

A Pleading Primer

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Cheryl D. Shoun
843.720.1762
cshoun@nexsenpruet.com

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The United States District Court recently provided a pleading primer on a number of causes of action. *Hall v. Storm Team Construction, Inc, et al.* 2018 WL 2461991 (June 1, 2018). Plaintiff was hired as a project manager by Storm Team, signing a contract that stated he was an independent contractor. Upon his termination, Plaintiff filed this action wherein he alleged vestiges of an employer-employee relationship and several causes of action against Storm Team as well as its owner/president and its national sales manager. The matter came before the court on Defendants' motion to dismiss for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6), or motion for more definite statement pursuant to Fed. R. Civ. P. 12(e). In addressing Defendants' motions, the court provides some pleading reminders.

Piercing the Corporate Veil

Piercing the corporate veil is not a cause of action; it is a means of imposing liability in an underlying claim. South Carolina follows a two-pronged test to determine whether corporate entities should be disregarded. The first prong is based upon an eight-factor analysis of the observance of corporate formalities by dominant shareholders. The second prong requires an element of injustice or fundamental unfairness if the acts of the corporation are not construed to be acts of the shareholders. The allegations must be more than mere legal conclusions or recitations of the elements; there must be sufficient factual allegations. See *Shearson Lehman Hutton, Inc. v. Venners*, 165 F.3d 912 (4th Cir. 1998); *Sturkie v. Sifly*, 313 S.E.2d 316 (S.C.Ct. App. 1984).

Fair Labor Standards Act

A claim for FLSA overtime violation requires a plaintiff to allege he worked overtime hours without compensation and the employer knew or should have known the employee worked overtime, but failed to compensate for those hours. A claim for a minimum wage violation under FLSA requires an allegation that a plaintiff did not receive compensation equal to or exceeding the product of the total number of hours worked and the statutory minimum hour wage during a given week. See *Davis v. Food Lion*,

792 F.2d 1274 (4th Cir. 1986); *Blankenship v. Thurston Motor Lines, Inc.*, 415 F.2d 1192 (4th Cir. 1969).

Breach of Contract Accompanied by Fraud

This cause of action requires factual allegations establishing three elements: (1) a breach of contract; (2) fraudulent intent relating to the breach of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. See *Harper V. Ethridge*, 348 S.E.2d 374 (S.C. Ct. App. 1986).

Conspiracy

Civil conspiracy is defined as a combination of two or more persons, for the purpose of injuring the plaintiff, acting to cause plaintiff special damage. In order to survive dismissal, a clam for civil conspiracy must allege special damages – mere repetition of damages from another claim is insufficient. The special damages must be more than the damages alleged in other causes of action. Attorney’s fees may constitute special damages, but only if different from attorneys’ fees sought in other causes of action.

Pursuant to the intracorporate conspiracy doctrine, there cannot be a conspiracy within a corporation; a corporation cannot conspire with itself. Where, however, a plaintiff alleges that officers, directors, employees or agents of a corporation acted in furtherance of their personal interests and not the interests of the corporation, or they have acted outside the scope of their corporate authority, the court may recognize the personal stake exception to the intracorporate conspiracy doctrine. See 344 S.E. 2d 379 (S.C. Ct. App. 1986); *Hackworth v. Greywood at Hammett, LLC*, 682 S.E. 2d 871 (S.C. Ct. App. 2009).

Conversion

Conversion is the unauthorized exercise of the right of ownership over goods or personal property belonging to another to the exclusion of the owner’s rights. Generally, intangible rights are not the proper subject of a conversation claim. Money may be the subject of a conversion claim if it can be identified or there are determinate sums. See *Moseley v. Oswalds*, 656 S.E.2d 789 (S.C. 1990).

Quantum Meruit

Also known as unjust enrichment, a claim for quantum meruit requires three elements: (1) plaintiff conferred a benefit to defendant (2) defendant knowingly and voluntarily accepted the benefit and (3) it was unjust for defendant to retain that benefit without paying its value.^[1] See *Williams Carpet Contractors, Inc. v. Shelly*, 734 S.E. 2d 177 (S.C. Ct. App. 2012).

Accounting

An accounting is an equitable action, proper only where a plaintiff has alleged there is no adequate remedy at law. Without an adequate remedy at law, an accounting may be granted where there is a need for enhanced discovery. The need for enhanced discovery will be recognized when defendant either has control over accounts or otherwise withholds information needed by plaintiff to determine an amount owed. If the information sought by plaintiff can be

obtained during the normal course of discovery, an accounting is less likely to be granted. See *Key Corp Capital, Inc. v. County of Beaufort*, 644 S.E.2d 675 (2007); *Historic Charleston Holdings, LLC v. Mallon*, 673 S.E.2d 448 (S.C. 2009).

While *Hall* does not establish any new causes of action or standards of proof, nor does it abolish any existing causes of action or overturn existing law, it provides the practitioner with a succinct insight to the elements of the causes of action addressed.

[1] The court fails to address that quantum meruit is an equitable cause of action appropriate in the absence of an express contract. Generally, quantum meruit is not available if there is an express contract between the parties that encompasses the activities at issue.

Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.