

STATE OF SOUTH CAROLINA COUNTY OF SUMTER	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT C. A. NO: 2021-CP-43-00099
ROBERT ALLEN ANDREWS, <p style="text-align: center;">Plaintiff,</p> vs. CITY OF SUMTER and CITY OF SUMTER POLICE DEPARTMENT, <p style="text-align: center;">Defendant(s).</p>	<p style="font-size: 2em; color: blue; font-weight: bold;">RECEIVED</p> <p style="font-size: 1.5em; color: black; font-weight: bold;">ORDER Apr 02 2025</p> <p style="font-size: 1.5em; color: blue; font-weight: bold;">SC Court of Appeals</p>

Date of Hearing: January 29, 2024
 Appearances: Patrick J. McLaughlin, Attorney for Plaintiff
 David C. Holler, Attorney for Defendants

THIS MATTER is before the Court on Plaintiff’s *Pre-Trial Rule 16 Motion and/or Omnibus Motion in Limine*, filed June 26, 2023 and Defendants’ *Motion for Summary Judgment Under Rule 56* and *Motion to Withdraw/Amend Admissions under Rule 36(b)*, both filed July 10, 2023. Plaintiff filed responses in opposition to both motions on July 31, 2023.

A hearing was held on the motions on January 29, 2024, at which point these matters were taken under advisement.

Having reviewed the motions, Plaintiff’s responses in opposition and heard arguments of the parties, Plaintiff’s motion¹ is GRANTED and Defendants’ motions are DENIED.

¹ The Court would note the Plaintiff’s motion was filed when this case had previously been on the trial roster for the week of July 10, 2023, addressing numerous evidentiary/conduct of trial issues. Motion #1 in that filing was Plaintiff’s motion to determine the sufficiency of Defendant City of Sumter’s responses to Plaintiff’s requests for admission and/or deem the requests admitted. While the Court did not consider and does not rule on the other motions in Plaintiff’s June 26th filing, the Court does rule on Motion #1, as both Rule 36(a) and Rule 16 SCRCP allow for Plaintiff’s Motion #1 to be decided prior to trial, that motion speaks directly to Defendants’ motion to amend/withdraw admissions, and was incorporated by reference along with its accompanying exhibits in Plaintiff’s July 31st response in opposition to Defendants’ motion to withdraw/amend admissions.

DISCUSSION & FINDINGS

I. Summary Judgment

I FIND that there are material questions of fact requiring presentment to a jury and as such, Defendants' motion for summary judgment is DENIED.

Defendants argue that Plaintiff's claim of a 20-year easement fails as a matter of law.

To establish an easement or private right of way by prescription, it is necessary to prove three things: (1) the continued and uninterrupted use or enjoyment of the right for 20 years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse, or under a claim of right. Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 231 (2016).

The test for a prescriptive easement can be simplified as follows: in order to establish a prescriptive easement, the claimant must identify the thing enjoyed and show his use has been open, notorious, continuous, uninterrupted and contrary to the true property owner's rights a period of twenty years.

Simmons at 233.

In the context of a prescriptive easement:

-“open” generally means that the use is not made in secret or stealthily. It also means that it is visible or apparent.

- “notorious” generally means that the use is actually known to the owner, or is widely known in the neighborhood.

Simmons at 233.

There is no requirement under South Carolina law that an easement obtained via prescription be reduced to writing. *See* Matthews v. Dennis, 365 S.C. 245 (Ct. App. 2005) (noting the difference between claiming a right to use versus ownership). The only requirements for the creation of such a property right are the three (3) requirements set out in Simmons.

The Court was presented with deposition testimony of not only the Plaintiff, but also of Defendants' agents/employees, as well as images of the real property, from which a reasonable jury could find that the Plaintiff had a prescriptive easement by virtue of "open, continuous and uninterrupted use" of a rear-driveway across the Defendants' property for over twenty years; that the identity of the thing enjoyed was known to Plaintiff and others (images presented to the Court show the rear-driveway was literally visible to the naked eye); and that the use was adverse, as South Carolina law holds that "when the claimant has established that the use was open, notorious, continuous and uninterrupted, the use will be presumed to have been adverse." Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 419 (2006).

I FURTHER FIND that there are material questions of fact as to whether the Plaintiff was falsely arrested/imprisoned. While South Carolina law has long held that one arrested with a facially valid warrant has no such cause of action², the evidence in this case directly challenges the validity of the warrant on its face. Specifically, the facts alleged on the face of the warrant (alleged damage to real property) do not support a violation of S.C. Code §16-11-510, which deals solely with malicious injury to "any horse, mule, cattle, hog, sheep, goat, or any kind, class, article, or description of personal property, or the goods and chattels of another." S.C. Code §16-11-510(A).

I FURTHER FIND that the evidence and findings above support there being material questions of fact as to Plaintiff's causes of action for defamation, abuse of process and civil conspiracy. The uncontested evidence presented to this Court is that after the institution of the criminal charges against him and his arrest, the Plaintiff paid Defendants \$20,000 for a rear-

² Carter v. Bryant, 429 S.C. 298, 306 (Ct. App. 2020).

driveway, and that the criminal prosecution against the Plaintiff was dismissed. It is uncontested that criminal prosecution was handled by a third party, the Third Circuit Solicitor's Office.

A jury could reasonably find that Defendants brought false charges against the Plaintiff, defaming him, conspiring with a third party, for the ulterior purpose forcing the Plaintiff to pay for a property right that he arguably may have already been entitled to under the law.

Based on the above findings, the Defendants' motion for summary judgment is DENIED.

II. Requests for Admission

I FIND that Defendant City failed to respond to Plaintiff's Rule 36 requests for admission. These requests were personally served on Defendant City on January 29, 2021, as attested to via sworn affidavit of personal service filed with the Court on February 2, 2021. As such, Plaintiff's motion to deem those requests admitted is GRANTED.

Defendants' motion to withdraw/amend is DENIED as it has failed to demonstrate a meritorious defense and/or that the merits of the action will be subserved by amendment. Moreover, Plaintiff has established amendment will prejudice the maintenance of his action on the merits.

Rule 36 for the South Carolina Rules of Civil Procedure states, in relevant part:

A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact...the request may, without leave of court, be served...upon any other party with or after service of the summons and complaint upon that party...

...The matter is admitted unless, within 30 days after service of the request...the party to whom the request is directed serve upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney...

Rule 36(a) SCRPC.

“In reviewing the tenets of Rule 36(a), our courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, regardless of whether the admission concerns a matter responded to in a party’s pleadings.” Scott v. Greenville Hous. Auth., 353 S.C. 639, 646, 579, S.E.2d 151, 154-155 (Ct. App. 2003), citing Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d. 407 (Ct. App. 1986).

Plaintiff’s initial Rule 11 letter correspondence to Defendants dated April 20, 2021, specifically noticed that only responses to the requests for admission to Defendant Police Department had been received.

The fact that separate and distinct discovery requests were served on both Defendants was highlighted in the wake of Plaintiff’s subsequently filed May 6, 2021 *Motion to Compel* and the August 30, 2021 hearing on that motion before this Court, as there were numerous emails between the parties and the Court about this issue.

Defense counsel ultimately communicated to both the Plaintiff and this Court via September 22, 2021 email that they had “no reason to doubt” that separate and distinct discovery requests had been served on both Defendants and they would be looking into the issue with their clients. Despite that representation to both the Court and the Plaintiff, Defendant City never responded to properly served requests for admission and made no motion to be allowed to respond out of time until after this case appeared on the trial roster and Plaintiff filed his motion pursuant to Rule 16 and Rule 36 to deem those requests admitted.

Based on the foregoing, I find as a matter of fact that Defendant City of Sumter, in its motion to withdraw or for leave to amend the requests to admit, has failed to carry its burden of demonstrating that the presentation of the merits of this action will be subserved by withdrawal or amendment and that it has a meritorious defense to the matters for which plaintiff sought

admissions. Further, I find that, at this stage in the litigation, plaintiff will be prejudiced in maintaining his action on the merits by amendment or withdrawal. Therefore, in the sole discretion of this court, I find that withdrawal or amendment of Defendants' answers, or lack thereof, is not warranted. Lastly, I find that no manifest injustice will result from the denial of Defendant's motion.

As such, Plaintiff's motion is granted, Defendants motion to withdraw/amend is denied, and Requests for Admission Nos. 1-17 to Defendant City are deemed ADMITTED.

AND IT IS SO ORDERED!

(e-signature page to follow)



Sumter Common Pleas

Case Caption: Robert Allen Andrews VS City Of Sumter , defendant, et al

Case Number: 2021CP4300099

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144