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NO. COA09-1400

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

PAUL RICHARDSON,  
Plaintiff

v.

Union County  
No. 08 CVS 2596

DOROTHY A. MANCIL, JO N.  
HOLBROOK, KAREN D. MCGUIRT,  
EARLINE B. PHIPPS, DOUGLAS  
C. PROCTOR, MICHAEL PODEVYN,  
N.A. "CHRIS" MATHISEN,  
KURT J. SCHOELLER, GERSON  
MARK, DRAGUTIN OBLAK, ANN  
OBLAK, BEVERLY MARTIN,  
SARAH MARTIN, and VALDA  
GENTRY,  
Defendants

Appeal by plaintiff from orders entered 3 February 2009, *nunc pro tunc* 30 January 2009 and 13 March 2009, *nunc pro tunc* 12 March 2009, by Judge W. David Lee in Union County Superior Court. Heard in the Court of Appeals 27 April 2010.

*Paul Richardson, pro se, for plaintiff-appellant.*

*Erwin and Eleazer, P.A., by L. Holmes Eleazer, Jr. and Fenton T. Erwin, Jr., for defendant-appellees Dorothy A. Mancil, Jo N. Holbrook, Earline B. Phipps, Michael Podevyn, Gershon Carmel a/k/a Gershon Mark, Dragutin Oblak, Ann Oblak, Beverly Martin, Sarah Martin and Valda Gentry.*

*Golding, Holden & Pope, L.L.P., by Elizabeth A. Sprenger, for defendant-appellee Karen McGuirt.*

*Moreau & Marks, PLLC, by Daniel C. Marks, for defendant-appellee Douglas C. Proctor.*

*McAngus, Goudelock & Courie, PLLC, by Heather G. Connor and Jennifer M. Arno, for defendant-appellee N. A. Chris Mathisen.*

*Templeton & Raynor, P.A., by Kenneth R. Raynor, for defendant-appellee Kurt J. Schoeller.*

CALABRIA, Judge.

Paul Richardson ("plaintiff" or "Richardson") appeals the trial court's orders dismissing his complaint against Dorothy A. Mancil ("Ms. Mancil"), Jo N. Holbrook ("Ms. Holbrook"), Karen D. McGuirt ("Ms. McGuirt"), Earline B. Phipps ("Ms. Phipps"), Douglas C. Proctor ("Proctor"), Michael Podevyn ("Podevyn"), N.A. Chris Mathisen ("Mathisen"), Kurt J. Schoeller ("Schoeller"), Gershon Carmel f/k/a Gershon Mark ("Ms. Carmel"), Dragutin Oblak ("Oblak"), Ann Oblak ("Ms. Oblak") (collectively "the Oblaks"), Beverly Martin ("Ms. B. Martin"), Sarah Martin ("Ms. S. Martin"), and Valda Gentry ("Ms. Gentry") (collectively "defendants"). We affirm in part and reverse in part.

#### I. Background

\_\_\_\_ According to the allegations in plaintiff's complaint, plaintiff, his daughter Lisa Ann Richardson ("Ms. Richardson") (collectively "the Richardsons") and defendants were residents of the Vintage Condominiums ("Vintage Condos") in Union County, North Carolina in 2006-2007. On or about 1 August 2006, Ms. Richardson was elected to the Board of Directors ("the Board") of Vintage Condominiums Association, Inc. ("the Association"), the homeowners' association of Vintage Condos. Ms. Richardson subsequently became President of the Association and plaintiff became business manager.

Prior to Ms. Richardson's election to the Board, Proctor and Ms. McGuirt had been removed from the Board and Ms. Gentry had

resigned her position on the Board. Plaintiff alleges that defendants desired to remove Ms. Richardson from the Board and instead elect Ms. Holbrook, Schoeller, the Mathisen Company (owned by Mathisen), Podevyn, and Ms. Carmel, to the Board.

Plaintiff's complaint further alleges that defendants conspired to remove Ms. Richardson from the Board by defaming both Ms. Richardson and plaintiff. Specifically, plaintiff alleged that:

From August 1, 2006 until May 31, 2007, the Defendants, acting in concert, and pursuant to a conspiracy to effectuate the removal of [Ms.] Richardson from the Board of Directors, and the removal of [plaintiff] as business manager of the Association, maliciously made false and defamatory statements about [plaintiff] and [Ms.] Richardson to other condominium owners at Vintage Condominiums.

In addition, plaintiff alleged "that throughout 2006 and 2007, Defendants continued to make false and defamatory statements about Plaintiff to many of his friends and social acquaintances."

On 12 July 2007, several of the defendants in the instant case filed a complaint against the Richardsons ("the Vintage Condo case"). The Vintage Condo case focused on the Richardsons' management of the Association. On 26 July 2007, the Richardsons filed an Answer and Counterclaim ("the Counterclaim"). The Counterclaim included allegations that Ms. Mancil, Ms. Holbrook, Ms. McGuirt, Ms. Phipps, and the Oblaks (collectively "the Counterclaim defendants") made various verbal and written defamatory statements against the Richardsons. On 29 January 2008,

the Richardsons filed a voluntary dismissal without prejudice of the Counterclaim in the Vintage Condo case.

On 24 July 2008, plaintiff initiated the present action against defendants in Union County Superior Court for defamation and civil conspiracy seeking damages, including punitive damages. Some of the defendants in the present action were also plaintiffs in the Vintage Condo case. At the time plaintiff filed his complaint, the Vintage Condo case was still pending.

Defendants, through their respective counsel, filed several motions to dismiss, which were heard on 12 January 2009. During the hearing, plaintiff made a motion *ore tenus* to amend his complaint. On 3 February 2009, the trial court denied plaintiff's motion to amend his complaint and dismissed all of plaintiff's claims pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). Plaintiff appeals.

## II. Standard of Review

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The standard of review of an order granting a 12(b)(6) motion is whether the complaint states a claim for which relief can be granted under some legal theory when the complaint is liberally construed and all the allegations included therein are taken as true. On a motion to dismiss, the complaint's material factual allegations are taken as true.

Dismissal under Rule 12(b)(6) is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.

*Scheerer v. Fisher*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 688 S.E.2d 472, 474 (2010) (citations omitted). "A complaint should not be dismissed for failure to state a claim unless it appears to a certainty that plaintiff is legally entitled to no relief under any construction of the facts asserted." *Powell v. Wold*, 88 N.C. App. 61, 63, 362 S.E.2d 796, 797 (1987). "The standard of review on an appeal of a grant of a motion to dismiss is *de novo*." *Scheerer*, \_\_\_ N.C. App. at \_\_\_, 688 S.E.2d at 474.

### III. Statute of Limitations

As an initial matter, we note that each of the defendants specifically raised the statute of limitations as an affirmative defense to plaintiff's claims. "A statute of limitations can be the basis for dismissal on a Rule 12(b)(6) motion if the face of the complaint discloses that plaintiff's claim is so barred." *Long v. Fink*, 80 N.C. App. 482, 484, 342 S.E.2d 557, 559 (1986). Defendants' claims are based upon paragraph 20 of the complaint, in which plaintiff alleged:

From August 1, 2006 until May 31, 2007, the Defendants, acting in concert, and pursuant to a conspiracy to effectuate the removal of [Ms.] Richardson from the Board of Directors, and the removal of [plaintiff] as business manager of the Association, maliciously made false and defamatory statements about [plaintiff] and [Ms.] Richardson to other condominium owners at Vintage Condominiums.

"Under N.C. Gen. Stat. § 1-54(3) (2007), the statute of limitations for a claim of slander or libel is one year." *Merritt, Flebotte, Wilson, Webb & Caruso, PLLC v. Hemmings*, 196 N.C. App. 600, 611, 676 S.E.2d 79, 87 (2009). Plaintiff's complaint was

filed on 24 July 2008. We agree with defendants that any statements alleged in paragraph 20 of the complaint could not be used to support a claim for either slander or libel because they occurred more than one year prior to the filing of the complaint and were therefore barred by the statute of limitations.

However, plaintiff's claims of defamation were not limited to the allegations contained in paragraph 20. Reviewing the remainder of the complaint, plaintiff further alleged, in paragraph 24: "[T]hat *throughout 2006 and 2007*, Defendants continued to make false and defamatory statements about Plaintiff to many of his friends and social acquaintances." (Emphasis added). Treating this allegation as true, it must be assumed for purposes of Rule 12(b)(6) that defendants made the defamatory statements alleged by plaintiff through 31 December 2007. The one year statute of limitations would not bar plaintiff's claims for defamatory statements made by defendants from 24 July 2007 to 31 December 2007. Because it does not "appear[] to a certainty that plaintiff is legally entitled to no relief under any construction of the facts asserted" in plaintiff's complaint, the complaint could not be dismissed in its entirety based solely on the statute of limitations. *Powell*, 88 N.C. App. at 63, 362 S.E.2d at 797. Therefore, it is necessary to address the remainder of plaintiff's claims.

#### IV. Civil Conspiracy

\_\_\_\_Plaintiff argues that the trial court erred by dismissing his claims for civil conspiracy against all defendants. We disagree.

An action for civil conspiracy will lie when there is an agreement between two or more individuals to do an unlawful act or to do a lawful act in an unlawful way, resulting in injury inflicted by one or more of the conspirators pursuant to a common scheme.

Such an action is not one for damages caused by the conspiracy itself, but is one for damages caused by acts committed pursuant to a formed conspiracy; the charge of conspiracy itself does nothing more than associate defendants together and perhaps liberalize the rules of evidence to the extent that under proper circumstances the acts and conduct of one defendant might be admissible against all.

*Jones v. City of Greensboro*, 51 N.C. App. 571, 583, 277 S.E.2d 562, 571 (1981) (citations omitted), *overruled on other grounds by Fowler v. Valencourt*, 334 N.C. 345, 435 S.E.2d 530 (1993).

This Court has previously held that a plaintiff cannot "use the same alleged acts to form both the basis of a claim for conspiracy to commit certain torts *and* the basis of claims for those torts." *Id.* at 584, 277 S.E.2d at 571. In the instant case, plaintiff's complaint repeatedly alleged only that defendants defamed plaintiff. Because his claim for conspiracy uses the same alleged acts that form the basis of his defamation claims, the trial court properly dismissed plaintiff's action for civil conspiracy against defendants. This assignment of error is overruled.

#### V. Defamation

\_\_\_\_Richardson argues that the trial court erred in dismissing his defamation claims against all defendants. "In North Carolina, the term defamation applies to the two distinct torts of libel and slander." *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568

S.E.2d 893, 898 (2002). In the instant case, Richardson alleged that certain statements of defendants constituted libel *per se* and slander *per se*.

Libel *per se* is a publication which, when considered alone without explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace.

*Phillips v. Winston-Salem/Forsyth Cty. Bd. of Educ.*, 117 N.C. App. 274, 277, 450 S.E.2d 753, 756 (1994). Our Courts have consistently set a high threshold when reviewing allegations of libel *per se*.

[D]efamatory words to be libelous *per se* must be susceptible of *but one meaning* and of such nature that *the court* can presume as a matter of law that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided.

*Renwick v. News and Observer and Renwick v. Greensboro News*, 310 N.C. 312, 317-18, 312 S.E.2d 405, 409 (1984) (internal quotations and citation omitted). "In addition, the alleged defamatory statements must be construed only in the context of the document in which they are contained, 'stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The articles must be defamatory on its face within the four corners thereof.'" *Nucor Corp. v. Prudential Equity Grp., LLC*, 189 N.C. App. 731, 736, 659 S.E.2d 483, 487 (2008) (quoting *Renwick*, 310 N.C. at 317-18, 312 S.E.2d at 409).

Slander *per se* is an oral communication to a third person which amounts to (1) an accusation that the plaintiff committed a



crime involving moral turpitude; (2) an allegation that impeaches the plaintiff in his trade, business, or profession; or (3) an imputation that the plaintiff has a loathsome disease.

*Phillips*, 117 N.C. App. at 277, 450 S.E.2d at 756.

Richardson's complaint alleged that the following statements constituted libel *per se* and slander *per se*:

28. The Defendants, Dorothy A. Mancil and Jo N. Holbrook, stated that Plaintiff, Paul Richardson, and Lisa Ann Richardson misappropriated Association funds.

29. The Defendant, Jo N. Holbrook, stated that Plaintiff, Paul Richardson, beat up Earline B. Phipps. She also stated Plaintiff, Paul Richardson, and Lisa Ann Richardson misappropriated Association funds.

30. The Defendant, Karen D. McGuirt, stated that Plaintiff, Paul Richardson, wrongfully received Association funds.

31. The Defendants, Dragutin Oblak and Ann Oblak, Dorothy A. Mancil, and Jo N. Holbrook, stated that Plaintiff, Paul Richardson, has a master key to all the Vintage Condominium units, implying that Paul Richardson has been surreptitiously entering condominium units on the property.

32. Upon information and belief, the Defendants, Earline B. Phipps and Jo N. Holbrook, stated that the Plaintiff, Paul Richardson, trespassed and assaulted Earline B. Phipps.

33. Defendant, Karen D. McGuirt, stated that Plaintiff, Paul Richardson, and Lisa Ann Richardson misappropriated Association funds for their personal use.

34. Defendants, Jo N. Holbrook, Karen D. McGuirt, Douglas C. Proctor, and Dorothy A. Mancil, stated that Paul Richardson was not paying association bills to third parties.

A. Defendants Podevyn, Mathisen, Schoeller, Ms. Carmel, Ms. B. Martin, Ms. S. Martin and Ms. Gentry

Initially, we note that Richardson's complaint fails to allege that any specific defamatory statement was made by defendants Podevyn, Mathisen, Schoeller, Ms. Carmel, Ms. B. Martin, Ms. S. Martin, or Ms. Gentry. In the absence of any allegations of specific statements by these defendants, it is impossible to reach the high threshold level necessary to maintain actions for libel *per se* and slander *per se* against them. Thus, the trial court properly dismissed the defamation claims against these defendants.

B. Defendants the Oblaks and Proctor

In addition, the only statements alleged to have been made by the Oblaks and Proctor do not rise to the level necessary to maintain actions for libel *per se* and slander *per se*. The statement attributed to the Oblaks (and Ms. Mancil and Ms. Holbrook), in paragraph 31 of the complaint, that Richardson possessed a master key to all condominium units, is innocuous once it is "stripped of all insinuations, innuendo, colloquium and explanatory circumstances." *Renwick*, 310 N.C. at 317-18, 312 S.E.2d at 409.

The statement attributed to Proctor (and Ms. Holbrook, Ms. McGuirt, and Ms. Mancil), in paragraph 34 of the complaint, that Richardson failed to pay the HOA's bills to third parties, also fails to reach the necessary threshold. Our Courts have previously held that the following statements would not support actions for libel *per se*: (1) a plaintiff would not pay his debts, would not work, and was "a man that respectable people had best not have

anything to do with." *Penner v. Elliott*, 225 N.C. 33, 34, 33 S.E.2d 124, 125 (1945); (2) a plaintiff had unfavorable personal habits, *Robinson v. Insurance Co.*, 273 N.C. 391, 395, 159 S.E.2d 896, 899 (1968); and (3) a plaintiff was dishonest, untruthful and an unreliable employee, *Stutts v. Power Co.*, 47 N.C. App. 76, 82, 266 S.E.2d 861, 865 (1980). The statement alleged in the instant case is materially indistinguishable from these statements. Therefore, the statements alleged in paragraphs 31 and 34 of the complaint were insufficient to support an action for libel *per se* and slander *per se*, and, as a result, the trial court properly dismissed the claims based upon these statements.

C. Defendants Ms. Mancil, Ms. Holbrook, Ms. McGuirt and Ms. Phipps

The remaining statements alleged in Richardson's complaint were made by four defendants - Ms. Mancil, Ms. Holbrook, Ms. McGuirt and Ms. Phipps.

The statements allegedly made by these defendants essentially involve two accusations: (1) that Richardson and his daughter had misappropriated HOA funds and (2) that Richardson assaulted Ms. Phipps. Richardson argues that these statements support an action for libel *per se* because they accuse Richardson of committing infamous crimes and slander *per se* because they accuse Richardson of committing a crime involving moral turpitude.

Our Supreme Court has defined infamous crimes to be those "whose commission involves an inherent baseness and which are in conflict with those moral attributes upon which the relations of

life are based. . . . They are said to be those which involve moral turpitude. . . . It [the infamous crime] includes anything done contrary to justice, honest[y], modesty, or good morals. . . .” *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986) (citation omitted).

This Court has defined crimes involving moral turpitude to include “act[s] of baseness, vileness, or depravity in the private and social duties that a man owes to his fellowman or to society in general.” *Dew v. State ex rel. N.C. Dep't of Motor Vehicles*, 127 N.C. App. 309, 311, 488 S.E.2d 836, 837 (1997) (internal quotations and citation omitted). Moral turpitude may also be defined as “[c]onduct that is contrary to justice, honesty, or morality.” *Black's Law Dictionary*, 1101 (9th ed. 2009).

In the instant case, Richardson was accused of perpetrating a simple assault against Ms. Phipps. Under our criminal statutes, simple assault is a Class 2 misdemeanor. See N.C. Gen. Stat. § 14-33 (2009). In *State v. McNeill*, our Supreme Court specifically refused to categorize the crime of assault as an infamous crime, which at that time was necessary to institute a prison term. 75 N.C. 15, 15-17 (1876). While “[w]hich offenses are considered infamous are affected by changes in public opinion from one age to another,” we determine that the crime of simple assault, in and of itself, still does not rise to the level of an infamous crime or a crime involving moral turpitude. *Mann*, 317 N.C. at 171, 345 S.E.2d at 369. Therefore, the trial court properly dismissed the portion of Richardson’s complaint based upon this allegation.

However, the statements made by defendants Ms. Mancil, Ms. Holbrook and Ms. McGuirt, accusing Richardson of misappropriating the funds of the Association, appear to fall squarely within the ambit of infamous crimes and/or crimes involving moral turpitude. The misappropriation of funds is, in essence, an accusation of embezzlement against Richardson. Embezzlement is a felony, with the class level determined by the amount of money embezzled. See N.C. Gen. Stat. § 14-90 (2009). In *Elmore v. R.R. Co.*, our Supreme Court held that an accusation that a plaintiff misappropriated funds was tantamount to an accusation that the plaintiff had committed the infamous offense of embezzlement and was actionable as slander *per se*. 189 N.C. 658, 671, 127 S.E. 710, 716 (1925). Because felony embezzlement is a serious crime that necessarily involves dishonesty, we hold that an accusation of embezzlement is sufficient to support causes of action against defendants Ms. Mancil, Ms. Holbrook and Ms. McGuirt for both libel *per se* and slander *per se*.

#### VI. Counterclaims

The remaining defendants, Ms. Mancil, Ms. Holbrook, and Ms. McGuirt, were also plaintiffs in the Vintage Condo case ("the Vintage Condo plaintiffs"). In support of their motions to dismiss in the instant case, the Vintage Condo plaintiffs submitted both written and oral arguments to the trial court asserting that Richardson's causes of action for defamation and conspiracy were

compulsory counterclaims in the Vintage Condo case. At the outset, we note that when this argument was raised before the trial court, the trial court necessarily had to consider the court record in the Vintage Condo case to determine whether Richardson's claims in the instant case were compulsory counterclaims in the Vintage Condo case. The transcript indicates that it was the trial court that first raised the issue of compulsory counterclaims during oral arguments on the motions to dismiss. Plaintiff argues that consideration of the record in the Vintage Condo case was improper under Rule 12(b)(6).

However, this Court has previously held that "[s]ubsequent to the adoption of G.S. 1A-1, Rule 13(a), relating to compulsory counterclaims, [our Supreme] Court has treated denial of a motion to dismiss on the ground of a prior action pending as a motion pursuant to that rule[.]" *Atkins v. Nash*, 61 N.C. App. 488, 489, 300 S.E.2d 880, 881 (1983) (citing *Gardner v. Gardner*, 294 N.C. 172, 240 S.E.2d 399 (1978)); see also 1 G. Gray Wilson, *North Carolina Civil Procedure* § 13-5, at 13-13 (3d ed. 2007) ("A motion to dismiss on the ground of a pending prior action . . . will usually be treated as a motion pursuant to Rule 13(a)."). Thus, the motion to dismiss on the basis that Richardson's complaint asserted claims that were required to be filed as compulsory counterclaims in the Vintage Condo case was made pursuant to Rule 13(a). It would be impossible for a trial court to determine if an asserted claim should be dismissed under Rule 13(a) because it constituted a compulsory counterclaim in a prior action if the trial court could

not consider the court record in the previous case. Consequently, it was proper for the trial court to consider the court record in the Vintage Condo case in order to ascertain if Richardson's claims in the instant case should have been dismissed pursuant to that rule.

Rule 13(a) governs compulsory counterclaims and states, in relevant part: "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim[.]" N.C. Gen. Stat. § 1A-1, Rule 13(a) (2009). The purpose of this rule "is to enable one court to resolve 'all related claims in one action, thereby avoiding a wasteful multiplicity of litigation. . . .'" *Gardner*, 294 N.C. at 176-77, 240 S.E.2d at 403 (quoting 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1409, at 37 (1971)).

[C]ourts examine the following three factors in determining whether two or more claims arose out of the same transaction or occurrence for purposes of the compulsory counterclaim rule: [(1)] whether the issues of fact and law raised by the claim and counterclaim are largely the same[;] [(2)] whether substantially the same evidence bears on both claims[;] and [(3)] whether any logical relationship exists between the two claims.

*Jonesboro United Methodist Church v. Mullins-Sherman Architects, L.L.P.*, 359 N.C. 593, 599-600, 614 S.E.2d 268, 272 (2005).

In the instant case, the Vintage Condo complaint included allegations that the Richardsons were mismanaging the HOA. These

allegations raise issues of fact and law that are largely the same as Richardson's defamation allegations, involve much of the same conduct and evidence as Richardson's defamation allegations, and are logically related to Richardson's defamation allegations. Therefore, in order to avoid a wasteful multiplicity of litigation, Richardson was required, pursuant to Rule 13(a), to have brought his claims as counterclaims in the Vintage Condo case. Instead, Richardson dismissed his counterclaims without prejudice and then filed an independent action that included the defamation allegations.

The record before this Court indicates that the Vintage Condo case was still pending at the time of the hearing on defendants' motions to dismiss. When the prior action is still pending, "if an action may be denominated a compulsory counterclaim in a prior action, it must be either (1) dismissed with leave to file it in the former case or (2) stayed until the conclusion of the former case." *Brooks v. Rogers*, 82 N.C. App. 502, 507, 346 S.E.2d 677, 681 (1986) (citing *Gardner*, 294 N.C. at 176-77, 240 S.E.2d at 403). Nonetheless, "[b]ecause the purpose of Rule 13(a) is to combine related claims in one action . . . the option to stay the second action should be reserved for unusual circumstances. . . ." *Id.* Therefore, the trial court should have either dismissed Richardson's defamation claims against Ms. Mancil, Ms. Holbrook, and Ms. McGuirt with leave to file them in the Vintage Condo case, or it should have stayed the instant case until the Vintage Condo case was completed, if unusual circumstances existed.



The record before this Court in the instant case does not reveal the presence of any unusual circumstances. However, we take judicial notice of this Court's recent opinion in *Vintage Condos. Assoc. v. Richardson*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, 2010 LEXIS \_\_\_, 2010 WL \_\_\_ (2010) (unpublished). The opinion in *Vintage* indicates that by 31 December 2008, the Vintage Condo plaintiffs had voluntarily dismissed all of their claims for relief, and the only issue still pending after these voluntary dismissals was Richardson's Rule 11 motion for sanctions. Thus, at the time of the 12 January 2009 hearing on defendants' motions to dismiss in the instant case, the Vintage Condo plaintiffs were no longer litigating their claims against Richardson, even though the case was still pending. This unique factual scenario created the sort of unusual circumstances contemplated by the *Brooks* Court that would have allowed the trial court to utilize the option to stay Richardson's action in the instant case until the Vintage Condo case was completed. Instead, the trial court erred by dismissing rather than staying Richardson's claims. Since the *Vintage* opinion makes clear that the Vintage Condo case is completed, it is now appropriate for Richardson to pursue his defamation claims against Ms. Mancil, Ms. Holbrook, and Ms. McGuirt. Accordingly, we reverse the portion of the trial court's order dismissing Richardson's defamation claims against Ms. Mancil, Ms. Holbrook, and Ms. McGuirt and remand the instant case for further proceedings.

VII. Conclusion

Any claims based upon defamatory statements that were made more than one year prior to the filing of Richardson's complaint on 24 July 2008 were barred by the one year statute of limitations in N.C. Gen. Stat. § 1-54(3). Because the alleged acts Richardson used to support his civil conspiracy claim were the same acts that formed the basis of his defamation claim, the trial court properly dismissed that cause of action against all defendants. Richardson's complaint fails to allege a cognizable claim for either slander *per se* or libel *per se* against defendants Podevyn, Mathisen, Schoeller, Ms. Carmel, Ms. B. Martin, Ms. S. Martin, Ms. Gentry, the Oblaks and Proctor.

The defamation allegations against Ms. Mancil, Ms. Holbrook and Ms. McGuirt stated valid causes of action, but these claims were compulsory counterclaims that should have been asserted in the Vintage Condo case. Since the Vintage Condo case was still pending at the time of the hearing on the motions to dismiss, the trial court should have either dismissed Richardson's claims with leave to file them in the Vintage Condo case or stayed Richardson's claims against the Vintage Condo plaintiffs until the completion of the Vintage Condo case. According to this Court's recent opinion in *Vintage*, that case is now completed. Accordingly, we reverse the portion of the trial court's order dismissing Richardson's defamation claims against Ms. Mancil, Ms. Holbrook, and Ms. McGuirt, and remand for further proceedings on those claims. The remainder of the trial court's order is affirmed.

Affirmed in part and reversed in part.

Judges STEELMAN and THIGPEN concur.

Report per Rule 30(e).