id.*

Plaintiff alleges Defendant's actions in retaining her deposit, locking her out of the rental car and having it towed, and reporting her to the police constitute intentional infliction of emotional distress. Plaintiff claims Defendant's actions ruin[ed] her reputation as a creditable humanitarian and legal assistant and jeopardized her goals of attending law school and becoming a teacher to give back to the community. [ECF No. 1 at ¶¶ 31-33]. She notes her distress was compounded considering she was forced in to vagrancy for the past 5 years after being assaulted by the Kershaw county police in 2013 and being extorted out of money by several South Carolina businesses with the South Carolina Police department and Judicial system being one of them. *Id.* at ¶ 35.

Defendant argues Plaintiff has not alleged sufficient facts to support a claim for intentional infliction of emotional distress. Specifically, Defendant argues Plaintiff cannot show that the filing of a police



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report was so extreme and outrageous to exceed all bounds of decency, particularly when Plaintiff admitted having snatched her payment away from Defendant before exiting the premises and specifically admitting she lifted up her shirt and bent over in a threat to pull down her pants. The undersigned finds the facts alleged in

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the complaint are insufficient, when viewed as a whole, to constitute a viable claim for intentional infliction of emotional distress.

Although Plaintiff's proposed amended complaint omits many of the allegations that provided context for the incident many of which negate the alleged outrageousness of Defendant's actions such allegations are nevertheless part of Plaintiff's representations to the court. *Andrews v. Metro N. Commuter R. Co.*, 882 F.2d 705, 707 (2d Cir. 1989) (The amendment of a pleading does not make it any the less an admission of the party.). In addition, to the extent she claims Defendant wrongfully reported the car as stolen, Plaintiff has failed to allege facts showing she had a binding contract with Defendant that permitted her to drive the car. Further, Plaintiff has failed to allege facts demonstrating Defendant did not have the right to lock the doors of the rental car and tow it. For the foregoing reasons, the undersigned recommends Plaintiff's claim of intentional infliction of emotional distress be dismissed.

2. Defamation/Slander Plaintiff claims Defendant slandered her by the statements made in a police report. 1

The tort of defamation allows a plaintiff to recover for injury

1 Plaintiff's complaint alleges Defendant was responsible for news reports about the incident, but Defendant argues it could not be held liable for reports it did not publish. In her proposed amended complaint, Plaintiff alleges Defendant's employee slandered her by reporting she stole the car

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to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 710 S.E.2d 67, 73 (S.C. 2011) (internal quotation omitted). In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Id.* at 74. The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Id.* When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made



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has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 514 S.E.2d 126, 134 (S.C. 1999) (quoting *Bell v. Bank of Abbeville*, 38 S.E.2d 641 (S.C. 1946)).

Defendant seeks dismissal of Plaintiff's defamation claim, arguing any communication its employee made to the police was qualifiedly privileged because it was made in good faith and on a subject matter in which the

from Defendant's lot and she exposed her buttocks, as well as by accusing her of having smoked in the original rental car.

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Defendant has an interest ensuring its cars are only removed from its premises when authorized and from prohibiting customers from exposing themselves at its place of business. Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded. *Swinton Creek*, 514 S.E.2d at 134 (internal citations omitted). As the South Carolina Supreme Court has noted:

To prove actual malice, the plaintiff must show that the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious disregard for plaintiff's rights. In addition, the person making the defamatory statement must be careful to go no further than his interests or his duties require And the fact that a duty, a common interest, or a confidential relation existed to a limited degree, is not a defense, even though the publisher acted in good faith. In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. However, the question whether the privilege has been abused is one for the jury. Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Id.* (internal quotations and citations omitted).

Under the unique circumstances of this case, the undersigned finds the statements of Defendant's employees to the police fall under a qualified

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privileged. By Plaintiff's own admission, she snatched back the money orders she was using to rent the car and threw them in the air. She does not allege she completed a rental agreement that permitted her to drive the car, so insufficient allegations exist in the complaint that Defendant acted



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in bad faith in believing Plaintiff had stolen the car. Additionally, while Plaintiff states that she never exposed her buttocks, she admits to having lifted her shirt and also bending over in a threat to pull down her jeans. Plaintiff has not alleged facts showing Defendant acted in bad faith or exceeded the scope of the qualified privilege in reporting Plaintiff's conduct to the police. Finally, as to Defendant's accusation that Plaintiff had smoked in the rental car, the undersigned finds Plaintiff has not provided sufficient allegations to demonstrate the statement was defamatory. The undersigned recommends Plaintiff's defamation claim be dismissed. III. Conclusion and Recommendation

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IT IS SO RECOMMENDED.

January 30, 2019 Shiva V. Hodges Columbia, South Carolina United States Magistrate Judge

The parties are directed to note the important information in the attached

Notice of Right to File Objections to Report and Recommendation. 3:18-cv-01225-TLW Date Filed 01/30/19 Entry Number 58 Page 11 of 12

Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. [I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court

901 Richland Street Columbia, South Carolina 29201 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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