

1 STATE OF SOUTH CAROLINA) IN SOUTH CAROLINA CIRCUIT COURT 16
2 COUNTY OF YORK) COURT C.A NO. 2022-CV-46-01509

3
4 Kalishwar Das,)
5 Plaintiff,)
6 Versus)
7 York County,)
8 Defendant.)

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SC Court of Appeals

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10 H E A R I N G

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12 DATE: March 9th, 2023

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14 LOCATION: South Carolina Circuit Court 16

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16 JUDGE: William McKinnon

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18 TRANSCRIBED BY: ERIN REILLY

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Certificate of Transcriber 11

EXHIBITS

(None marked)

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PROCEEDINGS

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THE COURT: Kalishwar Das Versus York County.

MR. DAS: Are you hearing me, sir?

THE COURT: I can hear you.

MR. DAS: Yes, sir. Is it my chance to speak?

THE COURT: No, sir. It's Mr. Darwin's because Mr. Darwin had filed a motion to dismiss the amended complaint.

MR. DARWIN: Thank you, Your Honor. May I please the Court?

THE COURT: Yes, sir.

MR. DARWIN: Your Honor, may I recall this? You heard a motion to dismiss an amended complaint, excuse me, back on January the fifth of this year. Five days later on January 10th, you granted that motion to dismiss Mr. Das amended complaint, but allowed him 30 days, excuse me, to file a second amended complaint to attempt to assert a viable cause of action against York County. Your Honor, he filed a second amended complaint on January the 25th. I filed an answer to that amended -- second amended complaint and a motion to dismiss on February the second. And Your Honor, I would just assert, I'm not going to beat up what we did last time. It's set forth in my motion, but there's still no viable cause of action, Your Honor. This time Mr. Das attempts to assert six causes of action.

Four of those, Your Honor. The first, second, fourth

1 and fifth, he cites the 18 US code, which from my reading of
2 those are all criminal statutes, certainly not appropriate for
3 a civil cause of action. As to the third claim from -- for
4 relief, it says he is a -- trying -- trying to assert a claim
5 for the defendants denying motions without conduct --
6 conducting a hearing. And as Your Honor may recall, this
7 underlying case arose in the magistrate court of a commercial
8 eviction.

9 And Mr. Das was upset about the ruling of the Court in
10 that commercial eviction, which found for the landlord, and
11 actually filed an appeal of that to the Circuit Court, then
12 withdrew that appeal and filed a lawsuit in Circuit Court
13 attempting to assert causes of action under the South Carolina
14 Tort Claims Act. Your Honor, so again that cause of action
15 would -- should have been on the appeal. And that's a
16 collateral estoppel issue, which and res adjudicata, which I've
17 asserted in the motion not only back in January but this new
18 one. And finally, the sixth cause of action or claim for
19 relief is simply says for a possible attorney's fee and court
20 costs. Of course, Mr. Das does not have counsel. So that's
21 not a viable cause of action either, Your Honor. So, for those
22 reasons, there reasons asserted in my motion, I'd ask that the
23 Court dismiss the second amended complaint.

24 THE COURT: All right. Mr. Das, now it's your turn,
25 sir.

1 MR. DAS: Yes, Your honor. Defense --

2 THE COURT: I can't see you.

3 MR. DAS: I have a -- okay. So can I turn it on
4 temporarily -- I will turn it off again.

5 THE COURT: Sure.

6 MR. DAS: Okay. You can see me here now, are you?

7 THE COURT: Not yet sometimes it takes a few seconds
8 for it to pop up, but I don't -- there we go. Okay. Now I see
9 you.

10 MR. DAS: Okay, sir. Thank you, sir.

11 THE COURT: Never mind.

12 MR. DAS: Yeah. Mr. Darwin is -- Mr. Defense
13 attorney is repeatedly telling only one thing to Court that I
14 had of dispute with the landlord. And landlord dispute is
15 already [indiscernible]. There is no like a dispute left and
16 he's repeating, and I'm telling that there is only one case
17 left that is a discrimination and it doesn't mean in the --
18 during the Court hearing and for approving that I wanted the
19 surveillance of footage and they are not providing me. That is
20 the real cause of action here and as you directed last hearing,
21 sir, that applied through the FOIA and I applied and they
22 provided me very little piece of evidence like a 10%, 5% only
23 and that is also only the audio recording, not the video
24 recording. So, if any claim, he's claiming that I am doing
25 this and anyway in the wrong way, that can be proven only by

1 providing the real video, which is not provided. So, I came to
2 request for the compelled discovery under Rule 37, and that is
3 why I'm here. And whatever he's applying for this dismissal
4 without the proper hearing, no dismissal can be granted. This
5 is why I came here, sir.

6 THE COURT: Okay. Well, Mr. Das I don't even think
7 your motion to compel is on the docket. I think you sent an
8 email asking me to continue the hearing on Mr. Darwin's
9 motion. Is that correct?

10 MR. DAS: That is also correct. I wanted to continue
11 because I'm not trying to -- I'm not trying to be like on the
12 wrong side whether I'm right requesting for the dismissal. I
13 say no continue it and if this is anything, if he thinks like,
14 you know, there is a viability of this case that must be heard
15 properly. So first bring the evidence up and then you conduct
16 the hearing. That's why is he requesting for the dismissal? If
17 he's innocent, his client innocent, then he must bring the
18 proof evident like bring the evidence in front of the Court why
19 he's concealing?

20 THE COURT: Mr. Das I've looked at your amended
21 complaint I just don't see any causes of action that can
22 proceed. Mr. Das, please don't interrupt me.

23 MR. DAS: My mistake, sir.

24 THE COURT: Okay. Mr. Das, I mean, in order to get
25 discovery, you have to have a complaint that states at least

1 | probable causes of action. Meaning that at least if the all
2 | the things you say are true, then you might have some recovery.
3 | But I mean as Mr. Darwin pointed out, you keep citing the
4 | Title 18 of the United States Code, which is Crimes and
5 | Criminal Procedure. So, I mean these are not causes of action,
6 | certainly not causes of action under the Tort Claims Act. I
7 | mean --

8 | MR. DAS: Can I speak?

9 | THE COURT: You can speak but speak on that issue
10 | because I -- that -- that's what I'm asking because what I'm
11 | looking at your complaint right now and it --

12 | MR. DAS: Okay. So, my point is that if he's
13 | referring to the United States Rule 18 which is the criminal
14 | lawman thing, and I referred that, I refer -- did not refer it
15 | like, you know, the crime thing. I say if it is proven that,
16 | you know, the evidence had been concealed and I was
17 | discriminated, I was publicly humiliated then that is a crime.
18 | That is not a civil case. If somebody hold my hand and throw
19 | me out of the Court premise, that is a crime. No matter who is
20 | he sees my state, of course, it's my state. So that's a crime.
21 | So, while referring that incident, I use this log, this section
22 | of law and many things, sir, like, you know, if I'm
23 | discriminated, how this is not the cause of action and if I'm
24 | claiming I'm discriminated and I'm requesting for the evidence
25 | and evidence is in the hand of defendant then how -- where I

1 will go? I don't know.

2 THE COURT: Mr. Das, anything else?

3 MR. DAS: So, my case cannot be dismissed, sir. I
4 request you to please compel the discovery, bring the evidence
5 up like in front. And if you find that there is nothing
6 happened, which I claim then this case may -- can be dismissed
7 not before that. This is what I say.

8 THE COURT: Okay. Mr. Das, I'm going to grant the
9 motion to dismiss. And again, it's not -- the issue is that
10 even if what you assert in the complaint is true, there's no,
11 there's no recovery there. I mean, you -- you've not asserted
12 a valid cause of action. So, I'm going to grant the motion to
13 dismiss. Mr. Darwin, can you prepare me an order?

14 MR. DARWIN: Yes, Your Honor.

15 MR. DAS: One question, sir?

16 THE COURT: Okay.

17 MR. DAS: Can I -- okay. Hold on one second. Okay.
18 So, my question is like, you know, am I allowed to appeal this
19 case?

20 THE COURT: Sure, the appeal from my decision is to
21 the South Carolina Court of Appeals. You absolutely can
22 appeal.

23 MR. DAS: Yes, sir. Thank you, sir.

24 THE COURT: You're very welcome. All right. Thank
25 you, counsel. Mr. Das thank you.

1 MR. DAS: Honorable judge, I have one question asked
2 -- to ask you.

3 THE COURT: Okay.

4 MR. DAS: About how -- what about my compelled
5 discovery that is on the docket you say?

6 THE COURT: Well, because the case is dismissed and
7 your discovery motion is muted. So, there you -- does that
8 make sense? The case is over.

9 MR. DAS: Okay. So, I need to go to appeal court,
10 okay? All right.

11 THE COURT: Correct, you need to file an appeal.

12 MR. DAS: Yes, sir. Thank you.

13 [End of hearing]

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 16, South Carolina, on the 9th day of March, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 28th, 2024
ERIN REILLY
TRANSCRIBER