

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
Nicole M. Pioli, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Great Oak Equine Assisted Programs, )  
Shawna Dietrich, Gary Finnan, and )  
Grace Flanders )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

CA No. 2023-CP-02-02730

**DEFENDANTS’ PARTIAL MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Great Oak Equine Assisted Programs (“Great Oak”), Shawna Dietrich, Gary Finnan, and Grace Flanders (“Defendants”), through their counsel, respectfully move this Court for an order dismissing three causes of action alleged in Plaintiff Nicole M. Pioli’s Complaint against Defendants for failure to state a claim. Defendants base their Motion on the following grounds:

1. Plaintiff filed her Summons and Complaint on December 5, 2023.
2. Plaintiff’s Complaint alleges four causes of action against Defendants. Defendants move to dismiss Plaintiff’s first cause of action against Defendant Great Oak Equine Assisted Programs for alleged breach of the South Carolina Freedom of Information Act (Compl. ¶¶ 39-40, 55-67), her third cause of action for civil conspiracy against Defendants Shawna Dietrich and Gary Finnan (Compl. ¶¶ 14-17, 73-80), and her fourth cause of action for common-law defamation *per se* against Defendants Shawna Dietrich and Grace Flanders. (*See* Compl. ¶¶ 47-49, 73-80.)

3. Under Rule 12(b)(6), SCRCF, one or more defendants may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). “Generally, in considering a 12(b)(6) motion, the court must base its ruling solely upon allegations set forth on the face of the complaint.” *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004), *aff’d* 645 S.E.2d 245, 2007 WL 1321978; *accord Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

4. Plaintiff’s first cause of action should be dismissed, *inter alia*, because Great Oak, a South Carolina Nonprofit Corporation, is not a “public body” and, therefore, is not subject to the South Carolina Freedom of Information Act.

5. Plaintiff’s third cause of action should be dismissed, *inter alia*, because Plaintiff has failed to plead facts sufficient to establish the required elements for a claim of civil conspiracy. To state a claim for civil conspiracy, Plaintiff must plead sufficient facts to show “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cty. Sch. Dist.*, 861 S.E.2d 774, 780 (S.C. 2021), *reh’g denied* (Aug. 18, 2021). Plaintiff has failed to plead facts, as opposed to mere conclusions, regarding any of these elements.

6. Specifically, Plaintiff has failed to allege any additional acts separate and independent from those alleged in her other causes of action. Additionally, Plaintiff has failed to allege that Defendants Dietrich or Finnan committed an unlawful act or a lawful act by unlawful means. To the contrary, Plaintiff has “merely reincorporated his previous claims and added conclusory allegations the Individual Defendants were engaged in a civil conspiracy.” *Coker v.*

*Norwich Com. Grp., Inc.*, No. CV 3:20-03071-MGL, 2021 WL 4037472, at \*6 (D.S.C. Sept. 3, 2021). Finally, Plaintiff's cause of action for civil conspiracy fails under the intracorporate conspiracy doctrine. Under that principle, it is not legally possible for there to be a conspiracy within a corporation. *Anvar v. Greenville Hospital System*, No. 2007-UP-004, 2007 WL 8324255 at \*4 (S.C. Ct. App. 2007) (unpublished). Stated differently, "a corporation cannot conspire with itself," *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 626 S.E.2d 884, 887 (S.C. 2006); *see also Ziglar v. Abbasi*, 582 U.S. 120 (2017) ("[A]n agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy").

7. Plaintiff's fourth cause of action should be dismissed, *inter alia*, because Plaintiff's allegations do not meet the standard for a *per se* defamation claim. Defamation is actionable *per se* if "it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 510, 506 S.E.2d 497, 502 (1998). Plaintiff's Complaint contains no facts to support a claim for defamation *per se*.

8. Moreover, if defamation is not actionable *per se*, then at common law, the plaintiff must plead (and prove) common law actual malice and special damages. *Id.* (citing *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978); *Lily v. Belk's Dep't Store*, 178 S.C. 278, 182 S.E. 889 (1935)). Here, Plaintiff has not alleged, as she must, that the defamatory communications at issue were made with actual malice, but merely that the statements were "published with bad faith and without any reasonable effort to determine the truth or falsity of the allegations they contained." (Compl. ¶ 86.)

9. This Motion is supported by the South Carolina Rules of Civil Procedure, the statutes and case law of the United States and the State of South Carolina, and any additional memoranda and exhibits as may be submitted prior to a ruling on this Motion.

WHEREFORE, based on the foregoing, Defendants respectfully request that this Court grant its Partial Motion to Dismiss, and dismiss Plaintiff's first and fourth causes of action.

Dated this 11th day of January 2024.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

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**ATTORNEYS FOR DEFENDANTS**