

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Teresa McWilliams,

Plaintiff,

vs.

South Carolina Department of Health and  
Environmental Control,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No.: 2022-CP-40-00027

PROPOSED ORDER  
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SC Court of Appeals

This matter comes before the Court upon Defendant South Carolina Department of Health and Environmental Control's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Rule 12(b)(6), SCRCPP. A hearing was held on August 8, 2023, before Judge Clifton Newman. Meredith L. Seibert, Esquire of Duff Freeman Lyon LLC, now Duff Freeman Seibert, LLC., appeared on behalf of the South Carolina Department of Health and Environmental Control ("Defendant" or "DHEC"). Ms. Teresa Williams appeared *pro se*. After reviewing the pleadings, including the prior order permitting Plaintiff the opportunity to amend her Complaint, Defendant's Motion to Dismiss, the parties' memoranda, the arguments of the parties, and relevant case law, the Court hereby grants Defendant's Motion to Dismiss.

#### I. INTRODUCTION

On January 4, 2022, Plaintiff, who is proceeding *pro se*, filed a Complaint against DHEC. DHEC filed a Motion to Dismiss pursuant to 12(b)(6), SCRCPP. On November 30, 2022, the Court, retired Chief Justice Toal presiding, heard arguments from Plaintiff and counsel for the Defendant on the pending Motion. Per the resulting order, Plaintiff stated at the hearing that she wanted to pursue a cause of action for age-based employment discrimination following receipt of a right-to-sue notice from the Equal Employment Opportunity Commission ("EEOC"). While noting that the original Complaint lacked any factual support for, or attempted statement of, a legal cause of

action for such a claim, the Court nevertheless granted Plaintiff an opportunity to amend her Complaint, subject to specific directives. Specifically, Plaintiff was advised by the Court that she must include sufficient factual and procedural averments if she wished to avoid dismissal of her action. An Order memorializing the Court's directives was filed on January 18, 2023.

Plaintiff filed an Amended Complaint with the Court on December 30, 2022, prior to the issuance of the Court's January 18, 2023 Order. Plaintiff filed no other proposed amended complaint or revisions to her December 30, 2023, filing following the January 18, 2023, Order. Defendant filed the present Motion on January 30, 2023.

## II. STANDARD OF REVIEW

Under Rule 12(b)(6), SCRPC, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 648 S.E.2d 295 (Ct. App. 2007) citing *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct.App.2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Rule 12(b)(6), SCRPC; *Haskell Co. v. Morgan*, 274 S.C. 261, 262 S.E.2d 737 (1980). "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." *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App.2004), aff'd 645 S.E.2d 245, 2007 WL 1321978; accord *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); see also *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff). However, an allegation of a mere legal conclusion is insufficient to state a cause of action. *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (1986); see

also *Russell v. City of Columbia*, 301 S.C. 117, 390 S.E.2d 463 (Ct. App. 1989) (“The court must take well pleaded factual allegations as true. However, allegations which are conclusory rather than factual should be disregarded.”)

### III. DECISION

The Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted. In the Amended Complaint, Plaintiff asserts that she was retaliated against for embarrassing her supervisor by questioning a grant discrepancy. Amended Compl. ¶ 6. Specifically, Plaintiff alleges she was “terminated as an act of retaliation and the method used to argue cause was veiled age discrimination.” Amended Compl. ¶ 5. To the extent Plaintiff seeks to state a cause of action for age-based employment discrimination and retaliation, the Amended Complaint fails to state facts sufficient to constitute a cause of action. Because there is no common law cause of action for age discrimination and retaliation, it was incumbent upon Plaintiff to include the statutory basis for her purported claim. Such a claim must be brought pursuant to the S.C. Human Affairs Law (SCHAL), the Age Discrimination in Employment Act (“ADEA”), or Title VII of the federal Civil Rights Act of 1964 (“Title VII”) - yet none of these are alleged or referenced. Moreover, the Amended Complaint fails to allege except in the most conclusory fashion that her termination was motivated by her age. In fact, Plaintiff even fails to allege her age at the time of her termination. In short, beyond using the terms “age discrimination” and “retaliation,” the Amended Complaint is devoid of any facts sufficient to assert or support age-based discrimination or retaliation nor does it include a statutory basis for Plaintiff’s claim, whether in state or federal law. See *Ridley v. S.C. Dept. of Mental Health*, 2017 WL 3924003 (S.C. Comm. Pl., June 1, 2017) at \*3 (“Although the court must liberally construe a pro se pleading, . . . [it is] clear that a plaintiff must do more than make conclusory statements to state a claim”; “. . . the pleading must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face . . . .”) (citations omitted).

In reaching this conclusion, the Court does not overlook that Plaintiff was given directions on statements and factual allegations she should include in her Amended Complaint if she wished to avoid dismissal. Plaintiff received specific directions – both in a November 20, 2022 hearing, and in the Court’s prior January 18, 2023 Order - of factual allegations that she must include in her Amended Complaint, if she intended to bring a claim for an age-based employment discrimination. Specifically, Plaintiff was told she must include within her Amended Complaint “sufficient factual allegations to state a claim for age discrimination/retaliation and the statutory basis for such claim.” She was also advised to include factual allegations related to the “timely filing an administrative charge, receipt of a right-to-sue letter, and timely commencement of the judicial action.” See Judge Jean Toal’s January 18, 2023, Order, page 3. None of those factual or procedural averments are found in the Amended Complaint. *See Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1990) (finding trial judge did not abuse her discretion by dismissing a plaintiff’s amended complaint when plaintiff ignored court order limiting what amended complaint should include).

Having considered the pleadings, Defendant’s Motion to Dismiss, the parties’ memoranda, the arguments of the parties, and relevant case law, Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint should be and **IS** therefore **GRANTED**.

**AND IT IS SO ORDERED.**

**[JUDGE’S E-SIGNATURE PAGE FOLLOWS]**

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Richland Common Pleas

**Case Caption:** Teresa Mcwilliams vs Georgette Lee Jackson , defendant, et al  
**Case Number:** 2022CP4000027  
**Type:** Order/Dismissal

So Ordered

s/ Clifton B. Newman, 2127