

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 PEGGY KANDIES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF NORTH CHARLESTON, )  
 ANGELA MCJUNKIN, WILLIAM )  
 TAYLOR, JOYCE SMITH, DARBIS )  
 BRIGGMAN, RUBEN POTTS, BRITTANY )  
 BUTLER, JAMEL FOSTER, AIKEN, TIM )  
 CAMPBELL, MICHAEL BURGESS, TINA )  
 SUTHERLAND, CARLTON BOURNE, and )  
 CHAD KURD, )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO. 2023-CP-10-01484

**ORDER GRANTING DEFENDANTS'**  
**MOTION TO DISMISS**

**RECEIVED**  
 JUN 20 2024  
 SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT FOR A HEARING ON February 15, 2024, on two motions: (1) a Motion to Dismiss in lieu of an answer filed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure by Defendants City of North Charleston (the "City"), Angela McJunkin, William Taylor, Darbis Briggman, Ruben Potts, Jamel Foster, Aiken, Tim Campbell, Michael Burgess, Carlton Bourne, and Chad Kurp (collectively, the "Defendants") on April 28, 2023, and (2) Plaintiff's Motion to Deny Defendants' Motion to Dismiss filed on May 9, 2023. Plaintiff appeared *pro se* and J. Matthew Johnson, Esq. and Wesley A. Southern, Esq. appeared on behalf of the Defendants. The Defendants filed a memorandum of law in support of their motion and in response to Plaintiff's motion on January 10, 2024, and Plaintiff filed a responsive memorandum on February 9, 2024. Having reviewed the pleadings, the memoranda, the law, and considered the arguments presented, this Court finds that the Defendants' Motion to Dismiss should be GRANTED, Plaintiff's Motion to Deny Defendants' Motion to Dismiss should be DENIED, and this case should be DISMISSED WITH PREJUDICE.

## **I. BACKGROUND**

Plaintiff, proceeding *pro se*, filed this action on March 27, 2023, against the City and several of its employees. Plaintiff's Complaint has the form and appearance of a legal document and, liberally construed, appears to assert claims for malicious prosecution against all Defendants. Generally, Plaintiff's claims are based upon her interactions with the City and its employees over the enforcement of City ordinances regarding the maintenance, upkeep, and habitability of residential property Plaintiff owns in the City. Plaintiff alleges a history of events between herself and the City, but her Complaint primarily focuses on underlying proceedings in the fall of 2021 before the City's Public Safety and Housing Committee (the "Committee").

On September 21, 2021, the City filed a Summons and Complaint before the Committee and these documents were filed with the Charleston County Clerk of Court, Case No. 2021-CP-10-04350. A hearing was held before the Committee on October 12, 2021. In both her filings and in the hearing before this Court, Plaintiff admitted to attending that hearing, which is corroborated in the public records from that underlying proceeding. On October 18, 2021, the Committee filed an order with the Charleston County Clerk of Court in Case No. 2021-CP-10-04350 which found that Plaintiff was in violation of certain city ordinances. That order provided that Plaintiff had sixty days from the date of the order, or until December 17, 2021, to bring her property into compliance and further provided that if she failed to do so, the City was authorized to take action necessary to bring the property into compliance. Under the applicable City ordinances, Plaintiff also had sixty days in which to seek injunctive relief to challenge the order. The public records reflect Plaintiff did not timely seek injunctive relief or otherwise timely appeal the order.

Instead, Plaintiff filed the instant action on March 27, 2023. The Defendants collectively filed the motion to dismiss in lieu of an answer on April 28, 2023. In response to the motion,

Plaintiff filed a Motion to Deny Defendants' Motion to Dismiss on May 9, 2023. For the reasons set forth below, the Court finds that Plaintiff's Complaint, even liberally construed, does not state a legally cognizable claim for relief against any Defendant. Further, based upon the allegations and the public record, Plaintiff cannot state any viable claim against the Defendants. Accordingly, the Court dismisses Plaintiff's Complaint with prejudice.

## **II. LEGAL STANDARD**

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 277-78, 648 S.E.2d 295, 298 (Ct. App. 2007) (internal citations omitted). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (internal citation omitted).

## **III. ANALYSIS**

### **A. PLAINTIFF'S COMPLAINT IS DISMISSED BECAUSE IT FAILS TO STATE A CLAIM AGAINST THE DEFENDANTS.**

#### **1. The public record shows that Plaintiff cannot establish all of the elements of a malicious prosecution claim.**

As discussed above, Plaintiff's Complaint purports to assert a malicious prosecution claim based upon the proceedings before the Committee in the fall of 2021. To maintain an action for malicious prosecution, Plaintiff must establish: (1) the institution or continuation of original judicial proceedings, (2) by or at the instance of the defendant, (3) termination of such proceedings in plaintiff's favor, (4) malice in instituting such proceedings, (5) lack of probable cause, and (6) resulting injury or damage. *Law v. S.C. Dep't of Corrections*, 368 S.C. 424, 435 (2006). Here, public records show that Plaintiff cannot establish two of these six elements, which is fatal to her malicious prosecution claim.

First, Plaintiff cannot establish the favorable termination of the underlying proceedings. The order filed in Case No. 2021-CP-10-04350 on October 18, 2021, shows that the Committee ruled against Plaintiff and determined Plaintiff's "Property violates §§ 9-67(1), 9-67(6), and 10-26 of the City Code." Pursuant to the City's ordinances governing matters before the Committee, Plaintiff had sixty (60) days to appeal but failed to do so. The order filed on October 18, 2021, is a final determination against the Plaintiff and, therefore, Plaintiff cannot establish the favorable termination of the Committee proceedings against her.

Additionally, Plaintiff also cannot establish any lack of probable cause. The existence of probable cause to initiate the Committee proceedings is evident on the face of the October 18, 2021, order, both in its factual findings as well as its determination that Plaintiff's Property violated the City's ordinances. Further, photos taken by a third-party as part of Plaintiff's homeowner's insurance claim a few months prior to the institution of the Committee matter show the Property was not habitable and supports the Committee's finding that Plaintiff's property was in violation of the City Code.<sup>1</sup> Because Plaintiff cannot, as a matter of law, establish the elements of a malicious prosecution claim, Plaintiff's malicious prosecution claim, which appears to be based solely on the proceedings before the Committee, is dismissed with prejudice.

**2. To the extent Plaintiff's claims are based upon events prior to March 27, 2021, they are time barred.**

Plaintiff's Complaint was filed on March 27, 2023. As discussed in more detail below, Plaintiff's claim falls under the South Carolina Tort Claims Act, which contains a two-year statute of limitations unless a verified claim is filed, in which event the statute of limitations is three years.

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<sup>1</sup> These photos were filed as "Exhibit D" to Defendants' memorandum of law. The Court takes judicial notice of these photos which have been filed in the public record in Plaintiff's current lawsuit against her insurance carrier. See Docket No. 65-3 in PACER records for C/A 2:22-cv-04521-RMG-MGB, available at <https://pacer.uscourts.gov/>.

See S.C. Code Ann. § 15-78-110; see also S.C. Code Ann. § 15-78-80 (setting forth specific procedures which must be followed to file a verified claim under the Tort Claims Act). There is nothing in the record which shows a verified claim was filed thus, under the applicable two year statute of limitations, any claim based upon an event which occurred prior to March 27, 2021, is time barred. Although Plaintiff's claims appear to be centered on the Committee proceedings in the fall of 2021, Plaintiff's filings discuss events which occurred as far back as 2013. This Court finds that to the extent Plaintiff's claims are based upon events prior to March 27, 2021, they are time barred and any such claims fail as a matter of law.

**3. Plaintiff's claims regarding the underlying Public Safety and Housing Committee proceedings are barred by res judicata and collateral estoppel.**

Plaintiff's Complaint, as well as her arguments raised at the hearing on this motion, suggest that Plaintiff wishes to relitigate the proceedings before the Committee. However, Plaintiff is barred from relitigating those proceedings by the doctrines of res judicata and collateral estoppel. Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. See *S.C. Pub. Int. Found. v. Greenville Cnty.*, 401 S.C. 377, 389, 737 S.E.2d 502, 508 (Ct. App. 2013) (“[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit”). Collateral estoppel is similar, but addresses issues rather than claims. “Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, any claims arising from the underlying Committee proceedings are barred by res judicata and collateral estoppel because Plaintiff had a full and fair opportunity to litigate the

underlying issues in that matter: Plaintiff admits she was present before the Committee and, therefore, had the opportunity to present her side of the issues related to her property's compliance or lack thereof with the City's ordinances. Further, an avenue existed for Plaintiff to challenge the October 18, 2021, Committee order. Plaintiff cannot relitigate her Committee proceedings in this Court.

**B. PLAINTIFF'S CLAIMS ARE BARRED BY THE SOUTH CAROLINA TORT CLAIMS ACT AND THE NORTH CHARLESTON CODE OF ORDINANCES.**

**1. All individual defendants are immune from suit under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70.**

Plaintiff's malicious prosecution claim is a tort claim and is therefore governed by the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. § 15-78-10, *et seq.* See S.C. Code Ann. § 15-78-20(b) (stating the SCTCA constitutes "the exclusive civil remedy for any tort committed by a governmental entity, its employees, or its agents"). "The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Proctor v. Dep't of Health & Envtl. Ctrl.*, 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006). Plaintiff's claims against the individual Defendants are barred because, as employees of the City, they are immune from suit pursuant to the SCTCA. See S.C. Code Ann. § 15-78-70(c) (providing suits under the SCTCA "shall name as a party defendant only the agency or political subdivision for which the employee was acting"). Thus, this Court dismisses Plaintiff's claims against the individual Defendants.

**2. Plaintiff's claims are barred by multiple exceptions to the waiver of immunity in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60.**

As discussed above, Plaintiff's malicious prosecution claim is governed by the SCTCA. "Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability." *Health Promotion Specialists, LLC v.*

*S.C. Bd. of Dentistry*, 403 S.C. 623, 635, 743 S.E.2d 808, 814 (2013); *see also* S.C. Code Ann. § 15-78-20(f) (declaring public policy that provisions of SCTCA “must be liberally construed in favor of limiting the liability of the” governmental entity). This Court finds Plaintiff’s Complaint is barred by multiple provisions of the SCTCA, specifically S.C. Code Ann. § 15-78-60(1), (2), (3), (4), (20), and (23), as set forth below.

**a. S.C. Code Ann. §§ 15-78-60(1) and (2).**

Section 15-78-60(1) provides that a “governmental entity is not liable for a loss resulting from ... legislative, judicial, or quasi-judicial action or inaction” while Section 15-78-60(2) provides that a “governmental entity is not liable for a loss resulting from ... administrative action or inaction of a legislative, judicial, or quasi-judicial nature.” S.C. Code Ann. §§ 15-78-60(1-2). Here, the underlying Committee proceedings were, at a minimum, quasi-judicial in nature and therefore the City cannot be liable for its actions or inactions related to the underlying Committee matter including, without limitation, filing the matter, the hearing, and the Committee’s findings and order that Plaintiff’s property violated the City Code. Accordingly, this Court finds Plaintiff’s claims are barred by S.C. Code Ann. §§ 15-78-60(1) and (2). *See Hawkins v. City of Greenville*, 358 S.C. 280, 294, 594 S.E.2d 557, 564 (Ct. App. 2004) (finding that a municipality acted in a quasi-judicial manner where it “exercise[d] [] measured policy judgments”).

**b. S.C. Code Ann. § 15-78-60(3).**

Section 15-78-60(3) provides that a “governmental entity is not liable for a loss resulting from ... execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.” S.C. Code Ann. § 15-78-60(3). As discussed above, public records establish the Committee proceedings were lawfully implemented. Accordingly, this Court finds that Section 15-78-60(3) bars any claims arising from the initiation of the Committee matter. *See Kifayatuthelezi v. S.C. Dep’t of Corr.*, 2019 WL 4675355, at \*7

(D.S.C. Mar. 4, 2019) (federal district court applying South Carolina law and finding claims based upon “implementation and enforcement of the order” barred by § 15-78-60(3)), *adopted*, 2019 WL 4671159 (D.S.C. Sept. 25, 2019), *aff’d*, 805 F. App’x 229 (4th Cir. 2020).

**c. S.C. Code Ann. § 15-78-60(4).**

Section 15-78-60(4) provides that a “governmental entity is not liable for a loss resulting from ... adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.” S.C. Code Ann. § 15-78-60(4) (emphasis added). Here, this Court finds this immunity applies on the face of Plaintiff’s Complaint because it is clear that Plaintiff’s claim arises from her disagreement with the City’s enforcement of its ordinances and are thus barred by S.C. Code Ann. § 15-78-60(4). *See Repko v. Cty. Of Georgetown*, 424 S.C. 494, 500, 818 S.E.2d 743, 747 (2018) (applying § 15-78-60(4) to bar claims against governmental entity where claims were based on the governmental entity’s alleged failure “to comply with or enforce its rules, regulations, and policies”).

**d. S.C. Code Ann. § 15-78-60(20).**

Section 15-78-20 provides that a “governmental entity is not liable for a loss resulting from ... 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(20). Plaintiff’s filings reference her dispute with her homeowner’s insurance company, which she blames for her home’s condition and which she appears to allege led to the City initiating the Committee matter. To the extent Plaintiff is attempting to assert liability against the City because of the actions of her insurance carrier, this Court finds any such claims are barred by S.C. Code Ann. § 15-78-60(20). *See Smith v. Reg’l Med. Ctr. of Orangeburg & Calhoun Ctys.*, 394 S.C. 110, 116, 713 S.E.2d 656, 659 (Ct. App.

2011) (finding governmental entity could not be liable for acts of non-party independent contractor).

e. **S.C. Code Ann. § 15-78-60(23).**

Finally, Section 15-78-60(23) provides that a “governmental entity is not liable for a loss resulting from ... the institution or prosecution of a judicial proceeding.” S.C. Code Ann. § 15-78-60(23). Courts interpreting this provision have uniformly held this SCTCA provision bars malicious prosecution claims. *See, e.g., McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 567, n.10 (D.S.C. 2013) (holding governmental entity was immune from plaintiff’s “cause of action for malicious prosecution plainly falls” within immunity provided by § 15-78-60(23)). This Court finds that Plaintiff’s malicious prosecution claim is likewise barred by Section 15-78-60(23).

**3. Plaintiff’s claims are barred by City Ordinance § 10-34.**

Plaintiff’s claim arising from the Committee proceedings are also barred by the City’s own ordinances. Plaintiff’s claim seeks money damages from the City; however, under City Code § 10-34(a), the only available remedy related to a Committee order is injunctive relief. Further, the City Code bars monetary damages arising from Committee proceedings. Specifically, City Code § 10-34(b) states in pertinent part:

(b) ... The remedies herein provided shall be exclusive remedies and no person affected by an order of the public safety and housing committee shall be entitled to recover any damages for action taken pursuant to any order of the public safety and housing committee, or because of compliance by the public safety and housing officer, the director of code enforcement, or the fire chief with any order of the public safety and housing committee.”

City Code § 10-34(b) (emphasis added). This Court finds the plain language of Section 10-34(b) bars Plaintiff’s claim for money damages in this action. *See, e.g. Mikell v. Cnty. of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009) (interpreting county ordinance and noting “[t]he

primary rule of statutory construction is to ascertain and give effect to the intent of the [governing body]”).

**C. FURTHER AMENDMENT OF THE COMPLAINT WOULD BE CLEARLY FUTILE.**

Finally, mindful of the South Carolina Supreme Court’s guidance in *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 190, 826 S.E.2d 585, 593 (2019), this Court finds that any further amendment of Plaintiff’s complaint would clearly be futile. As discussed above, it is clear the South Carolina Tort Claims Act bars any tort claims Plaintiff might assert under state law regarding the underlying Committee proceedings and this Court further finds the South Carolina Tort Claims Act would bar any tort claim based upon the City’s actions to implement the October 18, 2021, Committee order. Further, Plaintiff has filed a document which discusses pursuing claims for a violation of her Fourth Amendment rights against the Defendants for entering her property to implement the Committee order. However, any entry onto Plaintiff’s property was lawful and because the Fourth Amendment is only concerned with unlawful, *i.e.* unreasonable, searches and seizures, there can be no Fourth Amendment violation. *See, e.g., Soldal v. Cook Cnty., Ill.*, 506 U.S. 56, 71 (1992) (recognizing that “reasonableness is still the ultimate standard” under the Fourth Amendment and that if government officials “were acting pursuant to a court order ... a showing of unreasonableness on these facts would be a laborious task indeed” (internal quotations and citations omitted); *Nixon v. Montgomery Cnty., Md.*, 251 F. App’x 141, 145 (4th Cir. 2007) (holding county’s entry onto property to bring property into compliance with county ordinances did not violate the Fourth Amendment where due process was provided through availability of county proceedings to dispute property condition). Therefore, any Fourth Amendment claim Plaintiff might wish to make would be futile. For all these reasons, the Court finds that it need not provide Plaintiff leave to amend her complaint since any amendment would clearly be futile.

#### IV. CONCLUSION

THEREFORE, for the foregoing reasons, it is hereby ORDERED that Defendants' Motion to Dismiss is hereby GRANTED, Plaintiff's Motion to Deny Defendants' Motion to Dismiss is DENIED, and Plaintiff's Complaint is DISMISSED WITH PREJUDICE.<sup>2</sup>

AND IT IS SO ORDERED.

*[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]*

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<sup>2</sup> Plaintiff additionally named three other individuals alleged to be City employees: Joyce Smith, Brittany Butler, and Tina Sutherland. According to Defendants' Motion, those three Defendants were former City employees and thus the City did not accept service for them. There is no proof of service filed related to those three Defendants nor does the record contain any indication those individuals have ever been served. Accordingly, those Defendants are subject to dismissal without prejudice pursuant to Rule 5(d), SCRPC. However, as discussed above, the Court finds the allegations and underlying issues in this matter do not support any cognizable claim. Accordingly, the Court dismisses the entire case with prejudice, to include the unserved Defendants.



Charleston Common Pleas

**Case Caption:** Peggy Kandies VS North Charleston City of , defendant, et al  
**Case Number:** 2023CP1001484  
**Type:** Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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