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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2022-000399
Civil Action No. 2021-CP-10-3740

Amenhotep Myers,

Appellant,

v.

South Carolina Department of Motor Vehicles and Kevin Shwedo, in his official
capacity as Executive Director of Motor Vehicles, Respondent.

RECORD ON APPEAL

/s/ Amenhotep Myers
Amenhotep Myers
1572 Nathaniel Drive
Charleston, SC 29412
(202) 679-7947

Appellant

Robin Jackson
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045

Attorney for Respondents

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE: 2021-CP-10-03740

AMENHOTEP MYERS,

Plaintiff,

ORDER

v.

SOUTH CAROLINA DEPARTMENT OF
MOTOR VEHICLES and KEVIN A.
SHWEDO, in his official capacity as
Executive Director of the South Carolina
Department of Motor Vehicles,

Defendants.

This matter came before the court upon Defendants' Motion to Dismiss on February 11, 2022. Amenhotep Myers, Esquire, represented himself *pro se*, and Robin Jackson, Esquire represented the Department of Motor Vehicles (SCDMV or DMV) and Kevin Shwedo. After reviewing the briefs submitted and hearing oral arguments from both sides, for the reasons set forth herein, Defendants' Motion to Dismiss is granted.

In considering a SCRCP Rule 12(b)(6) motion to dismiss, the court construes the facts alleged in the Complaint in the non-moving party's favor to determine if such facts, as alleged, entitle him to relief under any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E. 2d 245, 247-8 (2007). In considering a Rule 12(b)(6) motion, the trial court bases its ruling solely upon allegations set forth on the face of the Complaint. *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E. 2d 413 (S.C. App. 2003); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E. 2d 601 (1995). In this motion, the defendant solely relies on the allegations contained in the body of the Complaint and it is on this basis that they are entitled to have this matter dismissed.

This case is governed by the South Carolina Tort Claims Act (hereafter “Tort Claims Act” or “the Act”). The DMV is entitled to the immunities under the Tort Claims Act. The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against the DMV, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. 15-78-20(b) (Supp. 1997); S.C. Code Ann. 15-78-40 (Supp. 1997).

I. THE STATUTE OF LIMITATIONS.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a “verified claim”. *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. at 207; *see also Joubert v. South Carolina Dept’ of Soc. Servs.*, 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). Here, the plaintiff did not file a statutorily compliant verified claim. As there is no evidence that Myers filed a verified claim, the three-year statute of limitations does not apply and the two-year statute of limitations is applicable. The DUI arrest and license suspension in this case occurred on July 7, 2018. The hearing on the Implied Consent suspension was requested on August 7, 2018. The letter at issue in this case was sent on August 13, 2018, and the hearing officer upheld the suspension on September 19, 2018. The allegations relating to Gross Negligence relate to the

letters sent to the plaintiff on August 13, 2018. The Plaintiff received one letter saying the suspension was deleted, and a second letter dated the same day, advising that the suspension was in effect and his request for hearing had been received. He also received copies of the SCDMV's motion to dismiss the Implied Consent hearing as the request was filed out of time (served August 14, 2018), the hearing officer's order to him to file a response (served on August 20, 2018 by e-mail), and the hearing officer's order dismissing the challenge to the implied consent suspension, which was served on him by e-mail on September 19, 2018.

Plaintiff admits he relied on the single letter dated August 13, 2018, that said the suspension was deleted but acknowledged that he received the two conflicting letters. It was at this time, that he was first on notice of an issue. He thereafter disregarded correspondence, motions and orders to the contrary.

The Complaint in this case was filed on August 16, 2021, over a year after the expiration of the two-year statute of limitations based on the conflicting letters and eleven months after receiving the hearing officer's order dismissing the implied consent challenge and upholding the license suspension. S.C. Code Ann. § 15-78-110. Additionally, in paragraph 28, plaintiff indicates that he was notified by Uber and Lyft on August 12, 2019 that his license was suspended. Even using this date as the date of notice, he has missed the two year statute of limitations by several days. Therefore, the claim for Gross Negligence is dismissed on the basis that the statute of limitations has expired.

Declaratory Judgment actions have a three year statute of limitations, but the plaintiff's request for declaratory relief is unclear at best. Plaintiff appears to be asking the court to declare that the right to operate a motor vehicle is a fundamental right under the due process clause of the 14th Amendment of the United States Constitution. If this is what the plaintiff is asking, his "right"

to operate a motor vehicle was suspended by virtue of his arrest for DUI and refusal to take a breathalyzer test on July 7, 2018. The statute of limitations for such an action would be July 7, 2021. This matter was not filed until August 16, 2021, more than a month after the expiration of the statute of limitations. Therefore, the request for declaratory judgment is dismissed based on the expiration of the statute of limitations.

II. SERVICE OF THE PLEADINGS.

Plaintiff filed this Summons and Complaint on August 16, 2021. As the South Carolina Department of Motor Vehicles is a state agency, and Kevin Shwedo is a state officer, service must be accomplished on each pursuant to SCRCP Rule 4(d)(5), which requires, “*State Officer or Agency*. Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.” In this case, the summons and complaint were mailed to the Attorney General as evidenced by the filed Affidavit of Service. However, plaintiff has not shown any evidence that either Director Shwedo or the SCDMV were ever served. One hundred and twenty days from the date of filing, August 16, 2021, was December 14, 2021. Therefore, even if the Complaint was filed within the statute of limitations, the statute subsequently expired and the Complaint was not served within the 120 day time period required by SCRCP Rule 3(a)(2).

III. FAILURE TO STATE A CAUSE OF ACTION FOR WHICH RELIEF MAY BE GRANTED.

Plaintiff filed a seventy two paragraph complaint which contains two causes of action – Gross Negligence and Declaratory Judgment. Neither of these claims entitles the plaintiff to any

relief. Plaintiff has not set forth any factual basis for how the DMV was grossly negligent. Instead he sets out facts regarding the history of driving in this country, and makes it clear that he willfully ignored multiple notices from the DMV about the status of his license.

In order to state a claim for declaratory relief, the plaintiff must clearly set forth what he is asking the court to declare. In this Complaint, the Plaintiff claims that the “right to operate a motor vehicle” is “like the right to marry, in that it can be regulated by the states”. (Compl. ¶53b). After that, he proceeds to include facts and information about the population of the state, the number of roadways in the United States, and automaker suppliers in South Carolina.

The plaintiff does not ask the court to declare the right to drive, but instead asserts that it is already a right. The declaratory judgment claim does not ask the court to do anything. Therefore, there is nothing for the Court to declare and therefore no cause of action upon which relief may be granted.

IV. KEVIN SHWEDO IS NOT A PROPER DEFENDANT FOR THE STATE LAW CAUSE OF ACTION LEVIED AGAINST HIM.

The plaintiff has brought a state law cause of action against moving defendants –Gross Negligence. The state law causes of action are necessarily brought pursuant to the South Carolina Tort Claims Act, S.C. Code §15-78-10 *et. seq.* Pursuant to the Tort Claims Act:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326 S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Kevin Shwedo was an individual acting in his capacity as the Executive Director of the Department of Motor Vehicles. In that capacity, he is an employee of the Department of Motor Vehicles. Therefore, Kevin Shwedo is not a proper defendant and should be dismissed from the state law causes of action, and the DMV (who is already named in these causes of action)—as “the agency or political subdivision for which the employee was acting”—should be substituted as the party defendant pursuant to S.C. Code Ann. § 15-78-70(c). To the extent that Shwedo, as the agency head would be a proper party defendant, he is not a proper party along with the DMV, as that would risk a double recovery on any such causes of action and therefore, Shwedo is hereby dismissed.

IT IS THEREFORE ORDERED THAT,

-Kevin Schwedo is dismissed as an improper party;

-The Complaint is dismissed on the basis that the plaintiff failed to file within the relevant statute of limitations and failed to properly serve the defendants;

-An additional grounds for dismissing the Complaint is that it fails to state a claim for which relief may be granted;

-All causes of action and all parties are dismissed and this matter is hereby dismissed.

AND IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Amenhotep Myers VS DMV South Carolina , defendant, et al
Case Number: 2021CP1003740
Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2022-02-16 14:47:55 page 7 of 7

ELECTRONICALLY FILED - 2022 Feb 16 4:02 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003740

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Amenhotep Myers,

Plaintiff,

v.

South Carolina Department of Motor
Vehicles and Kevin A. Shwedo, in his
official capacity as Executive Director of
Motor Vehicles,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-03740

**ORDER DENYING MOTION TO
RECONSIDER PURSUANT TO RULE
59(e)**

The Plaintiff filed a motion asking this Court to reconsider its Order dated February 16, 2022. Specifically, Plaintiff asks this Court to reconsider the order and argues that the Court effectively denied Plaintiff's oral motion to amend the complaint as a means of curing the defects cited in Defendants' motion to dismiss. For the reasons set forth below, the motion to reconsider is DENIED.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in the parties’ memorandums, Plaintiff’s Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Amenhotep Myers VS DMV South Carolina , defendant, et al
Case Number: 2021CP1003740
Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2022-03-02 09:22:20 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 02 9:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003740

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

Amenhotep Myers)
Plaintiff(s))

vs.)

South Carolina DMV and Kevin A. Shwedo)
Defendant(s))

Submitted By: Amenhotep Myers
Address: 1572 Nathaniel Drive
Charleston, SC 29412

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2021 -CP- 10 - 3740

2021 AUG 16 AM 11:00
CLERK OF COURT

SC Bar #: _____
Telephone #: 202 679 7997
Fax #: _____
Other: _____
E-mail: amenhotep.31@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is subject to the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input checked="" type="checkbox"/> Other (699) <i>Cross Neg. & QS</i> <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 - <u>NI</u> - <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
|---|---|--|--|
- Submitting Party Signature: *Amenhotep Myers* Date: 8/16/21

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2021-CP-10-3740

AMENHOTEP MYERS)
)
Plaintiff,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES and KEVIN A.)
SHWEDO, *in his official capacity as*)
Executive Director of the South Carolina)
Department of Motor Vehicles.)
)
Defendants.)
_____)


SUMMONS
(Jury Trial Demanded)

2021 AUG 16 AM 11:12
JULIE J. HARRINGTON
CLERK OF COURT

FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff at 1572 Nathaniel Drive, Charleston, SC 29412, within thirty (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for an entry of default against you and for an award of the relief demanded in the Complaint.


Amenhotep Myers
1572 Nathaniel Drive
Charleston, SC 29412
202-679-7947
Amenhotep.31@gmail.com
PLAINTIFF

Charleston, South Carolina
August 16, 2021

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2021-CP-10-3740

AMENHOTEP MYERS)
)
 Plaintiff,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES and KEVIN A.)
SHWEDO, *in his official capacity as*)
Executive Director of the South Carolina)
Department of Motor Vehicles.)

Defendants.)
_____)

COMPLAINT
(Jury Trial Demanded)

2021 AUG 16 AM 11:12
JULIE J. HARRIS, CLERK
CLERK OF COURT
FILED

TO THE DEFENDANTS ABOVE NAMED:

Plaintiff Amenhotep Myers (“Plaintiff”) brings this action against the South Carolina Department of Motor Vehicles and Kevin A. Shwedo (collectively “Defendants”, “SCDMV”, or the “Department”) and makes the following allegations based upon information, belief, and Plaintiff’s own knowledge:

PARTIES

1. Plaintiff Amenhotep Myers is an individual, a resident, and a citizen of the State of South Carolina.
2. Defendant SCDMV is a State agency that administers the State’s motor vehicle, licensing, and titling laws to deliver identification, licensing, and property records. Defendant SCDMV has offices in Charleston County and does business in Charleston County, South Carolina.

3. Defendant Kevin A. Shwedo is the Executive Director of SCDMV and is charged by law with administering the operations of SCDMV. The Executive Director is sued in his official capacity, as are his agents and successors in office.

JURISDICTION AND VENUE

4. Jurisdiction and venue are proper pursuant to S.C. Code Ann. § 15-77-50 and § 15-53-20.

5. At all times relevant, Plaintiff was a resident in the County of Charleston and a citizen of the State of South Carolina.

6. The Department, at all times relevant, was a South Carolina State Agency and a South Carolina State Official, transacting business in Charleston County, South Carolina.

FACTUAL ALLEGATIONS

7. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

8. Pursuant to the South Carolina Tort Claims Act, a government entity is liable for loss when the government entity's licensing power or function is exercised in a grossly negligent manner.

9. S.C Code Ann. § 15-78-60(12) provides and in relevant part states:

The governmental entity is not liable for a loss resulting from: (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any license *except when the power or function is exercised in a grossly negligent manner.*

10. Plaintiff became a South Carolina licensed driver on May 2, 2017 and Plaintiff's driver's license is set to expire on March 12, 2027.

11. As a precondition to obtain a driver's license, Plaintiff was required to and did relinquish Plaintiff's valid North Carolina driver's license, study the South Carolina Driver's Manual, successfully complete a vision, knowledge, and driving test, and pay twenty-five (\$25.00) dollars to the Department.

12. However, on July 7, 2018, Plaintiff's driver's license was suspended for an alleged violation.

13. Subsequently, Plaintiff requested a hearing against SCDMV, challenging the alleged violation and suspension, with the South Carolina Office of Motor Vehicle Hearings ("OMVH").

14. The OMVH scheduled a hearing for Monday, October 8, 2018.

15. However, two months before the scheduled hearing, by letter ("SCDMV letter") dated August 13, 2018, SCDMV mooted Plaintiff's challenge to the alleged violation and suspension by reinstating Plaintiff's driver's license in full.

16. Through the SCDMV letter, the SCDMV informed Plaintiff that the Defendants have deleted both the July 7, 2018 alleged violation and suspension from Plaintiff's driving record.

17. The Department drafted, signed, placed in an envelope, and mailed the SCMDV letter to Plaintiff. This letter contains the South Carolina State Seal, the names of the South Carolina State Governor and SCDMV Executive Director, and is signed by the SCDMV Driver Records Manager.

18. The SCDMV letter states in relevant part:

This is official notification that the information on your driving record has changed effective 08/13/2018. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification

Violation modified or deleted:

Date	Action	Ticket#	Viol Description
07/07/2018	Deleted	Implied Consent	

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action	Susp Description
07/07/2018	07/07/2018	01/07/2019	Deleted	Implied Consent

**IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS**

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

DELETED-The violation has been removed from your driving record.

If your driving status shows “No Suspension”, you may make application for a driver’s license by presenting this notice to your local DMV Office.

Driver Records Manager

19. Per the SCDMV letter, the Department informed Plaintiff that Plaintiff’s driver’s license is no longer suspended and that both the alleged violation and suspension on Plaintiff’s record are deleted.

20. Plaintiff maintains possession of Plaintiff’s unexpired, SCDMV issued, driver’s license.

21. Upon receipt of and in reliance on the SCDMV letter, Plaintiff began to operate a motor vehicle within and without the State of South Carolina.

22. At all times relevant, Plaintiff was employed by the United States Postal Service (“USPS”) and operated a USPS delivery vehicle as part of Plaintiff’s job responsibilities.

23. Plaintiff has been employed with the USPS, operating a USPS delivery vehicle as part of Plaintiff's job responsibilities, for the better part of nine years.

24. As a requirement of Plaintiff's job, Plaintiff has successfully completed several defensive driving courses provided by the USPS. Plaintiff has also been trained to operate several types of USPS vehicles.

25. Upon receipt of the SCDMV letter, Plaintiff resumed operation a USPS delivery vehicle as part of Plaintiff's job responsibilities.

26. In addition to employment with the USPS, Plaintiff worked as a driver for both Uber and Lyft since 2015.

27. However, on July 31, 2019, Plaintiff unsuccessfully attempted to "go online" as a driver for both Uber and Lyft. Then, Plaintiff contacted both Uber and Lyft regarding Plaintiff's driving accounts.

28. On August 12, 2019, both Uber and Lyft separately responded stating that the DMV records show that Plaintiff's license status is suspended.

29. Between August and November of 2019, Plaintiff misplaced Plaintiff's driver's license so Plaintiff reviewed the SCDMV letter.

30. The SCDMV letter states, "If your driving status shows "No Suspension", you may make application for a driver's license by presenting **this notice** to your local DMV Office."

31. According to the SCDMV letter, Plaintiff's driving status shows "No Suspension".

32. Plaintiff visited Plaintiff's "local DMV Office", "[presented the SCDMV letter]", and attempted to "make application for a driver's license".

33. Plaintiff's application was refused.

34. On November 4, 2019, Plaintiff sent a letter (“Plaintiff’s letter”) to SCMDV requesting SCDMV to honor the SCDMV letter.

35. After sending Plaintiff’s letter to Defendants, Plaintiff found Plaintiff’s missing, valid, unexpired SCDMV issued driver’s license and maintains its possession.

36. Responding to Plaintiff’s letter, SCDMV sent a letter (“SCDMV letter #2”) dated November 7, 2019, rejecting the official nature of and commanding language contained within the SCDMV letter.

37. SCDMV, through SCMDV letter #2, suggests that SCDMV can communicate an “official notification that the information on [Plaintiff’s] driving record has changed effective 08/13/2018”, completely disregard the SCDMV letter in its entirety, and ignore the ramifications of SCDMV’s acts and/or omissions.

38. SCDMV, through SCMDV letter #2, suggests that SCDMV can state that “[t]his official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s)”, completely disregard the SCDMV letter in its entirety, and ignore the ramifications of SCDMV’s acts and/or omissions.

39. Plaintiff and Defendants disagree with the official, commanding nature of the SCDMV letter as demonstrated by the State Seal of South Carolina and the following words: “State of South Carolina Department of Motor Vehicles”; “Henry McMaster, Governor”; and “Kevin A. Shwedo, Executive Director”.

40. Within the State Seal of South Carolina are the Latin phrases “QUIS SEPARABIT”; “ANIMIS OPIBUSQUE PARATI”; and “DUM SPIRO SPERO”, which means “WHO WILL SEPARATE US”; “PREPARED IN MIND AND RESOURCES”; and “WHILE I BREATHE, I HOPE”, respectively.

41. Additionally, Plaintiff and Defendants disagree with the reasonably objective nature and meaning of the following words contained within the SCDMV letter: "AMENDED NOTICE OF DRIVING STATUS"; "This is official notification"; "effective 08/13/2018"; "this official notice cancels previous notices"; "No Suspension"; "No Disqualification"; "Violation modified or deleted"; "Deleted"; "Suspension, revocation, cancellation and/or disqualification modified or deleted"; "IMPORTANT INFORMATION"; "DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS"; "Your driving privileges are clear"; and "The violation has been removed from your driving record", among others.

**FOR A FIRST CAUSE OF ACTION
GROSS NEGLIGENCE under S.C. Code Ann. § 15-78-60(12)
(All Defendants)**

42. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

43. The Department is not entitled to immunity under S.C. Code Ann § 15-78-60(12).

44. The Department has a duty to communicate accurate, truthful, and reliable information to Plaintiff regarding Plaintiff's driving status.

45. The Department has a duty to refrain from exercising the Department's licensing powers and functions in a grossly negligent manner.

46. The Department failed to exercise the care that was necessary under the circumstances and injuries and losses were sustained by the Plaintiff, and that said damages were directly and proximately caused and occasioned by the grossly negligent, reckless, careless, willful, and wanton conduct of the Defendants, in the following particulars to wit:

- a. In drafting, enveloping, and mailing to Plaintiff the SCDMV letter;
- b. In failing to honor the SCDMV letter;

- c. In failing to delete violations from Plaintiff's driving record;
- d. In failing to delete suspensions from Plaintiff's driving record;
- e. In failing to exercise the care that was necessary under the circumstances and/or slight care;
- f. In the Departments intentional, conscious failure to do that which is incumbent upon the Department to do;
- g. In the Departments intentional, conscious failure to communicate accurate, truthful, and reliable information to Plaintiff regarding Plaintiff's driving status;
- h. In the Departments intentional doing that which the Department ought not to do;
- i. In exercising the Department's licensing powers and functions in a grossly negligent manner;
- j. In disregarding the actual and potential ramifications of SCDMV's acts and/or omissions;
- k. In unreasonably exposing Plaintiff to liability, arrest, harassment, emotional stress, and embarrassment; and
- l. In SCDMV's reckless, careless, willful, and wanton disregard of Plaintiff's rights.

47. But for the Department's acts and/or omissions, Plaintiff would not be injured.

48. Plaintiff's injuries are the natural and probable consequences of the Department's acts and/or omissions.

49. The gross negligence, recklessness, carelessness, willfulness, and wantonness of the Defendants directly and proximately caused the injuries of the Plaintiff as is set forth below.

50. As a direct and proximate result of the grossly negligent, reckless, careless, willful, and wanton acts and/or omissions of the Defendants, the Plaintiff suffered and continues to suffer injuries.

51. By reason of the acts and/or omissions of the Defendants as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages, together with punitive damages in an appropriate amount to be determined by the finder of fact.

**FOR A SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT**

52. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

53. The right to operate a motor vehicle is:

- a. a fundamental right under the due process clause of the 14th Amendment of the United States Constitution;
- b. like the right to marry, in that it can be regulated by the states;
- c. deeply rooted in this Nation's history and tradition; and
- d. inherent in the liberty to make decisions and choices constitutive of private life, so fundamental to our concept of ordered liberty.

54. Transportation is about people and how they go about their daily lives, how they get to work, how they get to market, how they get their children to school, how they get to visit family and friends, and how they pursue happiness.¹

¹ <https://www.fhwa.dot.gov/publications/publicroads/96spring/p96sp2.cfm> (Last visited on August 16, 2021).

55. The first successful American gasoline automobile was designed in 1893.²
56. Congress initiated aid to the states for highways in 1916.³
57. The Federal-Aid Road Act of 1944 mandated construction of an interstate highway system.⁴
58. Congress on June 26, 1956, approved the Federal Highway Act, dedicating more than \$30 billion to build some 41,000 miles of interstate highways coast to coast.⁵
59. The United States has more than 4.1 million miles of public highways and almost 615,000 bridges.⁶ These roads and bridges form the backbone of the U.S. transportation network.⁷
60. There are over four million people living in South Carolina.⁸
61. There are over three million licensed drivers in South Carolina.⁹
62. The modern automotive industry began in South Carolina in 1973.¹⁰
63. Automaker suppliers are in 40 of South Carolina's 46 counties and make just about everything that goes into an automobile: seats, radiators, windshields, hydraulics, tires, plastics, cables, fuel tanks, fuel systems, brakes, transmissions, glass, aluminum, steel, carpet, windshield wipers and dozens of other components.¹¹

² <https://www.history.com/topics/inventions/automobiles> (Last visited on August 16, 2021).

³ <https://www.downsizinggovernment.org/transportation/federal-highway-policies> (Last visited on August 16, 2021).

⁴ <https://history.house.gov/HouseRecord/Detail/15032436197> (Last visited on August 16, 2021).

⁵ <https://www.autonews.com/article/20180626/CCHISTORY/180629844/congress-clears-path-for-u-s-interstate-highway-network> (Last visited on August 12, 2021).

⁶ <https://www.artba.org/government-affairs/policy-statements/highways-policy/> (Last visited on August 16, 2021).

⁷ *Id.*

⁸ https://www.fhwa.dot.gov/policyinformation/statistics/abstracts/2015/south_carolina_2015.pdf (Last visited on August 16, 2021).

⁹ *Id.*

¹⁰ <https://www.thestate.com/news/business/article13758719.html> (Last visited on August 16, 2021).

¹¹ *Id.*

64. With an annual economic impact of more than \$27 billion, the automotive sector is an integral part of South Carolina's economy.¹²

65. South Carolina is home to nearly 500 automotive-related companies and is the #1 automobile exporter in the United States.¹³

66. South Carolina ranks first in both the production and export of tires, accounting for nearly one-third of the United States market share.¹⁴

67. South Carolina has produced over four million vehicles.¹⁵

68. There is no merit to reducing the right to operate a motor vehicle to a mere privilege.

69. Merely calling something a privilege does not diminish an individual's right(s).

70. The right against self-incrimination is commonly referred to as the privilege against self-incrimination, yet it is indisputably a recognized constitutional right.

71. A governmental decision to deprive an individual of the right to operate a motor vehicle is a real and substantial controversy which is appropriate for judicial determination.

72. Procedural and substantive due process imposes constraints on governmental decisions which deprive an individual of liberty under the 14th Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in Plaintiff's favor and against Defendant as follows:

- a. Actual damages;


¹² <https://www.sccommerce.com/industries/automotive-industry> (Last visited on August 16, 2021).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

- b. Punitive damages, in an appropriate amount to be determined by the finder of fact;
- c. Declaring the operation of a motor vehicle a fundamental right; and
- d. For such other and further relief as this Honorable Court might deem just and proper.


Amenhotep Myers
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PLAINTIFF

Charleston, South Carolina
August 16, 2021

Henry M. Gustaf
Governor



Exhibit A
1 of 2

Louis A. Stuardo
Executive Director



State of South Carolina
Department of Motor Vehicles

08/13/2018

MYERS, AMENHOTEP
1572 NATHANIEL DR
CHARLESTON, SC 29412-8027

CUSTOMER NO: 33149043
FILE NO: 24869863
DL NO: 104622622

SEQUENCE 000075
02010000750

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 08/13/2018. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification

Defensive Driving Credit: No

Violation modified or deleted:

Date	Action	Ticket#	Viol Description
07/07/2018	Deleted		Implied Consent

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action	Susp Description
07/07/2018	07/07/2018	01/07/2019	Deleted	Implied Consent

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol-You have special driving privileges.

MODIFIED-The violation has been changed and is still on your official driving record.

DELETED-The violation has been removed from your driving record.

If your driving status is suspended and/or disqualified, you are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000. Information may also be obtained by visiting our website at www.scdmvonline.com.

Post Office Box 1498, Blythewood, South Carolina 29016

Henry W. McMaster
Governor



Exhibit A
2 of 20

Kristin A. Swartz
Executive Director



State of South Carolina
Department of Motor Vehicles

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

SEQUENCE 000075
02020000750

Post Office Box 1499, Bluffton, South Carolina 29016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
AMENHOTEP MYERS,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF MOTOR VEHICLES and KEVIN A.
SHWEDO, in his official capacity as
Executive Director of the South Carolina
Department of Motor Vehicles,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-10-03740

**DEFENDANTS'
MOTION TO DISMISS**

TO: AMENHOTEP MYERS, Pro Se Plaintiff,

NOW COME the Defendants, South Carolina Department of Motor Vehicles (“SCDMV) and Kevin A. Shwedo, Executive Director for SCDMV, by and through their undersigned counsel, and make a limited, special appearance before this court solely for the purpose of filing a motion to dismiss this matter in its entirety. These defendants give notice that on the tenth day or as soon thereafter as the court can set this matter for hearing, they will move for a dismissal of all claims.

This motion is made pursuant to SCRCP Rules 4, 8, 12(b)(4), 12(b)(5) and 12(b)(6), the plaintiff’s failure to file and serve this Complaint within the applicable statute of limitations, and pursuant to the protections and immunities set forth in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 to -220. Defendants respectfully ask this honorable court to dismiss all causes of action in this matter alleged against the Defendants.

Upon receiving notice of hearing, this motion will be supported with a memorandum of law and the pleadings.

Defendants further note that upon attempting to file this motion, the clerk of court has included the Department of Motor Vehicles as two separate defendants -- (1) DMV South Carolina; and (2) South Carolina Department of Motor Vehicles. Defendants were informed by the clerk's office that this was because the plaintiff referred to this defendant as "South Carolina DMV" on the Civil Action Coversheet and as "South Carolina Department of Motor Vehicles" on the Summons and Complaint. Defendant asserts that one of these listings should be dismissed as a party in the clerk's record because this appears to be a clerical matter not related to the claims or allegations contained in the Complaint itself.

Respectfully Moved,

s/Robin L. Jackson
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September 16, 2021

Attorney for Defendants SCDMV and
Schwedo

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AMENHOTEP MYERS,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
MOTOR VEHICLES and KEVIN A.
SHWEDO, in his official capacity as
Executive Director of the South Carolina
Department of Motor Vehicles,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE: 2021-CP-10-03740

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS**

COME NOW the Defendants, South Carolina Department of Motor Vehicles (SCDMV or DMV) and Kevin Shwedo, and hereby move this Honorable Court for an order dismissing all claims in the Complaint. Defendants assert that the statute of limitations has expired for claims of Gross Negligence and for Declaratory Judgment. Further, the defendants were not properly served with the Summons and Complaint. Additionally, Mr. Shwedo is not a proper defendant pursuant to the South Carolina Tort Claims Act, S.C. Code §15-78-10 *et. seq.* and the Department is entitled to immunity pursuant to the Tort Claims Act.

STANDARD

In considering a SCRPC Rule 12(b)(6) motion to dismiss, the court must construe the facts alleged in the Complaint in the non-moving party's favor to determine if such facts, as alleged, would entitled her to relief under any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E. 2d 245, 247-8 (2007). In considering a Rule 12(b)(6) motion, the trial court must base its ruling solely

upon allegations set forth on the face of the Complaint. *Fleteau v. Harrelson*, 355 S.C. 197, 584 S.E. 2d 413 (S.C. App. 2003); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E. 2d 601 (1995). In this motion, the defendant solely relies on the allegations contained in the body of the Complaint and it is on this basis that they are entitled to have this matter dismissed.

LAW AND ARGUMENT

This case is governed by the South Carolina Tort Claims Act (hereafter “Tort Claims Act” or “the Act”). The DMV is entitled to the immunities under the Tort Claims Act. The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against the DMV, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) (“The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.”).

Importantly, the Act also spells out that the exceptions to the waiver of immunity “must be **liberally construed in favor of limiting the liability of the state.**” S.C. Code Ann. § 15-78-20(f) (Emphasis added). Defendants assert several subsections of the Act that are applicable and assert that these are absolute immunities to suit.

I. THE STATUTE OF LIMITATIONS HAS EXPIRED.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a “verified claim”. See S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. at 207; see also *Joubert v. South Carolina Dept’ of Soc. Servs.*, 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). Here, the plaintiff did not file a statutorily compliant verified claim. As there is no evidence that Myers filed a verified claim, the three-year statute of limitations does not apply and the two-year statute of limitations is applicable. The DUI arrest and license suspension in this case occurred on July 7, 2018. The hearing on the Implied Consent suspension was requested on August 7, 2018. The letter at issue in this case was sent on August 13, 2018, and the hearing officer upheld the suspension on September 19, 2018. The allegations relating to Gross Negligence relate to the letters sent to the plaintiff on August 13, 2018. The Plaintiff received one letter saying the suspension was deleted, and a second letter dated the same day, advising that the suspension was in effect and his request for hearing had been received. He also received copies of the SCDMV’s motion to dismiss the Implied Consent hearing as the request was filed out of time (served August 14, 2018), the hearing officer’s order to him to file a response (served on August 20, 2018 by e-mail), and the hearing officer’s order dismissing the challenge to the implied consent suspension, which was served on him by e-mail on September 19, 2018.

Plaintiff claims he relied on the single letter dated August 13, 2018, that said the suspension was deleted. He thereafter completely ignored correspondence, motions and orders to the contrary. The Complaint in this case was filed on August 16, 2021, over a year after the expiration of the two-year statute of limitations based on the conflicting letters and eleven months after receiving the hearing officer's order dismissing the implied consent challenge and upholding the license suspension. S.C. Code Ann. § 15-78-110. Additionally, in paragraph 28, plaintiff indicates that he was notified by Uber and Lyft on August 12, 2019 that his license was suspended. Even using this date as the date of notice, he has missed the two year statute of limitations by several days. Therefore, the claim for Gross Negligence should be dismissed on the basis that the statute of limitations has expired.

Declaratory Judgment actions have a three year statute of limitations, but the plaintiff's request for declaratory relief is unclear at best. Plaintiff appears to be asking the court to declare that the right to operate a motor vehicle is a fundamental right under the due process clause of the 14th Amendment of the United States Constitution. If this is what the plaintiff is asking, his "right" to operate a motor vehicle was suspended by virtue of his arrest for DUI and refusal to take a breathalyzer test on July 7, 2018. The statute of limitations for such an action would be July 7, 2021. This matter was not filed until August 16, 2021, more than a month after the expiration of the statute of limitations.

Defendants assert that the statute of limitations has clearly expired on both causes of action as to all defendants, and this case should therefore be dismissed on that basis. However, out of an abundance of caution, defendants alternatively assert the following bases for dismissal of this matter.

II. THE DEFENDANTS HAVE NOT BEEN PROPERLY SERVED.

Plaintiff filed this Summons and Complaint on August 16, 2021. As the South Carolina Department of Motor Vehicles is a state agency, and Kevin Shvedo is a state officer, service must be accomplished on each pursuant to SCRCF Rule 4(d)(5), which requires, “*State Officer or Agency*. Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.” In this case, the summons and complaint were mailed to the Attorney General as evidenced by the filed Affidavit of Service. However, neither Director Shvedo nor the SCDMV were ever served. Defendants take the position that the statute of limitations expired prior to the filing of the summons and complaint. However, the latest date involved in this matter is the date the SCDMV served the hearing officer’s order dismissing the challenge to the implied consent suspension, which was served on him by e-mail on September 19, 2018. One hundred and twenty days from the date of filing, August 16, 2021, was December 14, 2021. Therefore, even if the Complaint was filed within the statute of limitations (which defendants assert it was not), it was not served within the time period required by SCRCF Rule 3(a)(2).

III. PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION FOR WHICH RELIEF MAY BE GRANTED.

Plaintiff filed a seventy two paragraph complaint which contains two causes of action – Gross Negligence and Declaratory Judgment. Neither of these claims entitles the plaintiff to any relief. Plaintiff has not set forth any factual basis for how the DMV was grossly negligent. Instead he sets out irrelevant facts regarding the history of driving in this country, and makes it clear that he ignored multiple notices from the DMV about the status of his license.

In order to state a claim for declaratory relief, the plaintiff must clearly set forth what he is asking the court to declare. In this Complaint, the Plaintiff claims that the “right to operate a motor vehicle” is “like the right to marry, in that it can be regulated by the states”. (Compl. ¶53b). After that, he proceeds to include irrelevant facts and information about the population of the state, the number of roadways in the United States, and automaker suppliers in South Carolina.

The plaintiff does not ask the court to declare the right to drive, but instead asserts that it is already a right. The declaratory judgment claim does not ask the court to do anything. Therefore, there is nothing for the Court to declare and therefore no cause of action upon which relief may be granted.

IV. KEVIN SHWEDO IS NOT A PROPER DEFENDANT FOR THE STATE LAW CAUSE OF ACTION LEVIED AGAINST HIM.

The plaintiff has brought a state law cause of action against moving defendants –Gross Negligence. The state law causes of action are necessarily brought pursuant to the South Carolina Tort Claims Act, S.C. Code §15-78-10 *et. seq.* Pursuant to the Tort Claims Act:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326 S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Kevin Shwedo was an individual acting in his capacity as the Executive Director of the Department of Motor Vehicles. In that

capacity, he is an employee of the Department of Motor Vehicles. Therefore, Kevin Shwedo is not a proper defendant and should be dismissed from the state law causes of action, and the DMV (who is already named in these causes of action)—as “the agency or political subdivision for which the employee was acting”—should be substituted as the party defendant pursuant to S.C. Code Ann. § 15-78-70(c). To the extent that Shwedo, as the agency head would be a proper party defendant, he is not a proper party along with the DMV, as that would risk a double recovery on any such causes of action and therefore, Shwedo should be dismissed.

CONCLUSION

By any of the relevant dates in the complaint that provided notice of a potential claim, the plaintiff has missed the statute of limitations to file this action. Further, even if he filed within the statute of limitations, he failed to properly serve either of the defendants within 120 days of the date of filing. Additionally, plaintiff has improperly named Director Shwedo as a defendant and failed to state a claim for which relief can be granted. For each of these reasons, this matter should be dismissed with prejudice.

Defendants further note that it was found upon attempting to file this motion, the clerk of court has included the Department of Motor Vehicles as two separate defendants -- (1) DMV South Carolina; and (2) South Carolina Department of Motor Vehicles. Defendants were informed by the clerk’s office that this was because the plaintiff referred to this defendant as “South Carolina DMV” on the Civil Action Coversheet and as “South Carolina Department of Motor Vehicles” on the Summons and Complaint. Defendant asserts that one of these listings should be dismissed as a party in the clerk’s record because this appears to be a clerical matter not related to the claims or allegations contained in the Complaint itself.

{Signature Page Follows}

Respectfully Moved,

January 28, 2022

s/Robin L. Jackson
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Attorney for Defendants

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2021-CP-10-03740

AMENHOTEP MYERS)

Plaintiff,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES and KEVIN A.)
SHWEDO, *in his official capacity as*)
Executive Director of the South Carolina)
Department of Motor Vehicles.)

Defendants.)

**NOTICE OF MOTION AND
MOTION TO RECONSIDER**

TO THE DEFENDANTS ABOVE NAMED:

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and principles of equity, Plaintiff Amenhotep Myers (hereinafter “the Plaintiff”) files this Motion to Reconsider. Plaintiff respectfully requests that this Court reconsider, amend or alter, and provide relief from this Court’s February 16, 2022 Order that effectively denied Plaintiff’s oral Motion to Amend its Complaint. Upon receiving notice of hearing, this motion will be supported with a memorandum of law and the pleadings.

Respectfully submitted,

/s/ Amenhotep Myers
Amenhotep Myers, Esq
1572 Nathaniel Drive
Charleston, SC 29412
202-679-7947
Amenhotep.31@gmail.com
PLAINTIFF

Charleston, South Carolina
February 25, 2022

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2021-CP-10-03740

AMENHOTEP MYERS)
)
Plaintiff.)

v.)

**PLAINTIFF'S RULE 59
SUPPORTING MEMORANDUM**

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES and KEVIN A.)
SHWEDO. *in his official capacity as*)
Executive Director of the South Carolina)
Department of Motor Vehicles.)
)
Defendants.)

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Plaintiff, Amenhotep Myers, respectfully requests that this Court reconsider, amend or alter, and provide relief from this Court's February 16, 2022 Order that effectively denied Plaintiff's oral Motion to Amend its Complaint. Plaintiff respectfully believes the Court has misunderstood, failed to fully consider, or perhaps failed to rule on Plaintiff's oral Rule 15 Motion to Amend its Complaint and wishes for the Court to reconsider or rule on it. A copy of the proposed Amended Complaint is attached hereto as EXHIBIT A.

STANDARD

A trial court has discretion to grant a motion to amend if the party opposing the amendment cannot show a valid reason for denying the motion. *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585,588 (2019). The burden of establishing a reason for denying the motion

is on the party opposing the amendment. *Id.* A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. *Id.*

LAW AND ARGUMENT

Rule 15(a) of the SCRCP states that "a party may amend [its] pleading...by leave of court: and leave shall be freely given when justice so requires and does not prejudice any other party." Our Courts have interpreted this rule liberally. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). "[T]his rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (S.C. App. 1987); *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). It is well established that a motion to amend a pleading is addressed to the sound discretion of the trial judge. *Duncan v. CRS Surrine Eng'rs, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (C. App. 199); see *Berry v. Mcleod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (Courts have wide latitude in amending pleadings).

I. THIS CASE IS GOVERNED BY PRINCIPLES OF EQUITY UNDER THE DOCTRINE OF PROMISSORY ESTOPPEL.

"[South Carolina] appellate courts enumerated the elements a party must prove to obtain relief under the doctrine of promissory estoppel as follows: (1) the presence of a promise unambiguous in its terms, (2) reasonable reliance upon the promise by the party to whom the promise is made, (3) the reliance is expected and foreseeable by the party who makes the promise, and (4) the party whom the promise is made must sustain injury in reliance on the promise." *Thomerson v. DeVito*, 430 S.C. 246, 256, 844 S.E.2d 378, 383 (2020).

The proposed additional claim arises out of the same facts, circumstances, transactions and/or occurrence that gave rise to the original action. The original Complaint and attached SCDMV letter include several promises to Plaintiff, unambiguous in their terms, that Plaintiff alleged it reasonably relied on to Plaintiff's detriment. Plaintiff's reliance was expected and foreseeable by Defendant.

II. PROMISSORY ESTOPPEL IS NOT SUBJECT TO THE THREE-YEAR STATUTE OF LIMITATIONS IN THE STATE.

"[T]he statute of limitations does not apply to promissory estoppel claims." *Thomerson v. DeVito*, 430 S.C. 246, 248, 844 S.E.2d 378, 379 (2020).

The crux of Defendants' challenge to Plaintiff's Complaint is a statute of limitations defense. However, that defense does not apply to suits in equity and a claim for promissory estoppel is equitable in nature.

III. GRANTING PLAINTIFF LEAVE DOES NOT PREJUDICE ANY DEFENDANTS.

Plaintiff asserts that no prejudice as envisioned by Rule 15 will result if the Court should grant Plaintiff leave to amend the Complaint. The language in Rule 15 that envisions prejudice to the adverse party contemplates a "lack of notice that the new issue is going to be tried, and lack of opportunity to refute it." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004).

This case is very far from the trial stage and there is no reason that amending the Complaint to add an additional claim would in any way prejudice the Defendants' ability to refute those claims. Further, Rule 15 allows for the Promissory Estoppel claim to be brought. The proposed additional claim arises out of the same facts, circumstances, transactions and/or occurrence that

gave rise to the original action. Therefore, Defendants have had ample notice of the issues underlying the new claim and had sufficient opportunity to refute it.

CONCLUSION

The Plaintiff's proposed amendment is necessary for the just and equitable pursuit of and trial of this action. Reconsidering, amending or altering, and providing relief from this Court's February 16, 2022 Order that effectively denied Plaintiff's oral Motion to Amend its Complaint is in accord with both the letter and spirit of Rule 15 SCRPC and causes no prejudice to the Defendants in this matter.

/s/ Amenhotep Myers
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PLAINTIFF

Charleston, South Carolina
March 1, 2022

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2021-CP-10-03740

AMENHOTEP MYERS)

Plaintiff,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES)

Defendant.)

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)
(EXHIBIT A)

TO THE DEFENDANT ABOVE NAMED:

Plaintiff Amenhotep Myers ("Plaintiff") brings this action against the South Carolina Department of Motor Vehicles ("Defendant", "SCDMV", or the "Department") and makes the following allegations based upon information, belief, and Plaintiff's own knowledge:

PARTIES

1. Plaintiff Amenhotep Myers is an individual, a resident, and a citizen of the State of South Carolina.
2. Defendant SCDMV is a State agency that administers the State's motor vehicle, licensing, and titling laws to deliver identification, licensing, and property records. Defendant SCDMV has offices in Charleston County and does business in Charleston County, South Carolina.

JURISDICTION AND VENUE

- 3. Jurisdiction and venue are proper pursuant to S.C. Code Ann. § 15-77-50.
- 4. At all times relevant, Plaintiff was a resident in the County of Charleston and a citizen of the State of South Carolina.
- 5. The Department, at all times relevant, was a South Carolina State Agency, transacting business in Charleston County, South Carolina.

FACTUAL ALLEGATIONS

- 6. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.
- 7. Through the SCDMV letter, the SCDMV informed Plaintiff that the Defendant has deleted both the July 7, 2018 alleged violation and suspension from Plaintiff's driving record.
- 8. The Department drafted, signed, placed in an envelope, and mailed the SCMDV letter to Plaintiff. This letter contains the South Carolina State Seal, the names of the South Carolina State Governor and SCDMV Executive Director, and is signed by the SCDMV Driver Records Manager.
- 9. The SCDMV letter states in relevant part:

This is official notification that the information on your driving record has changed effective 08/13/2018. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification
Violation modified or deleted:

Date	Action	Ticket#	Viol Description
07/07/2018	Deleted		Implied Consent

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action	Susp Description
07/07/2018	07/07/2018	01/07/2019	Deleted	Implied Consent

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

DELETED-The violation has been removed from your driving record.

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office.

Driver Records Manager

10. Per the SCDMV letter, the Department informed Plaintiff that Plaintiff's driver's license is no longer suspended and that both the alleged violation and suspension on Plaintiff's record are deleted.
11. Plaintiff maintains possession of Plaintiff's unexpired, SCDMV issued, driver's license.
12. Upon receipt of and in reliance on the SCDMV letter, Plaintiff began to operate a motor vehicle within and without the State of South Carolina.
13. Between August and November of 2019, Plaintiff misplaced Plaintiff's driver's license so Plaintiff reviewed the SCDMV letter.
14. The SCDMV letter states, "If your driving status shows "No Suspension", you may make application for a driver's license by presenting **this notice** to your local DMV Office."

15. According to the SCDMV letter, Plaintiff's driving status shows "No Suspension".
16. Plaintiff visited Plaintiff's "local DMV Office", "[presented the SCDMV letter]", and attempted to "make application for a driver's license".
17. Plaintiff's application was refused.
18. On November 4, 2019, Plaintiff sent a letter ("Plaintiff's letter") to SCMDV requesting SCDMV to honor the SCDMV letter.
19. After sending Plaintiff's letter to Defendant, Plaintiff found Plaintiff's missing, valid, unexpired SCDMV issued driver's license and maintains its possession.
20. Responding to Plaintiff's letter, SCDMV sent a letter ("SCDMV letter #2") dated November 7, 2019, rejecting the official nature of and commanding language contained within the SCDMV letter.
21. Additionally, Plaintiff and Defendant disagree with the reasonably objective nature and meaning of the following words contained within the SCDMV letter: "AMENDED NOTICE OF DRIVING STATUS"; "This is official notification"; "effective 08/13/2018"; "this official notice cancels previous notices"; "No Suspension"; "No Disqualification"; "Violation modified or deleted"; "Deleted"; "Suspension, revocation, cancellation and/or disqualification modified or deleted"; "IMPORTANT INFORMATION"; "DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS"; "Your driving privileges are clear"; and "The violation has been removed from your driving record", among others.

**FOR A FIRST CAUSE OF ACTION
PROMISSORY ESTOPPEL**

22. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

23. In the SCDMV letter, dated August 13, 2018, Defendant made the following unambiguous promises to Plaintiff:

- a. AMENDED NOTICE OF DRIVING STATUS;
- b. This is official notification that the information on [Plaintiff's] driving record has changed effective 08/13/2018;
- c. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed descriptions(s);
- d. DRIVING STATUS: No Suspension No Disqualification;
- e. Violation modified or deleted: Date 07/07/2018 Action Deleted
Ticket# Viol Description Implied Consent:
- f. Suspension, revocation, cancellation and /or disqualification modified or deleted: Date 07/07/2018 Begin Date 07/07/2018 End Date
07/07/2019 Action Deleted Susp Description Implied Consent;
- g. IMPORTANT INFORMATION:
- h. DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS:
- i. DRIVING STATUS: NO SUSPENSION-Your driving privileges are clear;
- j. DELETED: The violation has been removed from your driving record;
- k. If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office: and

l. Driver Records Manager.

24. Defendant's promises in the SCDMV letter were made on an official letterhead bearing the following:

- a. The State Seal of South Carolina;
- b. The State Motto of South Carolina;
- c. The words "State of South Carolina Department of Motor Vehicles";
- d. The name of the Governor of South Carolina;
- e. The name of the Executive Director of the South Carolina DMV;
- f. The Plaintiff's name, address, and driver's license number;
- g. Accurate information regarding the Plaintiff's alleged implied consent violation and suspension;
- h. A customer number;
- i. A file number;
- j. A signature by the DRIVER RECORDS MANAGER; and
- k. Defendant's mailing address: Post Office Box 1498 Blythewood, SC 29016.

25. Defendant's promises to Plaintiff in the SCDMV letter induced the Plaintiff in the following ways:

- a. To rely on the promises stated in SCDMV letter;
- b. To believe that the SCDMV letter came from the SCDMV;
- c. To believe that the SCDMV was an official letter;
- d. To believe that Defendant would honor the SCDMV letter;
- e. To believe that the SCDMV letter amended Plaintiff's driving record;

- f. To believe that Plaintiff's alleged implied consent violation and suspension were deleted;
 - g. To believe that Plaintiff's license was no longer suspended;
 - h. To change Plaintiff's position in an Office of Motor Vehicle Hearing;
 - i. To operate a motor vehicle within and without the State of South Carolina; and
 - j. To operate a motor vehicle on behalf of the United State Postal Service.
26. Plaintiff's reliance on the SCDMV letter was expected by Defendant.
27. Plaintiff's reliance on the SCDMV letter was foreseeable by Defendant.
28. Reliance of a South Carolina citizen on the promises made by a South Carolina Government Agency is expected and foreseeable.
29. Reliance of a South Carolina citizen on the promises made by a South Carolina Government Agency is expected by the State Agency and foreseeable.
30. The Defendant knew that Plaintiff would rely on the promises in the SCDMV letter.
31. Plaintiff suffered injuries in reliance to Defendant's promises.
32. But for the Defendant's inconsistent disposition, Plaintiff would not be injured.
33. Plaintiff's injuries are the natural and probable consequences of the Defendant's inconsistent disposition.
34. As a direct result of Defendant's inconsistent disposition, Plaintiff suffered and continues to suffer injuries.
35. By reason of the inconsistent disposition of the Defendant's as set forth above, the Plaintiff is informed and believes that the Plaintiff is entitled to equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in Plaintiff's favor and against Defendant as follows:

- a. Actual damages;
- b. Equitable damages;
- c. Specific Performance;
- d. Special damages;
- e. For such other and further relief as this Honorable Court might deem just and proper.

/s/ Amenhotep Myers
Amenhotep Myers, Esq
1572 Nathaniel Drive
Charleston, SC 29412
202-679-7947
Amenhotep.31@gmail.com
PLAINTIFF

Charleston, South Carolina
March 1, 2022

Henry M. Hester
Governor



Exhibit A 1
1 of 2

Karin A. Shwedo
Executive Director



SEQUENCE 000075
02010000750

State of South Carolina
Department of Motor Vehicles

08/13/2018

MYERS, AMENHOTEP
1572 NATHANIEL DR
CHARLESTON, SC 29412-8027

CUSTOMER NO: 33149043
FILE NO: 24869863
DL NO: 104622622

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 08/13/2018. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification

Defensive Driving Credit: No

Violation modified or deleted:

Date	Action	Ticket#	Viol Description
07/07/2018	Deleted		Implied Consent

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action	Susp Description
07/07/2018	07/07/2018	01/07/2019	Deleted	Implied Consent

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol-You have special driving privileges.

MODIFIED-The violation has been changed and is still on your official driving record.

DELETED-The violation has been removed from your driving record.

If your driving status is suspended and/or disqualified, you are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000. Information may also be obtained by visiting our website at www.scdmvonline.com.

Post Office Box 1498, Easleywood, South Carolina 29016

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Henry W. McMaster
Governor



Exhibit A1
2 of 2

Kevin A. Shumbo
Executive Director

State of South Carolina
Department of Motor Vehicles

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager



SEQUENCE 000075
0202000750

ELECTRONICALLY FILED - 2022 Mar 01 1:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003740

Post Office Box 1498, Elytonwood, South Carolina 29016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
AMENHOTEP MYERS,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
MOTOR VEHICLES and KEVIN A.
SHWEDO, in his official capacity as
Executive Director of the South Carolina
Department of Motor Vehicles,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE: 2021-CP-10-03740

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO
RECONSIDER**

The Defendants are in possession of Plaintiff's motion to reconsider, filed on February 25, 2022, and the memorandum in support, filed on March 1, 2022. The motion asks the court to reconsider, amend or alter its ruling denying plaintiff's oral motion to amend his Complaint. Defendants submit this opposition as follows:

The Defendants filed a motion to dismiss the Complaint on September 16, 2021. On October 22, 2021, plaintiff sent the undersigned an e-mail advising that he was considering amending his complaint. (Exhibit A). Counsel requested a copy of the proposed amended Complaint for consideration. (Exhibit B). On October 30, 2021, Plaintiff sent an e-mail with a proposed amended Complaint. (Exhibit C). Defense counsel reviewed the proposed amended Complaint and advised that she could not consent, as the proposed amended Complaint did not resolve the issues set forth in the motion. (Exhibit D).

On December 15, 2021, Plaintiff again sent a proposed amended Complaint (including promissory estoppel) and asked for consent to file the same. (Exhibit E). Plaintiff even advised that "if you are unable to provide such consent, I expect to file a motion to amend requesting

permission from the Court to file it.” On the same date, counsel for defendants responded by formal correspondence and provided all of the reasons she could not consent. (Exhibit F). Plaintiff did not file any motion to amend. On January 13, 2022, the clerk of court sent a notice of hearing on the motion to dismiss, scheduled for February 11, 2022. Memos were listed as due by January 28, 2022. On January 28, 2022, the defendants filed a memorandum of law in support of their motion to dismiss. Plaintiff did not file any briefs on the motion to dismiss and did not file a motion to amend the Complaint.

At no time between September 16, 2021, when the motion to dismiss was filed and February 11, 2022, when the hearing was held, did plaintiff ever file a motion to amend his Complaint, despite having the necessary information in his possession since at least mid-December. Plaintiff is a *pro se* litigant in this case, but he is also a licensed attorney. (Exhibit G). Therefore, he should be well aware of the Rules of Civil Procedure and the need to formally file a motion in order to have such a motion heard by the court. Additionally, a motion to amend requires that the proposed amended pleading be attached for the court’s review. This was also not done. Instead, plaintiff filed no brief opposing the motion to dismiss and no motion to amend his Complaint. During the hearing, he argued that he could amend to include promissory estoppel, but did not actually move the court for such relief. Now, for the first time, in a motion to reconsider, he asks the court to reconsider a motion that was not actually made and has submitted a proposed amended Complaint to the court for consideration. This proposed pleading should not be considered by the court for any purpose. It is an improper submission with a motion to reconsider.

With regard to the argument about promissory estoppel and the lack of a statute of limitations for such claim, defendants also oppose any reconsideration relating to an amendment to include that specific claim. The case cited by plaintiff for a lack of statute of limitations also

says “the statute of limitations may be applied by analogy in a court of equity, the court has the authority to extend that period if it believes a longer period is warranted under the circumstances.” *Thomerson v. Devito*, 430 S.C. 246, 251, 844 S.E. 2d 378, 381 (2020) (emphasis added). The court here did just that. This case is not governed by the principles of equity or the doctrine of promissory estoppel, and the court should not reconsider any oral, unfiled motion made by plaintiff during a hearing on defendants’ properly filed motion. Such would prejudice the defendants in forcing them to file another motion to dismiss and incur additional costs and attorney’s fees.

CONCLUSION

Defendants oppose the plaintiff’s motion to reconsider the Order issued February 16, 2022. The order does not address a motion to amend because no motion was before the court. Instead, plaintiff argues the order “effectively denied” the Plaintiff’s oral motion to amend his Complaint. Plaintiff did not follow the Rules of Civil Procedure to properly file a motion to amend in order to have it properly heard and considered by the Court. Defendants respectfully ask the court to deny the motion.

Respectfully Moved,

s/Robin L. Jackson
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Attorney for Defendants SCDMV and Schwedo

March 1, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) 2021-CP-10-03740

Amenhotep Myers,)
)
 Plaintiff,) **Transcript of Record**
)
 vs.)
) **FEBRUARY 11, 2022**
 South Carolina Department of)
 Motor Vehicles and Kevin A.)
 Shwedo, in his official)
 capacity as Executive Director)
 Of Motor Vehicles,)
)
 Defendants.)
)

B E F O R E:

Honorable Roger M. Young, Sr.
Charleston County Courthouse
Charleston, South Carolina
Via WebEx Remote Hearing

A P P E A R A N C E S:

Amenhotep Myers, Appearing Pro Se

Robin L. Jackson, Esquire
Attorney for Defendants

Sallie Beth Todd
Circuit Court Reporter

1 **THE COURT:** All right. Next is Myers versus DMV, that's
2 the Department of Motor Vehicles. That's the one with Robin.
3 Robin, are you there?

4 **MS. JACKSON:** Good morning.

5 **THE COURT:** Good morning.

6 So are you Mr. Myers? I don't hear you, so you might be
7 muted.

8 **MR. MYERS:** Yes, I am Mr. Myers, Your Honor. Good
9 morning.

10 **THE COURT:** Okay. How do you pronounce your first name?

11 **MR. MYERS:** It's Amenhotep. It's an ancient Egyptian
12 name.

13 **THE COURT:** Okay. All right. Well let's see, this is
14 the state's motion to dismiss. So, Mr. Myers, you're
15 representing yourself; is that correct?

16 **MR. MYERS:** Yes, Your Honor.

17 **THE COURT:** All right. Ms. Jackson, go ahead.

18 **MS. JACKSON:** Good morning, Your Honor. I am
19 representing the Department of Motor Vehicles and Director
20 Kevin Shwedo in this case. I previously submitted a brief
21 that sets forth all of the dates.

22 There are four bases to dismiss this case. The first one
23 is the statute of limitations. The second is the fact that it
24 was not properly served. Third, Mr. Shwedo is not a proper
25 defendant under the South Carolina Tort Claims Act, and the

1 department is entitled to immunity under the Tort Claims Act.
2 And forth, plaintiff has asked for declaratory relief but has
3 not set forth what exact declaratory relief he is looking for.

4 Your Honor, this case has a two-year statute of
5 limitations under the Tort Claims Act. It is undisputed that
6 the plaintiff did not file a verified claim as is required by
7 the Tort Claims Act in order to extend that statute of
8 limitations to three years. This case goes back to a DUI
9 suspension of license that occurred on July 7th of 2018. There
10 was a hearing requested on August 7th of 2018 under the implied
11 consent rules. There was a letter sent -- this case basically
12 revolves around a mistake in the letters, Your Honor. What
13 happened on August 13th of 2018 was that Mr. Myers had
14 requested a hearing on implied consent, but it was requested
15 one day late. And so the DMV employee put the -- put that
16 request into the system to generate a hearing notice and then
17 realized that it was late. And so what happened was it
18 generated two letters. One, when she had to delete the whole
19 -- the whole entry to be able to reenter it to say that the
20 letter was sent late. When that was deleted, it generated a
21 letter to Mr. Myers saying that the suspension had been
22 lifted. When she reentered it, it generated a letter on the
23 same date letting him know about the hearing. Mr. Myers was
24 sent both letters to the same address. And his position is
25 that he relied solely on the letter that said that the

1 suspension was lifted.

2 The hearing -- the hearing for the implied consent, the
3 DMV submitted an opposition to that motion and requested that
4 it be dismissed because the request for hearing was filed out
5 of time. The occurred on August 14th of 2018 and was served on
6 Mr. Myers. And the hearing officer sent an order to Mr. Myers
7 on August 20th telling him to file a response to the DMV's
8 motion. And then on September 19th of 2018 the hearing officer
9 dismissed the challenge to the implied consent suspension
10 because Mr. Myers had not filed a response.

11 This case was filed on August 16th of 2021, over a year
12 after the expiration of the two-year statute of limitations
13 based on the conflicting letters. It was filed 11 months
14 after receiving the hearing officers order dismissing the
15 implied consent challenge and upholding the license
16 suspension.

17 In addition, Mr. Myers alleges that on August 12th of 2019
18 he was notified by Uber and Lyft that his license was
19 suspended. Even if we use that date as the date of notice, he
20 still missed the two-year statute of limitations. We would go
21 back to the date of the refusal to take the breathalyzer on
22 July 7th of 2018. And even with the declaratory judgment
23 allegations which have a three-year statute of limitations,
24 that statute would have run on July 7th of 2021, and again the
25 plaintiff would have missed the statute of limitations.

1 Your Honor, that's our primary basis for the dismissal of
2 this. Do you want to consider that, or do you want me to
3 argue all of the grounds?

4 **THE COURT:** Well let me ask you this. Is his license
5 suspended or not? I'm really not clear?

6 **MS. JACKSON:** Yes.

7 **THE COURT:** It is? It is suspended?

8 **MS. JACKSON:** It is.

9 **THE COURT:** Okay. All right.

10 Well, Mr. Myers, we need to focus on this statute of
11 limitations question first because if you missed that the rest
12 of them don't matter.

13 **MR. MYERS:** Yes, Your Honor. Thank you, Your Honor.

14 Well the statute of limitations, as far as this case, was
15 filed August 16th 2021. I believe in my complaint I have
16 alleged that after August 16th of 2019 the state has -- the
17 state's conduct through acts or omissions have basically
18 created independent acts of gross negligence that I can claim
19 that I've included in my complaint.

20 For example, Your Honor -- well let's step back. This is
21 the first time I'm actually hearing the state's side that it
22 was some process issue with their system that generated this
23 letter. When I received it, I'm under the assumption that
24 it's a valid letter. It's coming from the government. It has
25 the governor's name on it, it's signed, it says that the

1 information is deleted. At that point I'm under the
2 assumption that my license is valid. All right. So the
3 statute of limitations she's saying starts on the date of that
4 letter, but it actually wouldn't start until I had a
5 reasonable belief that my license was suspended. As she said,
6 there was a DUI, my license was suspended. Uber and Lyft, for
7 whatever purposes, not government entities, have determined
8 that my license was suspended. They -- I don't know what
9 information that they are operating off of, the prior
10 information, do they know about the letter that the state has
11 sent me saying that this information was deleted? I don't
12 know. But what I've claimed is I've taken that letter to the
13 DMV as the letter instructs to take it to the DMV to get a new
14 license. That's what I've done after August 16th 2019. And
15 that's just one example of the acts and omissions that the
16 state has been accused of committing in this action.

17 But all of the other remaining concerns that opposing
18 counsel has can be dealt with with an amended complaint with
19 leave from the Court. To include a claim of promissory
20 estoppel, which does not have a statute of limitations
21 according to the Supreme Court of South Carolina. It states
22 in the letter that there are several promises that this
23 information is deleted, that I may make application to the DMV
24 for a new license, all of which was refused.

25 **THE COURT:** Well I understand, but the way the law works

1 on statute of limitations questions is when is the first time
2 that you knew or should have known that you had a problem.
3 And that appears that those problems were brought to your
4 attention vis-à-vis by sending you these letters prior to,
5 more than two years prior to you filing the lawsuit. So those
6 letters got sent out and you were in essence, basically a year
7 late in filing since it's a two-year statute of limitation on
8 that. So you know there's really nothing I can do to help you
9 out on that. They're entitled to raise that as a defense. It
10 appears to be a valid defense. You didn't act on those at
11 that time and that's, under the law, the first time you knew
12 or should have known that you had a problem, that let you know
13 you should have acted on it, or if you're going to file a
14 lawsuit to do it no later than two years from the date you got
15 those letters. So you missed the statute of limitations.

16 **MR. MYERS:** Your Honor, if I may? When I received that
17 letter, my license was essentially reinstated. What action
18 should a reasonable person take when they receive a letter
19 that their license is reinstated. I don't know why I should
20 file a lawsuit when they sent me a letter saying this
21 information is deleted.

22 **THE COURT:** Well, it's my understanding that you got two
23 letters at the same time with contradictory information on it
24 and that was the point.

25 **MR. MYERS:** I received the letter -- the second letter

1 not the same day, but I did receive it. But still, like I
2 said, I understand where you're coming from as far as them
3 sending the letter, but there's multiple acts of gross
4 negligence that I've alleged. Not just the ---

5 **THE COURT:** I understand that, but that's the first time
6 that you knew that you had a problem was when they sent you
7 one letter saying you're not suspended. They sent you another
8 letter saying you were suspended. When you got notice that
9 you had two contradictory things coming in, under the law
10 that's when the clock starts ticking so that if you wanted to
11 bring a lawsuit, it started then.

12 **MR. MYERS:** Yes, sir.

13 **THE COURT:** So I understand you've alleged various
14 things, but they all arise back out of the fact that they sent
15 you two letters that said two different things. So you had
16 notice in the eyes of the law back then that you had a problem
17 and that's when you should have acted.

18 **MR. MYERS:** I understand.

19 **THE COURT:** All right.

20 **MR. MYERS:** With leave from the Court, I can amend my
21 complaint to include ---

22 **THE COURT:** Well it's too late. That doesn't start the
23 clock over again.

24 **MR. MYERS:** The estoppel claim, as stated by the Supreme
25 Court of South Carolina, it does not have a statute of

1 limitations on that issue.

2 **THE COURT:** Well I kind of disagree with you on that.
3 But you are welcome to appeal my order. And I'm going to have
4 Ms. Jackson, if you would, take a draft on that, send it to me
5 -- prepare a draft, send it to me. After I review it, if I
6 want to make any changes I will, if not, I'll file it and then
7 you have the right to appeal after that if you want to. Okay.

8 **MR. MYERS:** Thank you so much, Your Honor.

9 **THE COURT:** All right. Good luck to you.

10 **MS. JACKSON:** Your Honor, can I add one thing?

11 **THE COURT:** Sure.

12 **MS. JACKSON:** Just because of the potential for appeal.
13 If I can just also put on the record the fact that the first
14 alternate argument was that the defendant's were not properly
15 and timely served. Again, this complaint was filed August 16th
16 of 2021. It was never served on Kevin Shwedo or the
17 Department of Motor Vehicles. It was only served on the
18 attorney general, which is not proper under the Rules of Civil
19 Procedure, Rule 4(d)(5) for a state officer or agency. And
20 that the 120 days from the date of filing expired December 14th
21 of 2021. They have not been properly served, so we would
22 assert that as an additional ground for dismissing this case.
23 And I only put that on the record because of that discussion
24 about the potential for appeal.

25 **THE COURT:** Okay. That'll be fine. Add that in.

South Carolina
Department of Motor Vehicles



08/13/2018

MYERS, AMENHOTEP
1572 NATHANIEL DR
CHARLESTON, SC 29412-8027

CUSTOMER NO: 33149043
FILE NO: 24869882
DL NO: 104622622

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: You failed to submit to the required alcohol or drug test.

SECTION OF LAW: 56-05-2950

VIOL DATE	CONV DATE	VIOL DESCR
07/07/2018	07/07/2018	Implied Consent

BEGINNING DATE: 12:01 AM 07/07/2018 ENDING DATE: MIDNIGHT 01/07/2019

SPECIAL DRIVING PRIVILEGES:

You may be eligible for a route restricted license if you are a licensed driver, a US Citizen, have a job, attend ADSAP, attend a court-ordered drug program or are enrolled in a college or university. This license allows you to drive non-commercial motor vehicles on a specific route at a certain time during this suspension period. Complete the enclosed application and return it to the DMV Customer Service Office at 1630 Shop Road, Columbia, S.C. or mail it to Driver Records, PO Box 1498, Blythewood, SC 29016-0028. There is a \$100 fee for this license. Incomplete applications will be returned. Your suspension can be cleared by enrolling in ADSAP and having the IID installed. You may not drive until the suspension period has ended and you have done the following:

ALCOHOL DRUG SAFETY ACTION PROGRAM:

You must successfully complete the ADSAP Program within one year of enrollment. The SC Department of Alcohol and Other Drug Abuse Services will notify the Department once you have completed this requirement. If you have not successfully completed the program within this time, your driving privilege will be subject to suspension for Failure to Successfully Complete ADSAP. If you need information concerning this program, you may call the Department of Alcohol and Other Drug Abuse Services in your county.

REINSTATEMENT FEE:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

TESTS:

You must successfully complete the vision test.

Driver Records Manager

Henry M. McMaster
Governor



Kevin A. Shivers
Executive Director



State of South Carolina
Department of Motor Vehicles

08/13/2018

MYERS, AMENHOTEP
1572 NATHANIEL DR
CHARLESTON, SC 29412-8027

CUSTOMER NO: 33149043
FILE NO: 24869863
DL NO: 104622622

SEQUENCE 000075
02010000750

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 08/13/2018. This official notice cancels previous notices of suspension, revocation, cancellation or disqualification concerning the listed description(s).

DRIVING STATUS: No Suspension No Disqualification

Defensive Driving Credit: No

Violation modified or deleted:

Date	Action	Ticket#	Viol Description
07/07/2018	Deleted		Implied Consent

Suspension, revocation, cancellation and/or disqualification modified or deleted:

Date	Begin Date	End Date	Action	Susp Description
07/07/2018	07/07/2018	01/07/2019	Deleted	Implied Consent

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol-You have special driving privileges.

MODIFIED-The violation has been changed and is still on your official driving record.

DELETED-The violation has been removed from your driving record.

If your driving status is suspended and/or disqualified, you are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000. Information may also be obtained by visiting our website at www.scdmvonline.com.

Post Office Box 1498, Elythwood, South Carolina 29016

Henry W. McMaster
Governor



Kevin A. Shivers
Executive Director



State of South Carolina
Department of Motor Vehicles

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

SALES PRICE 000075
0200000750

Post Office Box 1498, Bluffton, South Carolina 29016

Robin Jackson

From: Amenhotep Myers <scassociationllc@gmail.com>
Sent: Friday, October 22, 2021 4:02 PM
To: Robin Jackson
Cc: Missi Kinard
Subject: Amending Complaint

Hi Robin,

I'm considering amending my complaint. Do you consent to me amending my pleading and will you accept service by email to this address?

Regards,
Amen Myers



Robin Jackson

From: Amenhotep Myers <scassociationllc@gmail.com>
Sent: Friday, October 22, 2021 6:51 PM
To: Robin Jackson
Subject: Re: Amending Complaint

Great,

I plan to send a copy within a few days.

Regards,

Amen Myers

> On Oct 22, 2021, at 5:35 PM, Robin Jackson <robin@sennlegal.com> wrote:

>

> If you can send me what you propose, I will look at it and let you know if I can consent.

> Robin Jackson

>

> Sent from my iPhone, sorry for any typos or auto corrects.

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>>

>> Regards,

>> Amen Myers



Robin Jackson

From: Amenhotep Myers <scassociationllc@gmail.com>
Sent: Saturday, October 30, 2021 8:00 AM
To: Robin Jackson
Subject: Re: Amending Complaint
Attachments: Myers v. SCDMV (Amended).pdf

Hi,

Sorry for the delay. Please review attached.

Regards,
Amen Myers

On Thu, Oct 28, 2021 at 4:06 PM Amenhotep Myers <scassociationllc@gmail.com> wrote:
Hi,

Thank you for your email. I got a little busy this week, but, I will send it tonight or tomorrow. Thanks again.

Regards,

Amen Myers

> On Oct 28, 2021, at 2:40 PM, Robin Jackson <robin@sennlegal.com> wrote:

>

> I have not received anything from you. I am willing to receive the proposed amended complaint by e-mail if you have it in that format.

> Robin

>

> -----Original Message-----

> From: Amenhotep Myers [mailto:scassociationllc@gmail.com]

> Sent: Friday, October 22, 2021 6:51 PM

> To: Robin Jackson <robin@sennlegal.com>

> Subject: Re: Amending Complaint

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>>>
>>> Regards,
>>> Amen Myers

Robin Jackson

From: Amenhotep Myers <scassociationllc@gmail.com>
Sent: Monday, November 01, 2021 2:08 PM
To: Robin Jackson
Subject: Re: Amending Complaint

Hi,

Thank you for your consideration.

Regards,
Amen Myers

On Mon, Nov 1, 2021 at 10:43 AM Robin Jackson <robin@sennlegal.com> wrote:

Mr. Myers,

I have reviewed the proposed amended Complaint. Please correct me if I am wrong, but the only changes I see are to Paragraph 53, which adds C, and the prayer for relief which adds C and D. Are these the only changes?

I cannot consent at this time, because doing so would only require me to file a second motion to dismiss and incur costs and fees in doing so when there is nothing in your proposed amended complaint that is materially different. When the motion to dismiss is scheduled, you can discuss your proposed amendment with the court if you think it will overcome the motion to dismiss.

My motion is based on the fact that Kevin Schwedo is not a proper defendant pursuant to the Tort Claims Act and further that you have missed the applicable statutes of limitations. As it is my understanding that you are an attorney, you should be able to understand the two year statute of limitations in the Act. If you have proof of filing a verified claim that meets the statutory requirements, please send me a copy of the verified claim form and proof of service and I will speak with my client, but it based on the Complaint itself, it appears that even the three year statute was missed.

Thank you,

Robin Jackson

Robin Lilley Jackson, Esq.





www.SennLegal.com

Attorney & Certified Mediator

Robin@sennlegal.com

Tel: 843-556-4045

Fax: 843-556-4046

3 Wesley Drive

P.O. Box 12279 (29422)
Charleston, South Carolina 29407

This communication may be attorney-client privileged and/or confidential work product. If you are not the intended recipient, by law dissemination, distribution, or copying of this communication is prohibited. Please notify us by return email if you have obtained this communication in error and please destroy any copies. Also, we are not tax attorneys and have not/cannot give tax advice. Thank you

From: Amenhotep Myers [mailto:scassociationllc@gmail.com]
Sent: Saturday, October 30, 2021 8:00 AM
To: Robin Jackson <robin@sennlegal.com>
Subject: Re: Amending Complaint

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>>>> Hi Robin,

>>>>

>>>> I'm considering amending my complaint. Do you consent to me amending my pleading and will you accept service by email to this address?

>>>>

>>>> Regards,

>>>> Amen Myers

Robin Jackson

From: Amenhotep Myers <scassociationllc@gmail.com>
Sent: Wednesday, December 15, 2021 2:13 PM
To: Robin Jackson
Cc: Missi Kinard
Subject: First Amended Complaint
Attachments: Myers v. SCDMV (First Amended).pdf

Good afternoon,

I hope you enjoyed your Thanksgiving and look forward to Christmas and the New Year. I ate too much during Thanksgiving and now I'm playing catch up in the gym. I'll try to avoid repeating this during and after Christmas.

Attached, you will find my First Amended Complaint. I am requesting your written consent to allow me to file the attached document. If you are able to provide your consent, please respond to this email with such consent. However, if you are unable to provide such consent I expect to file a Motion to Amend requesting permission from the Court to file it.

Regards,
Amenhotep Myers
202-679-7947

South Carolina Association LLC
scassociationllc@gmail.com

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Robin Jackson

From: Robin Jackson
Sent: Wednesday, December 15, 2021 3:14 PM
To: 'Amenhotep Myers'
Cc: Missi Kinard
Subject: RE: First Amended Complaint
Attachments: 2021-12-15 Myers Am Compl.pdf

Mr. Myers,

Please see attached correspondence regarding your proposed amended Complaint.

Robin Jackson

From: Amenhotep Myers [mailto:scassociationllc@gmail.com]
Sent: Wednesday, December 15, 2021 2:13 PM
To: Robin Jackson <robin@sennlegal.com>
Cc: Missi Kinard <Missi@sennlegal.com>
Subject: First Amended Complaint

Good afternoon,

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Regards,
Amenhotep Myers
202-679-7947

South Carolina Association LLC
scassociationllc@gmail.com

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Sandra J. Senn
Robin L. Jackson
Christopher T. Dorsel

3 Wesley Drive
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
F: (843) 556-4046

robin@sennlegal.com

December 15 2021

Via E-mail Only
Amenhotep Myers, Esquire
1572 Nathaniel Drive
Charleston, SC 29412

RE: Amenhotep Myers v. S.C. Dept. of Motor Vehicles, et al
Case No.: 2021-CP-10-03740

Dear Mr. Myers:

Thank you for your e-mail with the proposed Amended Complaint. I had the opportunity to skim through it quickly. The biggest changes I note are the addition of a claim for 'promissory estoppel' and references to SCDMV letter and SCDMV letter #2, but neither are attached as exhibits. If you are going to reference them the way that you are, you should attach them so the court can review them and understand what you are talking about.

I do not believe your new claim for promissory estoppel changes the fact that you missed the applicable statute of limitations. It is also not proper because you do not meet the elements for such a claim. Your own complaint demonstrates this with the reference to SCDMV letter #2. Further, you do not even mention the second letter that was mailed on the same date as the first letter. Additionally, punitive damages are not permitted under the Tort Claims Act and you have requested them in your Amended Complaint. Because of these things, I am not able to consent to your proposed Amended Complaint.

I did speak with the clerk's office after the most recent motions roster was published to find out why my motion has not been scheduled. I was told that it would likely be on the January or February motions roster.

Sincerely,

S/ Robin L. Jackson

Robin L. Jackson

mbk

ELECTRONICALLY FILED - 2022 Mar 01 12:06 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003740

COVID-19 Updates See [our page](#) for the latest courts info., announcements, resources & event changes.

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Bar Member Profile

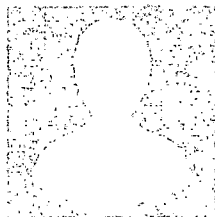
FOR LAWYERS

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**Amenhotep
Myers**

South Carolina
Association LLC



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Address: 1572 Nathaniel Drive

Charleston, SC 29412
Charleston

Email:

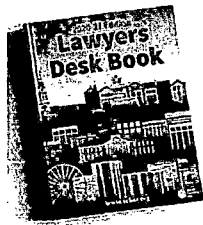
Law School: Charleston School of Law,
2019
Charleston School of Law,
2019

Bar Admission: 04/08/2021

Member Class: Regular Member

Member Status: Good Standing

ELECTRONICALLY FILED - 2022 Mar 01 12:06 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003740



**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Public Safety and
South Carolina Department of Motor Vehicles,

Petitioner,

v.

Amenhotep Myers,

Respondent.

18-OMVH-01-3817-CC

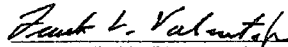
**NOTICE OF MOTION
AND MOTION TO DISMISS**

TO: RESPONDENT AMENHOTEP MYERS, *PRO SE*, PLEASE TAKE NOTICE that Petitioner South Carolina Department of Motor Vehicles ("DMV") hereby moves to dismiss the above referenced action. The grounds of this motion are set forth below.

S.C. Code §56-5-2951 and OMVH Rule 4(B) provide that a request for a contested case hearing must be filed and served within thirty (30) days of the notice of suspension. The suspension notice was issued on Amenhotep Myers, on July 7, 2018 (Exhibit A). The hearing request was filed on August 7, 2018 (Exhibit B), which is 1 day beyond the mandated thirty (30) day time limitation. It appears that the Office of Motor Vehicle Hearings does not have jurisdiction to consider the appeal.

For the reasons stated above the Department of Motor Vehicles hereby moves that this appeal be dismissed as untimely.

Respectfully submitted,



FRANK L. VALENTA, JR.

General Counsel

BRANDY A. DUNCAN

Assistant General Counsel

South Carolina Department of Motor Vehicles

10312 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0000

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

August 15, 2018
Blythewood, South Carolina

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**


North Charleston Police Department) and) South Carolina Department of Motor Vehicles) Petitioners,) vs.) Amenhotep Myers,) Respondent.)	Docket No. 18-OMVH-01-3817-CC DL# 104622622 ORDER FOR RESPONSE TO MOTION TO DISMISS FILED BY PETITIONER SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
--	--

Type of Hearing: Implied consent (S.C. Code Ann. § 56-5-2950)
[Refusal to submit to chemical test(s)]

This matter is before me pursuant to a request for a contested case hearing filed by the Respondent. On August 15, 2018, Petitioner South Carolina Department of Motor Vehicles (SC DMV), filed a motion seeking dismissal of the case. The SC DMV contends this office lacks jurisdiction to consider the matter because the request for a hearing was not timely filed. The SC DMV indicates it has served the motion on the other parties in this matter. In order to rule on the motion properly, it is necessary that I hear from the opposing party. Therefore,

IT IS HEREBY ORDERED that the Respondent must file a response to the motion of the SC DMV within fifteen (15) days of the date of this order. Respondent must file the response with the OMVH and serve a copy of it on all parties. Failure to file a response may result in the dismissal of the case pursuant to Rule 13 of the Rules of Procedure for the Office of Motor Vehicle Hearings. Petitioner North Charleston Police Department may file a response, but it is not required to do so. Failure of the Petitioner North Charleston Police Department to file a response shall be deemed consent to the motion of the SC DMV. No hearing will be held on the motion to dismiss.

AND IT IS SO ORDERED.



 Brigitte B. Autry
 Hearing Officer, Office of Motor Vehicle Hearings

August 20, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

North Charleston Police Department	)	Docket No. 18-OMVH-01-3817-CC
and	)	DL# 104622622
South Carolina Department of Motor Vehicles)	
)	
Petitioners,)	
	)	ORDER GRANTING PETITIONER
vs.	)	SCDMV'S MOTION TO DISMISS
)	
Amenhotep Myers,)	
)	
Respondent.)	

Type of Hearing: Implied consent (S.C. Code Ann. § 56-5-2950)
[Refusal to submit to chemical test(s)]

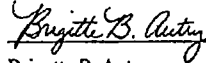
This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to Respondent's request for a contested case hearing regarding the suspension of his driver's license or driving privilege. On August 15, 2018, the South Carolina Department of Motor Vehicles ("SC DMV") filed a Motion to Dismiss, asserting the OMVH lacks jurisdiction to consider this matter because Respondent failed to timely file his request for a contested case hearing. On August 20, 2018, an order requiring Respondent to file a response to the motion within ten days was issued, but as of the date of this order, no response has been filed.

S.C. Code Ann. § 56-5-2951(B)(2) provides that a person may request a contested case hearing within thirty (30) days after the issuance of the notice of suspension. In this case, Respondent was issued a Notice of Suspension on July 7, 2018, but he did not file his request for a hearing until August 7, 2018 – one day beyond the thirty-day period. Therefore, his request for a hearing was not timely filed. Because the time frame set forth in §56-5-2951(B)(2) is mandatory, Respondent has not properly invoked the jurisdiction of the OMVH and this matter must be dismissed. See Wingate v. S.C. State Highway Dep't., 276 S.C. 39, 40, 274 S.E.2d 917 (1981) (holding that a trial court lacked jurisdiction to review driver's license suspension where the driver did not seek review within thirty day period as prescribed by statute). Accordingly,

IT IS HEREBY ORDERED that the hearing scheduled for 9:30 a.m. on October 8, 2018, at the Hanahan Municipal Court is **CANCELLED** and that this matter is **DISMISSED**.

AND IT IS SO ORDERED.

September 19, 2018
Columbia, South Carolina


Brigitte B. Autry
Hearing Officer, OMVH

Page 1 of 1

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Public Safety and
South Carolina Department of Motor Vehicles,

Petitioner,

v.

Amenhotep Myers,

Respondent.

18-OMVH-01-3817-CC

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AND MOTION TO DISMISS

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Respectfully submitted,



FRANK L. VALENTA, JR.

General Counsel

BRANDY A. DUNCAN

Assistant General Counsel

South Carolina Department of Motor Vehicles

10312 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0000

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.



Driver Services, Director

August 15, 2018
Blythewood, South Carolina

EXHIBIT B



South Carolina Department of Motor Vehicles
NOTICE OF SUSPENSION

MV-65
(Rev. 8/12)

Driver's Name: AMENHOTEP MYERS BP/DL State and Number: SC 1K4G23022 Date of Birth: 03-12-1988

Address on Driver's License: Street address, Apt. No., City, State, Zip Code: 1572 NATANIEL DRIVE, CHARLSTON SC 29412

Special mailing address for notices (if different from driver's license address): Street address, Apt. No., City, State, Zip Code: 2018-OMVH-01-2817
Vehicle License Plate State and No.: SC 1YL829 Vehicle Type: Commercial Yes No Hazardous Material Yes No

YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:
(CHECK ONLY ONE BOX)

UNDER THE AGE OF TWENTY-ONE (21) AND NOT UNDER ARREST FOR DUI*
 Registering an alcohol concentration of .02 or greater*
 Refusing to submit to a breath, blood or urine test*
Date of Test/Refusal: _____

ANY AGE UNDER ARREST FOR DUI
 Registering an alcohol concentration of .15 or greater
 Refusing to submit to a breath, blood or urine test
Date of Test/Refusal: _____

*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-8920, 20-7-8925, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can request a hearing to challenge the suspension. A request for a hearing must be filed with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension. There is a \$200.00 filing fee. (Personal checks are not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to obtain a temporary alcohol restricted license.

If you do not obtain a temporary alcohol restricted license, your suspension continues. You cannot drive until you either obtain a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP (if you do not complete ADSAP, your driver's license will again be suspended); 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to explain how to obtain a route-restricted license. If you do not obtain a route-restricted license or if you are under the age of twenty-one (21) and were not arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP (if you do not complete ADSAP, your driver's license will again be suspended); 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a Department of Motor Vehicles office to have a reinstatement hearing.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to obtain a route-restricted license.

I understand that I cannot drive until a license has been issued to me. [Signature] Date Signed: 07-07-2018

Driver's license or permit surrendered (yes or no) NO. (If yes, license must be attached to yellow copy of this form)

Date Signed: 07-07-2018 Signature of Arresting Officer: [Signature] Agency Name: SC10000 Agency Code: SC10000 Printed Name of Arresting Officer: [Name] Agency Telephone Number: [Number]

Date Signed: _____ Signature of District Master Operator: [Signature] Printed Name of District Master Operator: [Name] Agency Name: _____ Agency Code: _____ Agency Telephone Number: _____

Blue Copy - Driver Yellow Copy - DMV/Driver Records Green Copy - Officer White Copy - Officer's Agency
[Signature]
Driver Services, Director

FILED
AUG 07 2018

SC DMV

AUG 09 2018
SC DMV

Office of the Director
Department of Motor Vehicles
1000 North Main Street
Columbia, SC 29201
803-799-2300

EXHIBIT A

RECEIVED

JUL 28 2018
(Rev. 1/12)

DRIVER RECORDS



South Carolina Department of Motor Vehicles
NOTICE OF SUSPENSION

Driver's Name: AMANDA T P MASERS

BP/DU State and Number: S-1401623622

Date of Birth: 07-17-1988

Address on Driver's License: Street address, Apt. No., City, State, Zip Code
1577 ALABAMA DRIVE CHARLESTON SC 29412

Special mailing address for notices (if different from driver's license address): Street address, Apt. No., City, State, Zip Code

Vehicle License Plate State and No: FL 819 Vehicle Type: Commercial Yes No Hazardous Material Yes No

YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:
(CHECK ONLY ONE BOX)

UNDER THE AGE OF TWENTY-ONE (21) AND NOT UNDER ARREST FOR DUI*
 Registering an alcohol concentration of .02 or greater*
 Refusing to submit to a breath, blood or urine test*
Date of Test/Refusal

ANY AGE UNDER ARREST FOR DUI
 Registering an alcohol concentration of .15 or greater
 Refusing to submit to a breath, blood or urine test
Date of Test/Refusal: 07-07-2018

*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-892D, 20-7-892S, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can request a hearing to challenge the suspension. A request for a hearing must be filed with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension. There is a \$200.00 filing fee. (Personal checks are not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to obtain a temporary alcohol restricted license.

If you do not obtain a temporary alcohol restricted license, your suspension continues. You cannot drive until you either obtain a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to explain how to obtain a route-restricted license. If you do not obtain a route-restricted license or if you are under the age of twenty-one (21) and were not arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a Department of Motor Vehicles office to have a regular license issued.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to obtain a route-restricted license.

I understand that I cannot drive until a license has been issued to me. [Signature]
Signature of Driver

07-07-18
Date Signed

Driver's license or permit surrendered (yes or no) no (If yes, license must be attached to yellow copy of this form)

07-07-2018
Date Signed
[Signature]
Signature of Arresting Officer
COMMERCIAL
Agency Name
SC0230
Agency Code

CHARLESTON
Printed Name of Arresting Officer
512 7110
Agency Telephone Number

[Signature]
Signature of Data Master Operator
Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.
[Agency Name]
Agency Name
[Agency Code]
Agency Code

[Signature]
Printed Name of Data Master Operator
[Agency Name]
Agency Name
[Agency Code]
Agency Code

Blue Copy - Driver
Yellow Copy - DMV/Driver Records
Green Copy - Office

[Signature]
White Copy - Office
Driver Services, Director

[Signature]
Driver Services, Director

EXHIBIT B

HEARING REQUEST:

I am requesting an administrative hearing. I understand that I must request a hearing with the SC Office of Motor Vehicle Hearings within 30 days of the issuance of the Notice of Suspension or revocation and to obtain a temporary alcohol restricted license.

09/06/18
Date

Anthony [Signature]
Signature of Driver

1572 Northwood Drive, Columbia, SC 29906 (202) 679 7947
Driver's Mailing Address, Phone Number, and Email Address for Notice

amehokcp@310574ud.c

Your Attorney's Name

Attorney's Address, Phone Number, and Email Address

If you do not list an attorney above, you must tell your attorney when your hearing is scheduled.

INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING

1. Complete the Hearing Request part of this form, giving the current address, telephone number, and email address where you can be reached.
2. There is a \$200.00 filing fee for a hearing. (Personal checks are not accepted.)
3. Bring or mail your completed form, plus the filing fee, to the SC Office of Motor Vehicle Hearings, 1205 Pendleton St., Suite 325, Columbia, SC 29201. This completed form and the fee must be either hand-delivered or mailed on or before the date of (30th) day of the date on this notice of suspension.

INSTRUCTIONS FOR REQUESTING A HEARING WHEN NOT USING THIS FORM

1. You may use the Official Notice letter you will receive from the DMV to request a hearing. However, the thirty (30) days of the begins at the time the original Notice of Suspension was issued to you. Be sure to include your mailing address, phone number, and email address, along with your attorney's mailing address, phone number, and email address.
2. There is a \$200.00 filing fee for a hearing. (Personal checks are not accepted.)
3. Without either form, you may submit a written request for a hearing. However, be aware the case will not be assigned and the request will not be forwarded to the DMV until the filing fee and either the Notice of Suspension or the Official Notice letter to the DMV have been received.
4. You must follow the time, delivery, and mailing instructions in the previous section.

INSTRUCTIONS FOR OBTAINING A TEMPORARY ALCOHOL RESTRICTED LICENSE

1. If you met the deadline for requesting a hearing, you may be eligible for a non-commercial temporary alcohol restricted license. Temporary alcohol restricted licenses are not available for Class A, B or C commercial driver licenses.
2. The fee for a temporary alcohol restricted license is \$100.00.
3. After you file your request for a hearing, the SC Department of Motor Vehicles will determine whether you are eligible for a temporary alcohol restricted license. If you are eligible, SC DMV will mail you a letter stating your eligibility.
4. IF YOU ARE SOUTH CAROLINA LICENSED DRIVER, you may take that letter to any SC DMV office in the state, pay the \$100.00 license fee, and have the temporary alcohol restricted license issued.
5. IF YOU ARE LICENSED DRIVER FROM ANOTHER STATE, you may take that letter with the \$100.00 license fee to SC DMV, Specialized Services, 1630 Shop Road, Columbia, SC (two miles North of I-77 Exit 6). That office will issue the temporary alcohol restricted license. You may also mail that letter, a completed Driver's License Application (Form 447, available on the Internet at www.scdmvonline.com), and the \$100.00 license fee to SC DMV, Driver Records, P.O. Box 1498, Blythewood, SC 29916-0028. That office will mail you the temporary alcohol restricted license.

INSTRUCTIONS FOR OBTAINING A ROUTE-RESTRICTED LICENSE

1. If you were suspended after having been arrested for DUI, you may be eligible for a non-commercial route-restricted license. Route-restricted licenses are not available for Class A, B or C commercial driver licenses.
2. A route-restricted license allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college.
3. The fee for the route-restricted license is \$100.00. If you are licensed in another state, you must also pre-pay the \$100.00 reinstatement fee.
4. You must enroll in ADSAP before a route-restricted license will be issued.
5. You do not have to request a hearing to be eligible for a route-restricted license.
6. You must apply for a route-restricted license by submitting an application (Form 147-127). This application will be submitted to you with your suspension notice. It is also available on the Internet at www.scdmvonline.com.
7. You are advised to complete the application and bring it, with the \$100.00 license fee and the \$100.00 reinstatement fee if you are licensed in another state, to SC DMV, Specialized Services, 1630 Shop Road, Columbia, SC (two miles North of I-77 Exit 6). Once the application and the route are approved, that office can issue the route-restricted license. You may also mail the application, a completed Driver's License Application (Form 447, available on the Internet at www.scdmvonline.com), and the \$100.00 license fee (and the \$100.00 reinstatement fee if you are licensed in another state) to SC DMV, Driver Records, P.O. Box 1498, Blythewood, SC 29916-0028. Upon approval of the application and route, that office will mail you the route-restricted license.

ADSAP is an abbreviation for Alcohol and Drug Safety Action Program, which is operated under the supervision of the SC Department of Motor Vehicles and Other Drug Abuse Services (DAODAS). You may go to an ADSAP office in person. Numbers for ADSAP offices in the SC Department of Motor Vehicles Section of Motor Vehicle Hearings are listed on the back of this form. If you reside in another state, you can make arrangements for an equivalent program there.

Certified to be a true and correct copy of the original.

S. H. Rowis
Driver Services, Director

Copy of this document is available on the Internet at www.scdmvonline.com.
Motor Vehicle Hearings, Director

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Public Safety and
South Carolina Department of Motor Vehicles,

Petitioner,

v.

Amenhotep Myers,

Respondent,

Docket No. 18-OMVH-01-3817-CC

SCDL No. 104622622

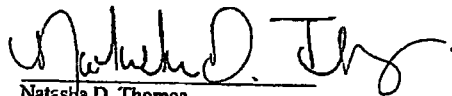
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 14, 2018, I mailed, via first class mail, a true and correct copy of the foregoing *Notice of Motion and Motion to Dismiss*

Amenhotep Myers, Pro Se
1572 Nathaniel Drive
Charleston, SC 29412

As Counsel of Record for Amenhotep Myers, and to

Ofc. M. A. Intini
North Charleston Police Department
2500 City Hall Lane
North Charleston, SC 29406



Natasha D. Thomas
Paralegal Assistant

August 15, 2018
Blythewood, South Carolina

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.


S. H. Rweis
Driver Services, Director

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

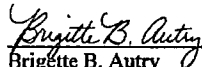
North Charleston Police Department	)	Docket No. 18-OMVH-01-3817-CC
and	)	DL# 104622622
South Carolina Department of Motor Vehicles)	
)	
Petitioners,	)	ORDER FOR RESPONSE TO
	)	MOTION TO DISMISS FILED BY
vs.	)	PETITIONER SOUTH CAROLINA
	)	DEPARTMENT OF MOTOR
Amenhotep Myers,	)	VEHICLES
)	
<u>Respondent.</u>)	

Type of Hearing: Implied consent (S.C. Code Ann. § 56-5-2950)
[Refusal to submit to chemical test(s)]

This matter is before me pursuant to a request for a contested case hearing filed by the Respondent. On August 15, 2018, Petitioner South Carolina Department of Motor Vehicles (SC DMV), filed a motion seeking dismissal of the case. The SC DMV contends this office lacks jurisdiction to consider the matter because the request for a hearing was not timely filed. The SC DMV indicates it has served the motion on the other parties in this matter. In order to rule on the motion properly, it is necessary that I hear from the opposing party. Therefore,

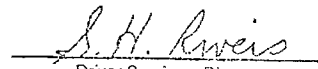
IT IS HEREBY ORDERED that the Respondent must file a response to the motion of the SC DMV within fifteen (15) days of the date of this order. Respondent must file the response with the OMVH and serve a copy of it on all parties. Failure to file a response may result in the dismissal of the case pursuant to Rule 13 of the Rules of Procedure for the Office of Motor Vehicle Hearings. Petitioner North Charleston Police Department may file a response, but it is not required to do so. Failure of the Petitioner North Charleston Police Department to file a response shall be deemed consent to the motion of the SC DMV. No hearing will be held on the motion to dismiss.

AND IT IS SO ORDERED.


Brigitte B. Autry
Hearing Officer, Office of Motor Vehicle Hearings

August 20, 2018
Columbia, South Carolina

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.


Driver Services, Director

CERTIFICATE OF SERVICE

I, Yolanda P. Williams, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Yolanda P. Williams

Yolanda P. Williams

August 20, 2018
Columbia, South Carolina

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.

S. H. Lewis

Driver Services, Director

Duncan, Brandy A

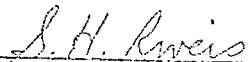
From: Yolanda Williams <ywilliams@scalc.net>
Sent: Monday, August 20, 2018 12:46 PM
To: North Charleston (mmouzon@northcharleston.org); North Charleston (svaughn@northcharleston.org); North Charleston PD (mintini@northcharleston.org); HPU; amenhotep.31@gmail.com
Subject: Order for Response, Amenhotep Myers, dk# 18-3817
Attachments: 08-20-18 CERTIFICATE OF SERVICE.pdf; Myers, Amenhotep - 18-3817 - Order for Response to MTD.pdf

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: EXTERNAL EMAIL! Ensure you trust this sender and validate attachments or links before opening them.

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette Autry and Tracy Holland
South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201
803-734-3201
803-734-3200 fax
www.scomvh.net

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.



Driver Services, Director

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

North Charleston Police Department	)	Docket No. 18-OMVH-01-3817-CC
and	)	DL# 104622622
South Carolina Department of Motor Vehicles)	
)	
Petitioners,)	
	)	ORDER GRANTING PETITIONER
vs.	)	SCDMV'S MOTION TO DISMISS
)	
Amenhotep Myers,)	
)	
<u>Respondent.</u>)	

Type of Hearing: Implied consent (S.C. Code Ann. § 56-5-2950)
[Refusal to submit to chemical test(s)]

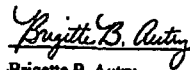
This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to Respondent's request for a contested case hearing regarding the suspension of his driver's license or driving privilege. On August 15, 2018, the South Carolina Department of Motor Vehicles ("SC DMV") filed a Motion to Dismiss, asserting the OMVH lacks jurisdiction to consider this matter because Respondent failed to timely file his request for a contested case hearing. On August 20, 2018, an order requiring Respondent to file a response to the motion within ten days was issued, but as of the date of this order, no response has been filed.

S.C. Code Ann. § 56-5-2951(B)(2) provides that a person may request a contested case hearing within thirty (30) days after the issuance of the notice of suspension. In this case, Respondent was issued a Notice of Suspension on July 7, 2018, but he did not file his request for a hearing until August 7, 2018 - one day beyond the thirty-day period. Therefore, his request for a hearing was not timely filed. Because the time frame set forth in §56-5-2951(B)(2) is mandatory, Respondent has not properly invoked the jurisdiction of the OMVH and this matter must be dismissed. See Wingate v. S.C. State Highway Dep't., 276 S.C. 39, 40, 274 S.E.2d 917 (1981) (holding that a trial court lacked jurisdiction to review driver's license suspension where the driver did not seek review within thirty day period as prescribed by statute). Accordingly,

IT IS HEREBY ORDERED that the hearing scheduled for 9:30 a.m. on October 8, 2018, at the Hanahan Municipal Court is **CANCELLED** and that this matter is **DISMISSED**.

AND IT IS SO ORDERED.

September 19, 2018
Columbia, South Carolina


Brigitte B. Autry
Hearing Officer, OMVH
Page 1 of 1

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.


S. H. Rivers
Driver Services, Director

CERTIFICATE OF SERVICE

I, Yolanda P. Williams, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Yolanda P. Williams

Yolanda P. Williams

September 19, 2018
Columbia, South Carolina

Certified to be a true and correct copy of the original document on file with the South Carolina Department of Motor Vehicles.

S. H. Rweis

Driver Services, Director

NOTICE

Motion of Reconsideration

A party may file a written motion with the OMVH within ten (10) days after notice of this order requesting the Hearing Officer reconsider this final decision. However, the filing of a Motion of Reconsideration does not stay the provisions of this final decision nor excuse compliance with its provisions. See OMVH Rule 15 (D). A stay must be requested specifically by motion. See OMVH Rule 15 (E). The filing of a motion for reconsideration does stay the time for an appeal until an order is issued; however, if the hearing officer does not issue a written order on the motion for reconsideration, it is deemed denied thirty days after it is filed.

Only original documents are accepted. Documents must be filed via hand-delivery or by depositing the document in the U.S. Mail, properly addressed, with sufficient first class postage attached. Facsimiles sent to the OMVH and the South Carolina Administrative Law Court do not comply with filing requirements and are not authorized. See ALC Rules 4(B).

South Carolina Office of Motor Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201

The Rules of the Administrative Law Court are found at: www.scalc.net

The Rules of the Office of Motor Vehicle Hearings are found at: www.scomvh.net

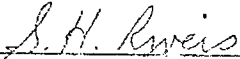
Appeal

A party may appeal this final decision by filing written notice with the South Carolina Administrative Law Court within thirty (30) days of receipt of the order to the following address:

Attn: Clerk
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

The notice must be accompanied by proof of service of the notice on all parties and a filing fee in the amount of \$150.00 made payable to the South Carolina Administrative Law Court. See ALC Rules 3(A), 4(B), 31(A), 33 and 71(A). A copy of the notice must also be sent to the OMVH and a copy of the transcript shall be ordered within ten days after service of the notice. The transcript must be ordered by the Appellant and the Appellant is responsible for the cost thereof.

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.



Driver Services, Director

Duncan, Brandy A

From: Yolanda Williams <ywilliams@scal.net>
Sent: Wednesday, September 19, 2018 10:20 AM
To: North Charleston (mmouzon@northcharleston.org); North Charleston (svaughn@northcharleston.org); North Charleston PD (mintini@northcharleston.org); HPU; amenhotep.31@gmail.com
Subject: 09-19-18 Amenhotep Myers, IC Dismissal
Attachments: 1 Reconsideration-appeal instructions 09-26-17.pdf; 09-19-18 CERTIFICATE OF SERVICE.pdf; Myers, Amenhotep - 18-3817 - Order granting MTD.pdf
Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: EXTERNAL EMAIL! Ensure you trust this sender and validate attachments or links before opening them.

Attached is a copy of the hearing officer's decision. You will receive additional information via mail from the DMV regarding your driving privileges.

Yolanda P. Williams
Administrative Coordinator
Scheduling Assistant for
Brigette Autry and Tracy Holland
South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201
803-734-3201
803-734-3200 fax
www.scomvh.net

Certified to be a true and correct
copy of the original document on file
with the South Carolina Department of
Motor Vehicles.



Driver Services, Director