

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Franklin J. Boyles,	)	Civil Action No. 2024-CP-40-05809
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING DEFENDANT
	)	UNIVERSITY OF SOUTH
	)	CAROLINA'S MOTION UNDER
C and C Masonry, Inc.,	)	SCRCP 12(b)(6) TO DISMISS
Juneau Construction Company, LLC, and	)	THE PLAINTIFF'S TWO (2)
University of South Carolina,	)	CAUSES OF ACTION AGAINST IT
	)	
Defendants.	)	
	)	
	)	

On February 3, 2025, the Court conducted a hearing on the motion filed October 31, 2024 by Defendant University of South Carolina [USC] to dismiss the two (2) causes of action asserted against it in the complaint filed September 25, 2024 by Plaintiff Franklin J. Boyles.

USC filed its motion under the provisions of South Carolina Rule of Civil Procedure [SCRCP] 12(b)(6), and it filed its motion in lieu of filing an answer to the Plaintiff's complaint.

Lake E. Summers, Esquire, appeared at the hearing on behalf of USC, and Lola Stradford Richey, Esquire appeared on behalf of Plaintiff Franklin J. Boyles.

After careful consideration of the argument offered by counsel during the hearing, the parties' filings, and for good cause shown, the Court hereby **GRANTS** USC's motion and **DISMISSES WITH PREJUDICE** the two (2) causes of action asserted by the Plaintiff against USC.

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I. APPLICABLE LEGAL STANDARD UNDER SCRCP 12(b)(6)

The title of SCRCP 12 is “Defenses and Objections – When and How Presented – by Pleading or Motion – Motion for Judgment on Pleadings,” and the title of SCRCP 12(b) is “How Presented.” The operative passage of SCRCP 12(b)(6) read as follows:

Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... **(6) failure to state facts sufficient to constitute a cause of action**, ... A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. [emphasis supplied].

In *Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 648 S.E.2d 295, 298 (S.C. Ct. App. 2007), our Court of Appeals articulated the following standard of review for the instant motion under SCRCP 12(b)(6):

Under [SCRCP 12(b)(6)], a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. ... A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. “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.” ... “A motion to dismiss under [SCRCP] 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” ... In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. ... [citations omitted].

Where the alleged facts and inferences reasonably deducible therefrom, in the light most favorable to the plaintiff, do not state any valid claim for relief, dismissal is appropriate. *See Doe v. Marion*, 645 S.E.2d 245, 246 (S.C. 2007).

II. THE PLAINTIFF'S COMPLAINT

The Plaintiff filed his complaint on September 25, 2024, and he identified USC as the third and final defendant.

A. THE PLAINTIFF'S CLAIMS AGAINST USC

After asserting a claim for "Negligence" in his first cause of action against USC's two (2) co-Defendants, the Plaintiff asserted a separate claim for "Negligence" against USC in his second cause of action. (Complaint, ¶¶50 – 70).

The Plaintiff did not identify USC as a Defendant in his third cause of action, but in his fourth cause of action, the Plaintiff asserted a claim of "Intentional Infliction of Emotional Distress" against USC and its two (2) co-Defendants. (Id., ¶¶85 – 93).

B. OPERATIVE FACTUAL ALLEGATIONS

The Plaintiff offered the following operative factual allegations in his pleading (Complaint, ¶¶5, 11 – 14, and 17 – 21):

The underlying accident that is the subject matter of this lawsuit occurred at the premises of USC at 1315 Whaley Street, Richland County, Columbia, South Carolina ("University of SC – Campus Village").

...

Plaintiff was an employee of Island Masonry Construction (hereinafter "Island Masonry") located at 301 McCullough Drive, Suite 400, Charlotte, North Carolina 28262 and an address at 10169 Forest Landing Drive, Charlotte, North Carolina which upon information and belief, is the subcontractor of C and C, licensed to do business in South Carolina.

Juneau and Cand C are part of a massive four-building student housing complex construction ("USC Campus Project") for USC at the University of SC – Campus Village.

USC owns the construction site property, the University of SC – Campus Village.

On or about **September 13, 2022**, Plaintiff worked as a forklift operator with Island Masonry at the University of SC – Campus Village.

...

On **September 13, 2022**, at the time of the incident, Plaintiff was operating a forklift on the North side of Building 4 on the construction site at the University of SC – Campus Village for the USC Campus Project.

At the relevant time and place, the forklift tripped over and fell to the ground while Plaintiff lowered a mason box to the ground from a mast climber scaffold positioned just beneath the roof awning of the building.

At that time, the forklift was positioned on a temporary base – a pile of sand. While Plaintiff was operating the forklift, the front right outrigger of the forklift began to sink into the unstable soft sand, causing a shift in balance and a sudden loss of stability, resulting in the forklift tipping to the right and overturning.

Despite Plaintiff using safety measures, including seatbelt and stabilizer pads, the force and sudden movement caused by the overturning forklift were so severe that Plaintiff was thrown from his seated position, resulting in a forceful fall on the ground.

The impact and the force of the fall were significant, resulting in substantial and serious injuries to the Plaintiff.

[emphasis supplied].

III. THE PLAINTIFF’S CLAIMS AGAINST USC ARE TIME-BARRED, AND THE DOCTRINE OF EQUITABLE TOLLING DOES NOT APPLY

USC moved the Court under SCRCP 12(b)(6) for an order dismissing the two (2) claims asserted by the Plaintiff against it in his complaint. In its August 31, 2024 motion, USC invoked the provisions of the South Carolina Tort Claims Act [SCTCA], S.C. Code Ann. §§ 15-78-10, *et seq.*, and it asserted that the Plaintiff’s claims against USC are time-barred by the applicable statute of limitations under § 15-78-110. The Court agrees with USC.

When a valid verified claim is properly filed per the requirements of § 15-78-80, the SCTCA extends the statute of limitations from two (2) years to three (3) years from the date of loss. *See Joubert v. S.C. Dep’t of Soc. Servs.*, 534 S.E.2d 1, 6 (S.C. Ct. App. 2000) (citing § 15-78-110). If, however, a verified claim is not filed per the requirements of § 15-78-80, the statute of limitations remains two (2) years from the date of loss. *Id.* If made, a verified claim must be

filed within “one year of the date of loss ...” See § 15-78-80(d). “Filing” is accomplished by “receipt” of the verified claim, if sent by certified mail. See § 15-78-80(c). Filing may also be accomplished by otherwise serving a verified claim by “compliance with the provisions of law relating to service of process.” *Id.*

The record reveals the Plaintiff did not timely file a verified claim against USC per the requirements of § 15-78-80. More precisely, the Plaintiff acknowledged in the response he filed November 18, 2024 to USC’s motion, as well as during the February 3, 2025 hearing conducted by the Court, that he never filed a verified claim against USC.

As the Plaintiff did not file a verified claim, the Court finds that the applicable statute of limitations pursuant § 15-78-110 was two (2) years after the date of loss on September 13, 2022. The Court also finds that, as the record indisputably reflects, the Plaintiff filed his complaint on September 25, 2024, nearly two (2) weeks *after* the two (2) year statute of limitations expired on September 13, 2024.

In his November 18, 2024 response to USC’s motion and during the February 3, 2025 hearing, the Plaintiff asserted that the Court should deny USC’s motion under the doctrine of equitable tolling. The Plaintiff, however, recognized in his November 18, 2024 response that “equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.” See *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 687 S.E.2d 29, 33 (S.C. 2009) and *Ross v. Ross*, 715 S.E.2d 359, 361 (S.C. Ct. App. 2011) (*quoting Hooper*).

The Plaintiff, however, relied on *Pelzer v. State*, 662 S.E.2d 618 (S.C. Ct. App. 2008) to support his invocation of equitable tolling, and he provided the following passage from *Pelzer* to support his assertion, *Id.* at 620 – 21:

Equitable tolling has been deemed available where —

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or **the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.**
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

[emphasis supplied].

The Plaintiff, however, omitted from his November 18, 2024 response the following passage from *Pelzer, Id.* at 621, in which our Court of Appeals recognized as follows:

It has been held that **equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.** However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation. [emphasis supplied].

The Court finds that the Plaintiff did not allege any wrongdoing by USC in his November 18, 2024 response. Even if he had so alleged, the Court finds that nothing in the record supports any allegation of wrongdoing by USC such that USC actively misled the Plaintiff about his two (2) causes of action against it or that USC prevented the Plaintiff in some extraordinary way from asserting his right to file them.

Not only does the record fail to support any allegation of wrongdoing by USC, but the Plaintiff's counsel acknowledged during the February 3, 2025 hearing that USC helpfully provided, in a timely fashion, materials responsive to a subpoena she served in the workers' compensation case the Plaintiff filed after the September 13, 2022 forklift accident in which he was involved. As reflected on pages 6 and 7 of his November 18, 2024 response, as well as by materials she filed in support of the same, the Plaintiff's counsel served the workers'

compensation case subpoena on USC on August 12, 2024, and USC provided materials responsive to it on August 22, 2024, 22 days before the expiration of the two-year statute of limitations associated with the Plaintiff's two (2) causes of action against USC.

For these reasons, the Court concludes that the doctrine of equitable tolling does not apply to the Plaintiff's failure to file the complaint in which he asserted his two (2) causes of action against USC within the applicable two-year statute of limitations. *See Pelzer, Id.* at 620 ("Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.").

Accordingly, the Court concludes that the Plaintiff's two (2) causes of action against USC are time-barred, and it **GRANTS** the motion to dismiss them filed by USC pursuant to SCRCP 12(b)(6).

IV. ANY RECOVERY BY THE PLAINTIFF AGAINST USC ON HIS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM IS BARRED

Along with asserting the two (2) causes of action he asserted against it in his complaint are time-barred, USC separately addressed in its October 31, 2024 motion the second cause of action the Plaintiff asserted against it. Although it rules above that both of causes of action the Plaintiff articulated against USC are time-barred, the Court considers USC's motion to dismiss the second cause of action the Plaintiff asserted against it out of an abundance of caution.

The Plaintiff's second cause of action against USC, in which he also named C and C Masonry and Juneau Construction as Defendants, constituted the fourth cause of action in his complaint. In this cause of action, the Plaintiff asserted an intentional infliction of emotional distress claim against USC, and he alleged as follows (Complaint, ¶¶86, 88, and 92):

Defendants' conduct, as described in the preceding counts, including their failures and breach of duty, were not merely negligent but constituted extreme and outrageous behavior.

...

USC's failure to provide safe premises for persons lawfully present at the University of SC – Campus Village, particularly given its knowledge of the instability of the sand for supporting heavy machinery, constitutes a clear and reckless disregard for the safety of workers and others at the premises.

...

The emotional impact of the forklift accident and the subsequent events has been profound. The Plaintiff has experienced ongoing psychological trauma, including persistent anxiety and depression, which has significantly impaired his ability to lead a normal life. The distress has manifested in various ways, including but not limited to:

- a) Persistent anxiety about returning to work or operating heavy machinery.
- b) Depression resulting from the physical injuries and the loss of the ability to perform daily activities.
- c) Psychological trauma stemming from the physical pain and suffering endured as a result of the accident.

As recognized by USC in its August 31, 2024 motion and during the February 3, 2025 hearing, the South Carolina Supreme Court, in *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024), examined, on certification from the United States District Court for the District of South Carolina, the tort of intentional infliction of emotional distress, and it did so within the context of the SCTCA. The *Gore* court, 900 S.E.2d at 441, observed as follows:

As the certified question reveals, one limitation upon liability and damages is found in the definition of a recoverable "loss" contained in [§] 15-78-30(f):

"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

Id. § 15-78-30(f) (emphasis added).

[underlined emphasis in original].

The *Gore* court next observed as follows, *Id.*, at 441 – 42:

Gore concedes [§] 15-78-30(f) bars recovery for the intentional infliction of emotional distress, but she contends she is entitled to pursue recovery for the reckless infliction of emotional distress. In that sense, she splits the tort of outrage into two torts from which she claims she may choose—intentional infliction of emotional distress and reckless infliction of emotional distress. [emphasis supplied].

Our Supreme Court rejected Appellant Gore’s contention that she was entitled to pursue recovery for the reckless infliction of emotional distress, and it concluded as follows, *Id.*, at 443:

The bar to recovery for the intentional infliction of emotional distress in [§] 15-78-30(f) applies to the subset of claims for the reckless infliction of emotional distress. [emphasis supplied].

On pages 7 and 8 of his November 18, 2024 response to USC’s October 31, 2024 motion, the Plaintiff tried to counter *Gore* by offering the following purportedly applicable decisions issued by federal courts in our district:

In South Carolina, “[a] governmental employee is not afforded immunity under the Tort Claims Act for conduct outside the scope of his official duties, or for conduct that amounts to actual fraud, actual malice, or an intent to harm.” *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019) (citing § 15-78-70(b)). Moreover, the South Carolina federal district court has observed that the claims for “assault and battery and claim for intentional infliction of emotional distress fall outside the SCTCA.” [*Gee Gary v. S.C. Dep’t of Corr.*, 2011 WL 2746307 (D.S.C. Jul. 14, 2011)]. Thus, “a state employee can . . . be held personally liable by a federal court for some intentional torts committed within the scope of his employment.” *Smith v. Ozmint*, 394 F. Supp. 2d 787, 792 (D.S.C. 2005) (citing *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671 (D.S.C. 1995) (finding that the governmental entity is not liable under the Act, and the employee is personally liable, when the employee’s conduct falls within the exceptions listed in §15-78-70(b)).

At the February 3, 2025 hearing, the Plaintiff’s counsel specifically referenced the federal court’s unpublished opinion in *Gary*, a copy of which she filed in support of the Plaintiff’s November 18, 2024 response.

Setting aside the reality that the Plaintiff did not name a USC employee as a defendant in his second cause of action against USC, the Court concludes that in *Gore* is dispositive, and

accordingly, under *Gore* and by operation of § 15-78-30(f), any recovery by the Plaintiff against USC under his intentional infliction of emotional distress claim is barred.

Thus, the Court concludes the Plaintiff failed to state facts sufficient to sustain his intentional infliction of emotional distress cause of action against USC, and it **GRANTS** the motion to dismiss it filed by USC pursuant to SCRCP 12(b)(6).

V. RULING AND ORDER

For the foregoing reasons, this Court **GRANTS** Defendant USC's motion to dismiss the two (2) causes of action the Plaintiff asserted against it in his complaint, and Defendant USC is **DISMISSED WITH PREJUDICE** from this action.

IT IS SO ORDERED.

The Honorable Jocelyn Newman
Presiding Judge
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Franklin J Boyles vs C And C Masonry Inc , defendant, et al

Case Number: 2024CP4005809

Type: Order/Dismissal

So Ordered

Jocelyn Newman