

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-604

No. COA21-748

Filed 6 September 2022

Wake County, No. 21CVD5636

STEVEN HESTER HALL, Plaintiff,

v.

BRUNSWICK PLANTATION PROPERTY OWNERS ASSOCIATION, GREG MAYOL, CATHY SIX, and COMMUNITY ASSOCIATION MANAGEMENT SERVICES, Defendants.

Appeal by Plaintiff from order entered 29 July 2021 by Judge Julie L. Bell in Wake County District Court. Heard in the Court of Appeals 24 August 2022.

Cranfill Sumner LLP, by Steven A. Bader, Benton L. Toups, and Elizabeth C. King, for Defendants-Appellees.

Steven Hester Hall, Pro se, Plaintiff-Appellant.

COLLINS, Judge.

¶ 1

Plaintiff appeals from an order granting Defendants' motion to dismiss Plaintiff's claims for breach of fiduciary duties, insurance licensing violations, bank fraud, insurance fraud, breach of implied covenant of good faith and fair dealing, harassment, and unfair and deceptive trade practices. We affirm the trial court's order.

I. Procedural History and Factual Background

¶ 2

Plaintiff Steven Hester Hall is a general contractor and the CEO of Eco Lakes Construction, LLC. Eco Lakes owns real property at 649 Covington Drive NW, Calabash, NC (“property”), in the Brunswick Plantation and Golf Course Community (“Community”). Defendants are the Brunswick Plantation Property Owners Association (“Association”); Community Association Management, the property management company for the Association; Greg Mayol, the Community Association Manager for the Community; and Cathy Six, the Administrator for the Architectural Standards Committee for the Association.

¶ 3

The Contract Performance and Master Department Agreement (“Master Department Agreement”) is a contract between the Architectural Standards Committee and a general contractor on a construction project in the Community. The Master Department Agreement requires the general contractor to provide to the Association a \$5,000 bond to be held as security for the performance of the construction project in accordance with the community governing documents—the Brunswick Plantation Architectural Plan and Residential Design and Construction Standards, and the Amended and Restated Master Declaration and Development Plan for Brunswick Plantation.

¶ 4

Plaintiff submitted plans to construct a home on the property but did not provide the \$5,000 Contractor Compliance Bond required by the Master Department

Agreement. Defendants declined to act on Plaintiff's construction proposal until he provided the bond. Plaintiff sought a bond waiver; Defendants declined to issue a waiver. Plaintiff again refused to provide the bond, and Defendants directed Plaintiff to cease construction on the lot.

¶ 5 On 23 April 2021, Plaintiff filed a complaint, motion for a temporary restraining order, and motion for a preliminary injunction against Defendants. The trial court denied the motion for a temporary restraining order on 6 May 2021.

¶ 6 Plaintiff filed an amended complaint on 7 May 2021, seeking to invalidate Defendants' requirement that new construction be secured by a Contractor Compliance Bond. In his amended complaint, Plaintiff alleged breach of fiduciary duties, insurance licensing violations, bank fraud, insurance fraud, breach of the implied covenant of good faith and fair dealing, harassment, and unfair and deceptive trade practices. Defendants filed a motion to dismiss the amended complaint under North Carolina Rule of Civil Procedure 12(b)(6). Plaintiff filed a motion to amend his complaint to add additional causes of action and an additional defendant, and an objection to Defendants' motion to dismiss. The trial court granted Defendants' motion to dismiss on 29 July 2021.¹ Plaintiff timely appealed.

II. Discussion

¹ The record is silent as to whether Plaintiff's motion to amend was ruled upon.

¶ 7 Plaintiff argues that the trial court erred by granting Defendants' motion to dismiss because Plaintiff stated valid claims for relief.

¶ 8 We review a trial court's order granting a Rule 12(b)(6) motion to dismiss de novo. *AMOCO v. AAN Real Estate, LLC*, 232 N.C. App. 524, 525, 754 S.E.2d 844, 845 (2014). In reviewing such a dismissal, this Court must determine "whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not." *Harris v. NCNB Nat'l Bank*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987). "The complaint must be liberally construed, and the court should not dismiss the complaint unless it appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim which would entitle him to relief." *Block v. Cnty. of Person*, 141 N.C. App. 273, 277-78, 540 S.E.2d 415, 419 (2000) (citation omitted). When the complaint fails to allege the substantive elements of some legally cognizable claim, or where it alleges facts that defeat the claim, the complaint should be dismissed under Rule 12(b)(6). *Hudson-Cole Dev. Corp. v. Beemer*, 132 N.C. App. 341, 345-46, 511 S.E.2d 309, 312 (1999).

¶ 9 Plaintiff contends that he stated valid claims for relief based on "the existence of a contract that the Plaintiff was required to sign as a condition of building a house in the community."

¶ 10 The caption of Plaintiff's complaint indicates that he is bringing actions for

breach of fiduciary duties, insurance licensing violations, bank fraud, insurance fraud, breach of implied covenant of good faith and fair dealing, harassment, and unfair and deceptive trade practices. The body of Plaintiff's complaint includes factual allegations and asserts that "1. The Requirements for Bonds, Escrows and the Compliance Bond Are Not Enforceable"; "2. The Use of the Compliance Bond Gives Rise to Numerous Breaches of Fiduciary Duty"; "3. The Performance Bond, the Cash Escrow, the Compliance Bond and the POA's Collusion with the Lender and other methods of harassment give rise to numerous Unfair or Deceptive Trade Practices in Violation of N.C. Gen. Stat. § 75-1"; and "4. The Contractor Compliance Bond not only had the intent to deceive, it actually did deceive Property Owners[.]"

¶ 11 It can be gleaned from the complaint that Plaintiff is challenging the propriety of the Contractor Compliance Bond as required by the Master Department Agreement. However, even construing the allegations in Plaintiff's complaint liberally, Plaintiff's "complaint fail[s] as a matter of law to state the substantive elements of some legally recognize claim" *Hudson-Cole Dev. Corp. v. Beemer*, 132 N.C. App. at 345-46, 511 S.E.2d at 312. As Plaintiff failed to state a claim upon which relief may be granted under some legal theory, the trial court did not err by dismissing the claims under Rule 12(b)(6). *Id.*

¶ 12 The trial court dismissed Plaintiff's claims for lack of subject matter jurisdiction and Plaintiff contends this was error.

¶ 13 “In order for a court to have subject matter jurisdiction to hear a claim, the party bringing the claim must have standing.” *Revolutionary Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 106, 744 S.E.2d 130, 133 (2013). Standing means “that the party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.” *Town of Ayden v. Town of Winterville*, 143 N.C. App. 136, 140, 544 S.E.2d 821, 824 (2001) (citation omitted). “Every claim must be prosecuted in the name of the real party in interest.” *Street v. Smart Corp.*, 157 N.C. App. 303, 306, 578 S.E.2d 695, 698 (2003) (citations omitted). “A real party in interest is a party who is benefited or injured by the judgment in the case.” *Id.* (citations omitted). “A lack of standing may be challenged by motion to dismiss for failure to state a claim upon which relief may be granted.” *Energy Inv’rs Fund, L.P. v. Metric Constructors, Inc.*, 351 N.C. 332, 337, 525 S.E.2d 441, 445 (2000).

¶ 14 Here, Plaintiff appears to argue that the Amended and Restated Master Declaration and Development Plan for Brunswick Plantation was unenforceable because it is ambiguous and is a restrictive covenant on the property. Plaintiff does not own the property, nor does he have a protected legal interest in the property. Accordingly, to the extent Plaintiff is arguing that the Amended and Restated Master Declaration and Development Plan for Brunswick Plantation was not enforceable, he lacks standing to bring this action. *See Beachcomber Props., L.L.C. v. Station One, Inc.*, 169 N.C. App. 820, 824, 611 S.E.2d 191, 194 (2005) (holding that plaintiff did

not have standing to bring an action for declaratory judgment to prohibit owners from transferring their property to a timeshare program because plaintiff did not own the property); *United Daughters of the Confederacy v. City of Winston-Salem*, 275 N.C. App. 402, 407, 853 S.E.2d 216, 220 (2020) (holding that plaintiff did not have standing to seek an injunction preventing removal of a confederate statue where plaintiff did not claim ownership of the statue).

¶ 15 In the alternative, the trial court dismissed Plaintiff's claims because Plaintiff does not have the authority to bring suit on behalf of Eco Lakes.

¶ 16 “[I]n North Carolina[,] a corporation must be represented by a duly admitted and licensed attorney-at-law and cannot proceed *pro se*.” *LexisNexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205, 209, 573 S.E.2d 547, 549 (2002).

¶ 17 Here, there is no indication that Plaintiff is a licensed attorney. Rather, Plaintiff is a general contractor and is the president and CEO of Eco Lakes. To the extent Plaintiff purports to bring claims on behalf of Eco Lakes, he may not do so.

III. Conclusion

¶ 18 The trial court's order dismissing Plaintiff's complaint is affirmed.

AFFIRMED.

Judges HAMPSON and JACKSON concur.

Report per Rule 30(e).