

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CURCUIT

COUNTY OF CHARLESTON)

MOHAMMAD ABULABAN)

Plaintiff,)

vs.)

CITY OF CHARLESTON AND SOUTH)
CAROLINA DEPARTMENT OF)
TRANSPORTATION,)

Defendants.

CASE NO: 2020-CP-10-01310

**ORDER GRANTING SOUTH
CAROLINA DEPARTMENT OF
TRANSPORTATION’S MOTION FOR
SUMMARY JUDGMENT**



This matter came before the Court on April 18, 2022 for a hearing on the Motion for Summary Judgment of South Carolina Department of Transportation (“SCDOT”). All parties appeared at the hearing by and through their respective counsel. After careful consideration of the evidence submitted, applicable law, and arguments of SCDOT and Plaintiff, the Court hereby grants SCDOT’s Motion for Summary Judgment and makes the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

Plaintiff commenced this action with the filing of his Summons and Complaint on March 10, 2020 and subsequent service thereof. Plaintiffs’ Complaint alleges a cause of action for negligence/gross negligence against both Defendants.

Defendants filed and served timely Motions to Dismiss in Lieu of an Answer on August 20, 2020. Defendants’ Motions to Dismiss were denied in an Order entered on March 10, 2021.

After the entry of the Order denying its Motion to Dismiss, SCDOT filed and served a timely Answer to Plaintiff’s Complaint on April 8, 2021. SCDOT’s Answer raised a number of

affirmative defenses, including immunity from liability by operation of the South Carolina Tort Claims Act (the “Act”), the Public Duty Rule, and lack of actual or constructive notice.

Since that time, the parties have conducted extensive written discovery. Likewise, the parties have completed the deposition of Plaintiff, and depositions of the Defendant’s designees under Rule 30(b)(6), SCRPC. As of the hearing on SCDOT’s instant Motion, the parties had not scheduled the depositions of any other witnesses.

FINDINGS OF FACT

1. This action arises out of Plaintiff’s allegations that he sustained injuries to his person during a fall through an uncovered or unsecured manhole on April 16, 2018, located on a sidewalk along Queen Street and near the intersection of Queen Street and State Street in the City of Charleston, South Carolina.

2. The subject manhole cover is located in the sidewalk over a stormwater catch basin. The sidewalk falls within SCDOT’s right-of-way on Queen Street.

3. Plaintiff testified that he was injured when he fell through the uncovered or unsecured manhole. Plaintiff disclaimed any personal knowledge or evidence regarding the manner in which the manhole became uncovered, who uncovered it, how long it had been uncovered, and whether SCDOT was (or should have been) aware of the manhole’s uncovered condition.

4. The record contains unrebutted evidence that SCDOT performed its biannual, regulatory inspection of Queen Street roughly one month before Plaintiff’s fall. No uncovered manholes, including the subject manhole, were noted at that time.

5. There is no evidence in the record suggesting that SCDOT was, or should have been, aware of the manhole’s condition.

CONCLUSIONS OF LAW

1. SCDOT submitted a timely Memorandum in Support of its Motion for Summary Judgment and served the same on all parties prior the hearing on its Motion. Similarly, Plaintiff submitted a timely Memorandum in Opposition to SCDOT's Motion for Summary Judgment and also served the same on all parties.

2. The Court reviewed the Memoranda of SCDOT and Plaintiff prior to the hearing on SCDOT's Motion. The arguments advanced by SCDOT and Plaintiff in their respective Memoranda are incorporated into this Order as fully as if set forth verbatim herein.

3. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Fleming v. Rose, 567 S.E.2d 857, 860 (S.C. 2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. "Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." NationsBank v. Scott Farm, 465 S.E.2d 98, 100 (S.C. App. 1995). "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." Id.

4. SCDOT is a government entity. See S.C. Code Ann. § 57-1-20 (Supp. 1996). A plaintiff alleging negligence on the part of a governmental entity may rely either upon a duty created by statute or one founded on the common law. Arthurs v. Aiken Cty., 346 S.C. 97, 104, 551 S.E.2d 579, 582 (2001).

5. During arguments on SCDOT's instant Motion, Plaintiff stipulated that SCDOT's alleged duties to Plaintiff arose by operation of our State's common law. Where the duty relied upon

is based upon the common law, pursuant to the Act, the existence of that duty is analyzed as if the defendant was a private entity. Id. at 105, 583.

6. The Act is a limited waiver of governmental immunity. Moore v. Florence Sch. Dist. No. 1, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994). Limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999).

7. The Act provides SCDOT with certain codified exemptions and limitations to the Act's limited waiver of liability, including the following:

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety; or

(15) a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice; or

20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons. S.C. Code Ann. § 15-78-60(13), (15), and (20) (Supp. 1998).

8. As above, SCDOT has presented un rebutted evidence that it performed its biannual, regulatory inspection of the accident site roughly one month before Plaintiff's fall. Although Plaintiff has presented no evidence that SCDOT's inspection departed from any established standard of care, SCDOT is exempt from liability for the performance of its biannual, regulatory inspections by operation of the Act.

9. SCDOT presented un rebutted evidence that it was not aware of the condition of the subject manhole cover for more than one year after Plaintiff's fall. Plaintiff disclaimed any

personal knowledge regarding the identity of the person or entity that uncovered the manhole, or when or why they did so. Accordingly, the record is devoid of any factual dispute as to SCDOT's actual knowledge of the manhole's condition being uncovered.

10. Plaintiff has no knowledge or information with regard to how long the subject manhole remained uncovered. Accordingly, there is no evidence to support the proposition that SCDOT should have been aware of the manhole's condition being uncovered.

11. As Plaintiff has not presented any evidence supporting the proposition that SCDOT was or should have been aware of the manhole's condition being uncovered, the Act provides SCDOT with immunity from liability for the manhole's allegedly defective condition.

12. Finally, Plaintiff has not presented any evidence that SCDOT created the manhole's condition. Specifically, Plaintiff has disclaimed any personal knowledge to that effect. The records produced by SCDOT in discovery are devoid of any inference that SCDOT manipulated the subject manhole cover at any point in time. Accordingly, the Act provides SCDOT with immunity from liability for the actions of any third-parties.

CONCLUSION

By operation of the Act, SCDOT is not liable for the manhole's allegedly defective condition unless it failed to act upon the condition within a reasonable time after receiving actual or constructive notice of its condition. SCDOT has presented un rebutted testimony that it was not actually aware of the alleged defect for over a year after Plaintiff's fall. Further, the record is devoid of any evidence or inference that SCDOT had any reason to be aware of the defect's existence.

Plaintiff has disclaimed any personal knowledge as to the manner in which the subject manhole became uncovered. He has likewise disclaimed any ability to identify the person or entity

that uncovered the manhole, why they did so, or the length of time for which the manhole remained uncovered. Accordingly, the Court finds there is no dispute as to any material fact in this matter as it relates to the SCDOT only, and, therefore, SCDOT is entitled to judgment in its favor as a matter of law by operation of the Act.

Therefore, SCDOT's Motion for Summary Judgment is hereby GRANTED and Plaintiff's claims against SCDOT are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

R. Markley Dennis, Jr.
Presiding Judge
Ninth Judicial Circuit Court of Common Pleas

April __, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Mohammad Abulaban VS Charleston City Of , defendant, et al

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