STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Michael Hainer,	)	C/A No. 2022-CP-10-02431
Plaintiff,	)	**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
Versus	)	
City of Charleston, John J. Tecklenburg in His Capacity as Mayor of City of Charleston,	)	
Defendants.	)	

Defendants City of Charleston, and John J. Tecklenburg in His Capacity as Mayor of City of Charleston filed the pending Motion for Summary Judgment on August 9, 2024, along with a Memorandum in Support on October 29, 2024, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and the South Carolina Tort Claims Act. This Court heard Defendants' motion on November 4, 2024. After consideration of the arguments set forth by the Parties, both at the hearing and within the supporting/opposing memoranda, the Court hereby GRANTS the Defendants' Motion for Summary Judgment.

PROCEDURAL HISTORY AND FACTUAL SUMMARY

Plaintiff Michael Hainer, a former security guard at the SkyGarden Apartments in Charleston, South Carolina, alleges negligence against the City of Charleston, and former City of Charleston Mayor, John J. Tecklenburg. His negligence actions arise out of injuries he sustained on May 30, 2020, during the riot that erupted in downtown Charleston following the death of George Floyd. Hainer alleges that he was assaulted by three unknown individuals while he was on duty working as a contracted security guard at the apartments. Essentially, Plaintiff alleges that

both the City of Charleston and Mayor Tecklenburg failed in their duties to provide him police protection during the riots. Specifically, Plaintiff alleges Mayor Tecklenburg had adequate opportunity to perceive the events that were occurring nationwide over the several days prior to this incident, and that it was Mayor Tecklenburg's negligent, grossly negligent, careless, reckless, willful and wanton acts or omissions that allowed the looting and violence that occurred the night of this incident to run rampant, to which Plaintiff was not given an opportunity to avoid and ultimately resulted in this incident occurring.

Plaintiff testified in his deposition that when he arrived at work, he observed the riot and called 9-1-1, but was told by the 9-1-1 dispatch operator that nobody was available to assist him. Plaintiff further testified that sometime after his 9-1-1 call, he observed a car speeding down Woolfe Street. Plaintiff confronted the occupants of the vehicle, asking the driver to slow down, whereupon he was subsequently assaulted by the driver and two other people from the car. Plaintiff's reference in his Complaint to "the events that were occurring nationwide over the several days prior to this incident," alludes to the nation-wide "George Floyd riots." Additionally, Plaintiff testified under oath that his injuries occurred during a "riot".

On June 29, 2022, Defendants filed a Motion to Dismiss in lieu of Answer, along with a Memorandum in Support on October 24, 2022, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and the South Carolina Tort Claims Act. The Court heard the motion on October 27, 2022, and denied the Defendants' Motion; the Defendants subsequently filed their Answer on December 28, 2022, generally denying the allegations and asserting numerous affirmative defenses. The Parties then exchanged written discovery, and undertook, among other things, the deposition of Mr. Hainer. Thereafter, Defendants filed the pending Motion for

Summary Judgment on August 9, 2024, along with a Memorandum in Support on October 29, 2024. This Court heard the motion on November 4, 2024.

LEGAL STANDARD

I. Summary Judgment

Summary Judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Columbia v. ACLU*, 323 S.C. 384, 475 S.E.2d 747 (1996); Rule 56 (c) SCRCP. The plain language of Rule 56(c) SCRCP mandates the entry of Summary Judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101, 410 S.E.2d 537 (1991). A party cannot escape Summary Judgment on the mere hope that something may develop at trial or by remaining silent and later claiming additional facts supporting the cause of action. *Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977). Conclusory allegations or denials, without more, are insufficient to defeat a motion for Summary Judgment. *Ross v. Communication Satellite Corp.,* 759 F. 2d. 355, 365 (4th Cir. 1985); *see also Baber v. Hosp. Corp. of Am.,* 977 F. 2d 872, 874-75 (4th Cir. 1992) (holding that the nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for Summary Judgment). Reliance upon inadmissible hearsay is also insufficient to overcome a motion for Summary Judgment. *Evans v. Technologies Applications & Services Co.,* 80 F. 3d. 954, 962 (4th Cir. 1996).

Summary Judgment is further appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Etheredge v. Richland School Dist. One,* 534 S.E.2d 275, 277 (S.C. 2000) (emphasis added). In

ruling on a motion for Summary Judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. *Id.* When reasonable minds cannot differ on plain, palpable, and indisputable facts, Summary Judgment should be granted. *Singleton v. Sherer*, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

The party seeking Summary Judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Richardson v. The State Record Co., Inc.*, 499 S.E.2d 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing, that is, pointing out to the [trial] court that there is an absence of evidence to support the nonmoving party's case. Id. at 825. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. *Id.*; see *Milligan v. Liberty Life Ins. Co.*, 443 S.E.2d 381, 382 (S.C. 1994) (noting that where record is devoid of evidence, moving party is entitled to Summary Judgment as a matter of law). Once the party moving for Summary Judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *See Singleton*, 659 S.E.2d at 203. It is not sufficient that one creates an inference which is not reasonable or an issue of fact that is not genuine. *Thompkins v. Festival Centre Group, I*, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

II. South Carolina Tort Claims Act.

Plaintiff has brought suit against the Defendants pursuant to the South Carolina Tort Claims Act. Notwithstanding any provision of law, the South Carolina Tort Claims Act is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. *S.C. Code Ann. § 15-78-200.* Elected officials are

considered to be an "employee" of the governmental entity for which they were acting. *S.C. Code Ann. § 15-78-30 (c)*. The provisions of the Tort Claims Act establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity. *Id.*

ANALYSIS

I. Plaintiff is prohibited by the South Carolina Tort Claims Act from naming John J. Tecklenburg as a Defendant.

The Plaintiff's claims against Mayor Tecklenburg are inappropriate and explicitly barred by the South Carolina Tort Claims Act. Under the Act, an employee of a governmental entity who commits a tort while acting within the scope of his official duty is generally not liable, and the plaintiff must sue the governmental agency itself. *S.C. Code Ann. § 15-78-70(a)*. The Act provides that where 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)*. Furthermore, "when an entity is sued because of the alleged tort of an employee acting within the scope of his or her employment, the Tort Claims Act provides that only the agency shall be named as a party." *Kinard v. Greenville Police Dep't*, No. 10-cv-3246, 2011 WL 3439292, at *6 (D.S.C. Aug. 5, 2011) (emphasis added).

Plaintiff names Defendant Tecklenburg in the caption as "John J. Tecklenburg in His Capacity as Mayor of City of Charleston." Further, Plaintiff's Complaint alleges that John J Tecklenburg was "was operating in his capacity as Mayor of the City of Charleston, in the County of Charleston, State of South Carolina on May 30, 2020." Moreover, Plaintiff's Complaint fails to cite any conduct of John J. Tecklenburg as occurring outside of the scope of his employment with the City of Charleston. See *Jacobs v. S.C. Dep't of Mental Health*, No. CV 3:20- 543-JMC-PJG, 2020 WL 5077636, at *5 (D.S.C. Aug. 25, 2020) (finding claims against the individual defendants

in their personal capacities and dismissing "civil conspiracy claim against the individual defendants because the Amended Complaint fails to allege facts plausibly suggesting that the individual defendants were acting outside the scope of their official duties"). Because the Plaintiff has alleged that John J. Tecklenburg's conduct giving rise to this lawsuit occurred within the course and scope of his employment with the City of Charleston, the Tort Claims Act mandates that only the City shall be named as a party. *See* S.C. *Code Ann. § 15- 78-70(c).* Therefore, the claims against John J. Tecklenburg are dismissed and summary judgment is entered in his favor.

II. Plaintiff's claims are barred by the South Carolina Tort Claims Act because his injuries occurred during the course of a riot.

The S.C. Tort Claims Act is the "exclusive civil remedy available for any tort committed by a governmental entity, its employees or its agents …." *S.C. Code Ann. § 15-78-20(b).* The S.C. Tort Claims Act limits liability limits liability of governmental entities in certain circumstances. *S.C. Code Ann. § 15-78-60.* The provisions of the S.C. Tort Claims Act must be liberally construed in favor of limiting the liability of the State. *S.C. Code Ann. § 15-78-20(f).* Section 15-78-60(6) of the S.C. Tort Claims Act provides that the governmental entity is not liable from a loss resulting from "civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection." *Id.* Additionally, S.C. Code § 15-78-60(20) provides that the governmental entity is not liable for "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." *Id.*

Plaintiff's pleadings, discovery responses, and deposition testimony unequivocally demonstrate that he is claiming his loss resulted from a riot or civil disobedience. Likewise, he is claiming injuries and damages which he contends resulted from the City and Mayor's failure to provide police protection. The "civil disobedience or riot" exception found in the Tort Claims Act specifically immunizes both the City and Mayor from liability associated with the provision of

police protection to the public during and in response to a protest or riot such as the event forming the basis of Plaintiff's Complaint. Furthermore, there is no question but that Plaintiff's claimed injuries resulted from criminal conduct of third persons.

Plaintiff contends that he has pled gross negligence, which is ultimately a question of fact for the jury. The court is not persuaded by Plaintiff's argument. The limitations of liability set forth in both S.C. Code § 15-78-60(6) and 15-78-60(20), both squarely on point in this case, neither contain nor consider a gross negligence standard. Therefore, neither the City of Charleston nor Mayor Tecklenburg can be held liable for the Plaintiff's injuries resulting from the aforementioned riot and criminal actions of third persons and summary judgment is proper as a matter of law.

THEREFORE, IT IS ORDERED the Defendants' Motion for Summary Judgment is hereby **GRANTED.**

IT IS SO ORDERED!

The Honorable Dale E. Van Slambrook
Ninth Judicial Circuit Court Judge

December ___, 2024
Charleston, South Carolina