

I. THE PLAINTIFF FAILED TO TIMELY COMMENCE HIS ACTION PURSUANT TO SCRPC 3

SCRPC 3 is entitled “Commencement of Action,” and SCRPC 3(a), which is entitled “Commencement of civil action,” provides as follows:

A civil action is commenced when the summons and complaint are filed with the clerk of court if:

- (1) the summons and complaint **are served** within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, **actual service** must be accomplished **not later than one hundred twenty days after filing**.

[emphasis supplied].

As developed in SCDOT’s motion and as argued by its counsel at the October 9, 2024 hearing conducted by the Court, the Plaintiff filed the materials comprising his action on August 7, 2023, and he attested in his “Affidavit of Service,” which he filed with the Clerk on March 25, 2024, that he served SCDOT with these materials by tendering them to the U.S. Postal Service for delivery on March 21, 2024.

The Plaintiff had earlier filed a “Charge of Discrimination” dated November 2, 2022 with the South Carolina Human Affairs Commission [SCHAC] and the U.S. Equal Employment Opportunity Commission [EEOC]. The Plaintiff included his “Charge of Discrimination” in the documents comprising his complaint filed in this Court.

SCHAC issued its “Dismissal and Notice of Right to Sue” to the Plaintiff on May 23, 2023, which clearly advised him that to pursue the allegations he presented in his “Charge of Discrimination,” he had to file suit either within one (1) year from the alleged violation or 120 days from issuance of the notice, whichever occurred earlier.

The 120-day window from the issuance of SCHAC's May 23, 2023 "Dismissal and Notice of Right to Sue" closed September 20, 2023, so by filing his action with the Clerk on August 7, 2023, the Plaintiff satisfied this deadline.

In his "Charge of Discrimination," the Plaintiff alleged the discrimination to which SCDOT purportedly subjected him began and concluded on October 17, 2022. Thus, the Plaintiff had until October 17, 2023 to file his action, so by filing his action with the Clerk on August 7, 2023, the Plaintiff likewise satisfied the one-year deadline alternatively prescribed by May 23, 2023 SCHAC's "Dismissal and Notice of Right to Sue."

While he met the filing deadlines imposed by SCHAC's May 23, 2023 "Dismissal and Notice of Right to Sue," this Court finds that the Plaintiff nevertheless ran afoul of SCRCP 3(a)(1), because he failed to commence his action by serving it upon SCDOT before these same deadlines expired (i.e., serving his action in late March 2024 clearly falls well after both September 20, 2023 and October 17, 2023).

The "Determination and Notice of Rights" issued to him June 20, 2023 by the EEOC in response to his "Charge of Discrimination" clearly advised him that to pursue the allegations he presented therein under federal law, the Plaintiff had to file suit in either federal or state court within 90 days of his receipt of the notice.

The 90-day deadline from the issuance of EEOC's June 20, 2023 "Determination and Notice of Rights" fell September 18, 2023, so by filing his action with the Clerk on August 7, 2023, the Plaintiff satisfied this deadline.

While he met the filing deadline imposed by the EEOC's June 20, 2023 "Determination and Notice of Rights," this Court finds that the Plaintiff again ran afoul of SCRCP 3(a)(1),

because he failed to commence his action by serving it upon SCDOT before the deadline expired (i.e., serving his action in late March 2024 clearly falls well after September 18, 2023).

An accounting of when he filed his action (i.e., August 7, 2023) and when he served this action (i.e., late March 2024) also reveals that just as he failed to conform to SCRCP 3(a)(1), the Plaintiff failed to conform to SCRCP 3(a)(2), because he served this action upon SCDOT more than 200 days after filing it. The Court finds that such a delay clearly runs contrary to the 120-day period from SCRCP 3(a)(2).

In summation, the Court adopts SCDOT's arguments that the Plaintiff failed to satisfy the deadlines from SCRCP 3(a)(1) and 3(a)(2) when he filed and then ultimately served his action against SCDOT.

At the October 9, 2024 hearing, however, the Plaintiff offered that he did not understand that he was required to serve his summons and complaint upon SCDOT until after the deadlines from SCRCP 3(a)(1) and 3(a)(2) had expired. Unfortunately, the Plaintiff's misunderstanding of the deadlines applicable by operation of SCRCP 3(a)(1) and 3(a)(2) does not constitute sufficient grounds to toll the limitations period.

For the foregoing reasons, therefore, the Court **GRANTS** the Motion to Dismiss the Plaintiff's action against it filed by SCDOT pursuant to SCRCP 3.

II. THE REMAINING GROUNDS ASSERTED BY SCDOT IN ITS MOTION

Given that a similar action filed by the Plaintiff against SCDOT in Orangeburg County had been dismissed prior to the Court's October 9, 2024 hearing in this case, the Court rules that SCDOT's Motion to Dismiss this action pursuant to SCRCP 12(b)(8) is **MOOT**.

The Court finds that SCDOT's Motion to Dismiss Plaintiff's Action under SCRCP 12(b)(6) has some level of merit because the form of the Plaintiff's pleadings does not adhere to

the standards articulated, for example in SCRCP 8(a). However, as its decision to **GRANT** the Motion to Dismiss Plaintiff's Action pursuant to SCRCP 3 precludes Plaintiff from refileing his action, the Court declines to rule on SCDOT's Motion to Dismiss under SCRCP 12(b)(6).

III. RULING AND ORDER

For the above-provided reasons, the Court **GRANTS** the Motion to Dismiss the Plaintiff's Action filed by SCDOT pursuant to SCRCP 3, and the Plaintiff's action **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

The Honorable Milton G. Kimpson
Presiding Judge
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Lemuel A Giviens vs Sc Dept Of Transportation

Case Number: 2023CP4004099

Type: Order/Dismissal

IT IS SO ORDERED.

s/Milton G. Kimpson 2783