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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joselyn Newman, Circuit Court Judge

Case No. 2022-CP-40-03484
Appellate Case No. 2025-002579

Suzanne Kay Young,

Appellant,

v.

Richland County Sheriff Leon Lott
in his official capacity as
Sheriff of Richland County

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Suzanne Young,

Plaintiff,

vs.

Richland County Sheriff Leon Lott in his
Official Capacity as Sheriff of Richland
County,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-40-03484

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter was before the Court on April 15, 2024, for a hearing on Defendant Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County's [hereinafter referred to as "Defendant"] Motion to Dismiss Plaintiff's Amended Complaint. Present at the hearing, Matthew C. LaFave, Esquire as counsel for Defendant and Kenneth M. Matthews, Esquire as counsel for Plaintiff. Having taken the matter under advisement and considered the filings and evidence, as well as the arguments of counsel, the Court finds that Plaintiff's Amended Complaint was filed beyond the two (2) year statute of limitations afforded by the South Carolina Tort Claims Act, specifically, S.C. Code Ann. § 15-78-110. Further, the Court finds that Plaintiff cannot satisfy the required elements of Rule 15(c), S.C. Rules of Civ. P. for the Amended Complaint to relate back to the originally filed Complaint. Therefore, Plaintiff's Amended Complaint is dismissed.

BACKGROUND AND FACTS

Plaintiff's original lawsuit was e-filed on July 8, 2022, and arises out of a motor vehicle collision that occurred on April 30, 2021. *See generally* Plaintiff's Complaint. The accident reportedly occurred when Aiden Sean Evans, a deputy with the Richland County Sheriff's Department, was responding to a call. Deputy Evans, while operating lights and siren, proceeded

into an intersection on a red light when his vehicle was struck by Plaintiff. Plaintiff in the July 8, 2022 Complaint named, as Defendants, Aiden Sean Evans, and Richland County. Following the filing of this lawsuit Plaintiff proceeded to serve same on Leonardo Brown, of Richland County, on November 15, 2022 and Deputy Evans personally.

In response to the lawsuit filed on July 8, 2022, Defendants Evans and Richland County timely filed a Motion to Dismiss and/or Strike on December 14, 2022. The motion, as pertaining to the instant motion, was premised on two (2) arguments. First, Defendant Evans was not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70(c), as he was, at the time of the accident, acting in the scope of his official duties as a deputy of the Richland County Sheriff's Department. Second, Defendant Richland County was not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 as they were not Defendant Evans' employer.

Prior to the hearing on the December 14, 2022 motion, which was scheduled to be heard on June 27, 2023, the parties entered into a Consent Order, which permitted Plaintiff to amend the Complaint to name the proper party defendant. Defendant, in entering into the Consent Order retained his rights to file a future motion to dismiss pursuant to Rule 12(b)(c), S.C. Rules of Civ. P. Plaintiff thereafter amended the Complaint, as agreed upon, and filed same on July 19, 2023. In response to the Amended Complaint Defendant filed the instant motion.

STANDARD OF REVIEW

The circuit court may dismiss a claim when the defendant demonstrates a plaintiff's "failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct.App. 2006) (quoting *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230

(Ct.App. 2002) (*quoting* Rule 12(b)(6), SCRCPP). The circuit court “must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint.” *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted). “All properly pleaded factual allegations are deemed admitted for ... a motion for judgment on the pleadings.” *FOC Lawshe Ltd. P’ship*, 352 S.C. at 413, 574 S.E.2d at 230.

A claim may be dismissed pursuant to Rule 12(b)(6) 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), SCRCPP; *Haskell Co. v. Morgan*, 374 S.C. 261, 262 S.E.2d 737 (1980). However, if on a motion under Rule 12(b)(6), “matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Rule 12(b)(6).

ANALYSIS

The South Carolina Tort Claims Act [hereinafter referred to as the “TCA”] governs all tort claims against South Carolina governmental entities and is a plaintiff’s exclusive civil remedy available in an action against a governmental entity or its employees. *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206 (Ct.App. 1999) (*quoting* *Murphy v. Richland Memorial Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995)). This case is inarguably an action against an employee of the Richland County Sheriff’s Department thus making the TCA Plaintiff’s exclusive remedy.

An action for damages under the TCA may be instituted at any time “within two years after the loss was or should have been discovered.” S.C. Code Ann. 15-78-100(a). “Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been

discovered....” S.C. Code Ann. § 15-78-110. There is only one germane exception to the two-year statute of limitations as espoused by S.C. Code Ann. § 15-78-110 and that is where a verified claim has been served in compliance with the requirements of S.C. Code Ann. § 15-78-80. S.C. Code Ann. § 15-78-80 sets forth specific requirements for filing a verified claim, which include that the claim be “verified”, *served on the governmental entity “employing the employee”* within one (1) year after the loss, contain the circumstances that brought about the loss, extent of the loss, time and place of the loss, names of those involved and the amount of the loss. (*emphasis added*). “Filing is accomplished by receipt of certified mail or by compliance with service of process.” *Vines v. Self Memorial Hospital*, 314 S.C. 305 307, 443 S.E.2d 909, 910 (1994).

Plaintiff’s counsel, in the present case, contends that communication occurred in this case regarding this loss within one (1) year of the loss. In furtherance of this contention a copy of a letter of representation, dated June 11, 2021, was produced, along with correspondence that followed same. The documents produced included a denial letter from PAI, which is the third-party claims administrator for Richland County, and a follow-up letter to Richland County advising them of the impending lawsuit. Plaintiff’s counsel had no communication with Deputy Evans’ employer.

South Carolina Courts construe the requirements for a verified claim strictly. “Substantial compliance is not sufficient” to bestow upon a plaintiff the three (3) year statute of limitations. *Id.*; (*quoting Rink v. Richland Memorial Hospital*, 310 S.C. 193, 422 S.E.2d 747 (1992); *Cochran v. City of Sumter*, 242 S.C. 382, 131 S.E.2d 153 (1963), overruled on other grounds; *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985); *Searcy v. Dep’t of Educ. Transp. Div.*, 305 S.C. 544, 402 S.E.2d 486 (Ct.App. 1991)). In fact, the Supreme Court held in *Vines* that “to the Extent that *Braudie v. Richland County* holds that substantial compliance is sufficient, it is overruled.” *Id.*,

S.C. at 307, 443 S.C. at 910. Moreover, in accordance with S.C. Code Ann. § 15-78-20(f) “[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of *limiting* the liability of the State.” (*emphasis added*). Plaintiff’s counsel presented no showing of a verified claim form having been submitted.

Accordingly, and irrefutably, Plaintiff has failed to comply with the requirements established by the TCA affording her the benefits of a three (3) year statute of limitations. Therefore, it is established that the Amended Complaint was filed beyond the statutory two (2) year limitation under S.C. Code Ann. § 15-78-110.

As established hereinabove Plaintiff filed the original Complaint on July 8, 2022, which was, inarguably, within two (2) years of the date of the accident giving rise to this lawsuit. However, the original Complaint named, as party defendants, Aiden Sean Evans and Richland County and as such a Motion to Dismiss was filed in response. Plaintiff’s counsel, in response to the Motion to Dismiss, sought to enter into a Consent Order permitting the amendment of the Complaint. Plaintiff, as evidenced by entering into the Consent Order filed July 11, 2023, acknowledged that neither were proper party defendants under the applicable sections of the South Carolina Tort Claims Act. Thereafter, Plaintiff, on July 19, 2023, filed the Amended Complaint naming the proper party defendant, Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County.

Ordinarily, when a “claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.” Rule 15(c), S.C. Rules of Civ. P.

However, this rule contains additional requirements that must be satisfied for the change in party to relate back. Specifically, for an amended pleading, changing a party defendant to relate back:

the foregoing provision [must be] satisfied *and*, within the period provided by law for commencing the action against him the party may be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Rule 15(c), S.C. Rules of Civ. P. (*emphasis added*)

There was no dispute that the claim asserted in the amended pleading arose out of the same occurrence as set forth in the original pleadings or that the amended pleadings represent the changing of a party defendant rather than the addition of a party defendant. Therefore, the initial provision of Rule 15(c), is undisputedly satisfied. However, Plaintiff's amended pleadings fail to satisfy a clear requirement of the remaining provisions of Rule 15(c). For the amended pleadings to relate back the change must be made "within the period provided by law for commencing the action against him." Rule 15(c), S.C. Rules of Civ. P. The amended pleadings were filed July 19, 2023, with the statute of limitations for this action having expired on April 30, 2023. Therefore, the amended pleadings, under the Rule, do not relate back as they were not brought within the period provided by law.

Moreover, Rule 15(c) requires, for amended pleadings to relate back, a showing that the party against whom the claim is now being brought "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him." Rule 15(c), S.C. Rules of Civ. P. In this case Plaintiff presented no evidence establishing that Sheriff Lott had any knowledge of a pending action prior to the filing of the Amended Complaint. Plaintiff's counsel argued that knowledge existed as a result of the fact that Deputy Evans accident occurred while he was in the course and scope of his employment. However, this

only, taken in the light most favorable to Plaintiff, could lead to an inference that Sheriff Lott knew of his deputy's involvement in an accident. Knowledge of an accident does not lead to a showing of knowledge of a lawsuit. Plaintiff, therefore, has failed to show Sheriff Lott knew or should have known of the action.

Therefore, this Court finds that Plaintiff failed to fully satisfy the requirements of Rule 15(c), S.C. Rules of Civ. P. and as such the Amended Complaint must be dismissed.

CONCLUSION AND ORDER

IT IS, THEREFORE, ORDERED AND ADJUDGED, Defendant's Motion to Dismiss is GRANTED, judgment is hereby entered for and on behalf of Defendant as to all claims, and this matter is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

The Honorable Jocelyn Newman
Chief Administrative Judge for the Fifth
Judicial Circuit

This ____ day of May 2024
Columbia, South Carolina



Richland Common Pleas

Case Caption: Suzanne Kay Young vs Aiden Sean Evans , defendant, et al
Case Number: 2022CP4003484
Type: Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2024-05-08 15:21:36 page 8 of 8

ELECTRONICALLY FILED - 2024 May 09 8:48 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4003484

Suzanne Kay Young
PLAINTIFF(S)

Richland County Sheriff et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration (filed on 5/17/24) is DENIED.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/03/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Dec 03 1:11 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003484

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Richland Common Pleas

Case Caption: Suzanne Kay Young vs Aiden Sean Evans , defendant, et al
Case Number: 2022CP4003484
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2025-12-03 12:50:39 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Suzanne Young,

Plaintiff,

vs.

Aiden Sean Evans and Richland County, SC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-40-03484

CONSENT ORDER

This matter was presented to the Court by way of a Motion to Dismiss and/or Strike filed on behalf of Defendants on December 14, 2022. The Hearing was originally scheduled for June 27, 2022.

The primary issues to be addressed in the Hearing was Defendants demand that the claims against them be dismissed on account of neither, pursuant to the South Carolina Tort Claims Act, being a proper party defendant.

In advance of the hearing, and to resolve the primary issues, the parties freely and voluntarily agree to the following:

1. Plaintiff shall amend the Complaint wherein she is to replace the current party defendants with Sheriff Leon Lott, in his Official Capacity, as Sheriff of Richland County.
2. Plaintiff's Amended Complaint shall be filed within thirty (30) days of the filing of this Consent Order.
3. The Amended Complaint will not pray for an award of punitive damages.
4. The issue of joint and several liability is rendered moot with the agreed upon amendment to the Complaint.
5. This Consent Order shall not abrogate the applicability of Rule 15(c) to the agreed upon amendment.
6. The Consent Order shall not be interpreted to operate as a waiver, by Defendants and/or Sheriff Lott, of his right to pursue a future Motion to Dismiss pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the above referenced agreement of the parties shall be approved.

IT IS SO ORDERED!

The Honorable Maite Murphy

This _____ day of July 2023
St. George, South Carolina

WE SO CONSENT:

s/Elizabeth McMahon Pentz
Elizabeth McMahon Pentz, Esquire
THE LAW OFFICE OF KENNETH M. MATHEWS
1331 Laurel Stret
Columiba, SC 29202
Phone: 803.252.1242
ken@kenmathews.law.com
Attorney for Plaintiff

WE CONSENT:

s/Matthew C. LaFave
Matthew C. LaFave, Esq
CROWE LAFAVE GARFIELD & BAGLEY , LLC
2019 Park Street
Columbia, SC 29201
Phone: 803.724.5727
matt@crowelafave.com
Attorney for Defendants



Richland Common Pleas

Case Caption: Suzanne Kay Young vs Aiden Sean Evans , defendant, et al
Case Number: 2022CP4003484
Type: Order/Consent Order

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2023-07-18 12:46:01 page 3 of 3

ELECTRONICALLY FILED - 2023 Jul 18 1:44 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003484

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Suzanne Kay Young,

Plaintiff,

v.

Aiden Sean Evans and Richland County, SC,

Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorney, Kenneth M. Mathews, 1331 Laurel Street, Post Office Box 7335, Columbia, South Carolina, 29202, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the attached Complaint.

Dated at Columbia, South Carolina on the 7th day of April 2022.

Respectfully submitted,

BY: s/Kenneth M. Mathews
Kenneth M. Mathews (SC Bar#: 003683)
Foster M. Mathews (SC Bar#: 79705)
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P.O. Box 7335
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ken@kenmathewslaw.com
foster@kenmathewslaw.com
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
April 7, 2022.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
)	
Suzanne Young,)	
)	
Plaintiff,)	
v.)	COMPLAINT
Aiden Sean Evans and Richland County, SC,)	
)	
Defendants.)	

The Plaintiff, complaining of the Defendants, would respectfully show unto this Court:

1. The Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.

2. The Defendant, Aiden Sean Evans, upon information and belief is a citizen and resident of the County of Lexington, State of South Carolina, and at all times referenced herein was operating with the scope of his employment of Defendant, Richland County, South Carolina.

3. The Defendant, Richland County, South Carolina, is an entity operating in Richland County, South Carolina.

4. The Plaintiff was traveling north on Saint Andrews Road, in the County of Richland State of South Carolina in her vehicle when suddenly without warning, the Defendant Evans, operating the vehicle of the Defendant, Richland County, within the scope of his employment, did fail to yield the right of way at the red light at Gibbes Street and Saint Andrews Road while travelling in a easterly direction, causing Plaintiff's vehicle to strike Defendant with great force and impact.

5. The Defendant was negligent, willful, wanton, reckless, and grossly negligent in the operation of his vehicle and such conduct was the proximate and direct result of the Plaintiff's injuries and damages suffered herein.

6. The Defendant was willful, wanton, negligent, and grossly negligent in the following particulars:

- (a) In failing to maintain proper lookout;
- (b) In failing to stop at a red light;
- (c) In failing to yield the right of way;

(d) In driving too fast for conditions;

(e) In failing to use the due care and caution that a reasonable and prudent driver would use under the conditions existing.

All or any one of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statutory laws of the State of South Carolina.

7. As a result, the Plaintiff is informed and believes she is entitled to judgment against the Defendants, jointly and severally, for actual damages and any punitive damages to be determined.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for actual damages plus a reasonable sum of punitive damages to be determined; for the costs of this action; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

BY: s/Kenneth M. Mathews

Kenneth M. Mathews (SC Bar#: 003683)

Foster M. Mathews (SC Bar#: 79705)

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
April 7, 2022

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C/A: 2022-CP-40-03484

Suzanne Kay Young,

Plaintiff,

v.

AMENDED SUMMONS

Richland County Sheriff Leon Lott in his
Official Capacity as Sheriff of Richland
County,

Defendant.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his attorney, Kenneth M. Mathews, 1331 Laurel Street, Post Office Box 7335, Columbia, South Carolina, 29202, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the attached Complaint.

Dated at Columbia, South Carolina on the 18th day of July 2023.

Respectfully submitted,

BY: s/Kenneth M. Mathews
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Foster M. Mathews (SC Bar#: 79705)
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ken@kenmathewslaw.com
foster@kenmathewslaw.com
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 18, 2023.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Suzanne Young,)

Plaintiff,)

v.)

Richland County Sheriff Leon Lott in his
Official Capacity as Sheriff of Richland
County ,

Defendant.)

IN THE COURT OF COMMON PLEAS

C/A: 2022-CP-40-03484

AMENDED COMPLAINT

The Plaintiff, complaining of the Defendant, would respectfully show unto this Court:

1. The Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.
2. The Defendant, Richland County Sheriff Leon Lott, in his official capacity as Sheriff of Richland County, is an elected official and as such is subject to the South Carolina Tort Claims Act.
3. The Defendant, upon information and belief is a citizen and resident of the County of Richland, State of South Carolina.
4. The Plaintiff was traveling north on Saint Andrews Road, in the County of Richland State of South Carolina, on or about April 30, 2021, in her vehicle when suddenly without warning, an agent of the Defendant, Richland County Sheriff Leon Lott, in his official capacity as Sheriff of Richland County, operating the vehicle of the Richland County Sheriff's Department, within the scope of his employment, did fail to yield the right of way at the red light at Gibbes Street and Saint Andrews Road while travelling in a easterly direction, causing Plaintiff's vehicle to strike the vehicle driven by the agent of the Defendant with great force and impact.
5. The Defendant's agent was negligent, willful, wanton, reckless, and grossly negligent in the operation of his vehicle and such conduct was the proximate and direct result of the Plaintiff's injuries and damages suffered herein.

6. The Defendant's agent was willful, wanton, negligent, and grossly negligent in the following particulars:

- (a) In failing to maintain proper lookout;
- (b) In failing to stop at a red light;
- (c) In failing to yield the right of way;
- (d) In driving too fast for conditions;
- (e) In failing to use the due care and caution that a reasonable and prudent driver would use under the conditions existing.

7. As a result, the Plaintiff is informed and believes she is entitled to judgment against the Defendant for actual damages.

All or any one of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statutory laws of the State of South Carolina.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for actual damages; for the costs of this action; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

BY: s/Kenneth M. Mathews
Kenneth M. Mathews (SC Bar#: 003683)
Foster M. Mathews (SC Bar#: 79705)
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foster@kenmathewslaw.com
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
July 18, 2023

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

2 COUNTY OF RICHLAND CASE NO.:2022-CP-40-03484

3 **** TRANSCRIPTION OF WEBEX HEARING ****

4 -----

5 April 15, 2024

6 **BEFORE:** The Honorable Jocelyn Newman

7 -----

8 SUZANNE YOUNG,

9 Plaintiff,

10 vs.

11 RICHLAND COUNTY, SHERIFF LEON LOTT in his Official
12 Capacity,

13 Defendants.

14 -----

15
16 APPEARANCES:

17
18 Kenneth M. Mathews, Esq.
19 Appearing for the Plaintiff.

20 Matthew C. LaFave, Esq.
21 Appearing for the Defendants.

22 Robert D. Garfield, Esq.
23 Also present.

24 Recorded by: Webex Video Courtroom

25 Transcriber: Natalie Dahl, RPR
 SC Official Court Reporter

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NOTE: Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526

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(NONE)	

EXHIBITS

(NONE)

Transcript Legend

- Dash (--) Indicates an interruption in speech
- Ellipses (...) Indicates trailing off in speech
- Phonetic (ph) Indicates a phonetic word
- (Inaudible) Indicates word(s) are not discernable due to audio recording quality

1 **P R O C E E D I N G S**

2 THE COURT: We're going to jump down to No.
3 15. That is a 2022-CP-40-3484, Young versus Evans.

4 Mr. Mathews, Mr. LaFave, and Mr. Garfield.

5 Give me one moment.

6 This is defendant's, the Sheriff's, motion to
7 dismiss the amended complaint.

8 MR. LaFAVE: That's correct, Your Honor.

9 THE COURT: Okie dokie. Mr. LaFave.

10 MR. LaFAVE: Thank you, Your Honor. May it
11 please the Court. Matt LaFave on behalf of Sheriff
12 Leon Lott.

13 I'll give the Court just a brief overview of
14 the procedural background because it's pertinent to
15 the motion. This involves a motor vehicle accident
16 involving a Deputy Evans, who while in the course
17 and scope of his employment, was in an accident
18 with Ms. Suzanne Young, the plaintiff in the case.
19 Date of loss is April 30th, 2021.

20 There was a summons and complaint filed by
21 Mr. Mathews on behalf of Ms. Young on July 8th,
22 2022. That was the subject of a motion to dismiss
23 filed by my colleague, Robbie Garfield. That
24 motion was filed December 14 of 2022. It was
25 eventually scheduled for a hearing, and Mr. Mathews

1 contacted me about amending the complaint.

2 The parties entered into a consent order in
3 June of 2023 indicating that he had the ability to
4 amend the complaint to replace the defendants in
5 the original lawsuit, which were Deputy Evans and
6 Richland County, with Sheriff Lott; but, at the
7 same time, the defendants reserved their rights to
8 still pursue a 12(b)(6) motion to dismiss.

9 The grounds for the motion at this point,
10 Your Honor, are that the amended complaint was
11 filed outside of the two-year statute of
12 limitations. For a little bit of background, the
13 only correspondence that was sent to anyone in this
14 case by Mr. Mathews, on behalf of Ms. Young, was a
15 letter of representation that was sent June 11th,
16 2021. That was directed solely to Richland County,
17 and did nothing more than advise the County of his
18 involvement in the case and his representation of
19 Ms. Young.

20 He received, in response to that letter, a
21 denial from the County's third-party administrator.
22 That was sent to him September 1 of 2021. Nothing
23 occurred then from that point on until the summons
24 and complaint, which was filed admittedly,
25 obviously, within the two years of statute of

1 limitations.

2 The issue here centers on Rule 15(c) and the
3 relation back provision. I think Mr. Mathews would
4 probably agree that the amended summons and
5 complaint was not filed until after the two-year
6 statute of limitations had expired.

7 The issue, however, is that it involves the
8 substitution of a -- of a defendant, as opposed to
9 the addition of a new defendant outside of the
10 statute of limitations.

11 So what we have, Your Honor, is a two-fold
12 issue. Number one, whether or not Mr. Mathews and
13 Ms. Young should be afforded the three-year statute
14 of limitations. The law on this is explicitly
15 clear, and has been examined multiple times over by
16 the supreme court, that in order for one to get the
17 extra year on the statute of limitations under the
18 Tort Claims Act, they are required to serve a
19 verified claim form pursuant to South Carolina Code
20 15-78-80, and that that form must be served on the
21 governmental entity employing the employee.

22 In this particular case, as mentioned, the
23 only communication was Mr. Mathews' letter of
24 representation that was sent to Richland County,
25 which is not Deputy Evans' employer, and that was

1 sent, obviously, still within the one year, but
2 does not meet the provision of the verified claim
3 form being served on the employee's employer.

4 So we believe that it is clear that the
5 two-year statute of limitations should apply. And
6 as mentioned, the amended complaint was not filed
7 until June of 2023, in which case the substitution
8 was made of Sheriff Lott for Richland County and
9 Deputy Evans.

10 Our assertion here in this particular case,
11 Your Honor, is that while ordinarily the relation
12 back provision would apply when you are
13 substituting or changing a defendant, there is a
14 provision in that rule that requires that change or
15 that substitution to be made within the period
16 provided by law for commencing the action against
17 the party. And, again, as noted, that would have
18 required the change to have been made, in this
19 particular case, within the two-year statute of
20 limitations.

21 Because it was not done, the amended
22 complaint does not relate back to the original
23 complaint; and, therefore, should be barred
24 pursuant to the statute of limitations having
25 expired, and the case should be dismissed under

1 Rule 12(b)(6).

2 Thank you.

3 THE COURT: Mr. Mathews.

4 MR. MATHEWS: If it please the Court, Judge.

5 This rule -- the rule that he's referring to is
6 exactly what this is intended to do. You know, it
7 has provisions that there is not to be any type of
8 prejudice against the other party; that they have
9 received notice of the institution of the action.
10 And this -- and the relation back is a relation
11 back to the original complaint, not just -- I don't
12 think that it was intended for that to be -- this
13 to be a new filing. When we're talking about a
14 relation back, it's a relation back to when the
15 original complaint was filed. The relation back
16 was certainly within the statute of limitations.

17 You know, not only was Richland County served
18 with the complaint, but the deputy was served with
19 the complaint also, personally served with the
20 complaint.

21 Richland County -- you know, this has always
22 interested me, Judge. I don't -- a little
23 sidetrack: Richland County pays these people's
24 salary. They get a check from Richland County, not
25 the Sheriff's Department. So they are certainly

1 aware of the people that work for them. Because
2 even though you serve at the pleasure of the
3 Sheriff, I get that, but they are paid -- they are
4 paid by the funds from the County, and they are
5 paid by the county administrator.

6 But, Judge, the relation back I believe we
7 have -- that this has been satisfied. There is no
8 prejudice to them, and they knew or should have
9 known that for a mistake concerning the identity of
10 the proper party, the case would have been brought
11 against them. That is specifically within this --
12 the rule -- Rule 15(c), the second paragraph, and
13 we think that the requirements have been met.

14 The relation back should -- goes back to the
15 complaint, not this -- not any kind of amended
16 complaint.

17 THE COURT: Well, how would the Sheriff know
18 or should have known that he should have been sued
19 if you have sued an individual and the County?
20 Like, how am I to determine that the Sheriff knew
21 or should have known?

22 MR. MATHEWS: Well, they say the deputy is an
23 employee of the Sheriff. If you serve an employee
24 of a business, the business is on notice with the
25 serving of that. You know, you don't have to --

1 when you -- when you serve a business or you serve
2 someone at the front desk, that is basically as
3 good service.

4 THE COURT: Mr. LaFave, let me hear from you
5 on this issue.

6 MR. LaFAVE: Yes, Your Honor. Thank you.
7 And I'll circle back to something that Mr. Mathews
8 just mentioned, but if -- if the Court would
9 actually even look at his own memorandum in
10 opposition, it does note that Rule 15(c) --
11 "whenever the claim or defense asserted in the
12 amended pleading arose out of conduct, transaction,
13 or occurrence set forth or attempted to be set
14 forth in the original pleadings, the amendment
15 relates back to the original pleading." And it
16 says: "An amendment changing the party against
17 whom a claim is asserted relates back if the
18 foregoing provision is satisfied," meaning that it
19 arises out of the same occurrence. And then it
20 says, in particular: "Within the period provided
21 by law for commencing the action against him."

22 And so it's our position that that exception
23 requires the amendment to be accomplished within
24 the statute of limitations. And, in this
25 particular case, it hasn't been.

1 And, as Your Honor noted, while Mr. Evans was
2 personally served, that does not put the Sheriff on
3 notice. That puts Mr. Evans on notice that a
4 lawsuit was brought against him. And it's
5 incumbent upon Mr. Mathews in this particular
6 motion to oppose it to show that the Sheriff was
7 put on notice by virtue of his having delivered a
8 copy of a complaint to a deputy.

9 MR. MATHEWS: And, Judge, I guess what I
10 should have done is just put -- because they are
11 saying they didn't have notice of it. They filed a
12 motion on behalf of the Sheriff. This motion was
13 filed, you know, by Mr. LaFave and Mr. Garfield,
14 you know, on behalf of the Sheriff. Are they
15 saying now that they represented that -- just the
16 individual and not the Sheriff's Department? So
17 they knew it at the time it was filed.

18 They filed a motion to dismiss to begin with
19 saying the parties were not proper. So who was
20 their client at the time that didn't have notice?
21 The client is the Sheriff's Department.

22 THE COURT: The motion is filed on behalf of
23 the deputy and the County. It's not the Sheriff's
24 Department filing that initial motion to dismiss.

25 This motion is filed on behalf of the

1 Sheriff, but the original motion was filed on
2 behalf of the defendants in that case that were
3 list -- party defendants at the time. "Richland
4 County is not liable, is not a proper party, is not
5 liable for the actions of the Sheriff," et cetera,
6 et cetera.

7 (A brief pause in the proceedings.)

8 THE COURT: I don't know. I might have to
9 grant the motion to dismiss because I just can't
10 see how the sheriff should have known, especially
11 over -- what is it, a car accident?

12 MR. MATHEWS: Yes, car accident while he's
13 working, Judge. How would he not have known that?

14 THE COURT: Yeah -- well, I mean, the deputy
15 may have known that it should have been the
16 Sheriff's Department, but I don't know that the
17 Sheriff would have known. That's where I'm stuck.
18 I mean, there are hundreds of deputies, and I'm
19 sure some of them have car accidents. And if the
20 deputy was personally served, I don't know how the
21 sheriff could know about that.

22 MR. MATHEWS: Well, Judge, he was -- the car
23 accident occurred when he was responding to a call.
24 It's not like it was a personal vehicle or
25 anything. He was in his marked patrol car with the

1 lights on when the accident occurred, came to an
2 intersection and hit my client.

3 THE COURT: Right.

4 MR. MATHEWS: So I'm sure the Sheriff would
5 know about that.

6 THE COURT: Well, wouldn't know about the
7 lawsuit, though. I mean, if the Sheriff is riding
8 shotgun or if he was standing next to the deputy
9 when the deputy was served with process, something
10 like that, that might get you there. But I can't
11 get there --

12 MR. MATHEWS: It's hard to believe that the
13 deputy wouldn't have notified his employee when he
14 got served, or that Richland County would not have
15 said something about it also. All they did was
16 just said Richland County wasn't liable, didn't say
17 someone else did, just said Richland County isn't
18 liable.

19 THE COURT: Right.

20 MR. MATHEWS: And all of these -- I mean, it
21 is all within the same whole family, I guess, you
22 know. I guess that's my issue, Judge.

23 THE COURT: I mean, it is, but it isn't. I
24 don't know. It is, but it isn't. I mean, their
25 paychecks may come from the County, you know, but

1 that is not a sufficient nexus, in my mind, for it
2 all to be the same thing, you know.

3 I'm a state employee. My check comes from
4 the treasurer, as I'm sure many, many others do,
5 and I have no idea what's going on with any of the
6 rest of them.

7 MR. MATHEWS: Yes, ma'am.

8 THE COURT: You know, I think you're missing
9 it. And, frankly -- frankly, it looks like Counsel
10 was aware of this potential pitfall; that is why
11 they carved out this exception in the consent
12 order, you know, to preserve their rights to move
13 to dismiss, or object, or whatever. That should
14 have been -- that should have been....

15 MR. MATHEWS: I think they agreed that it
16 hasn't been resolved to -- hasn't been resolved
17 before now. That's why we had that discussion
18 previously.

19 THE COURT: Right. Yeah. I think you just
20 missed the statute of limitations. I have to grant
21 the motion to dismiss.

22 I'm going to ask Mr. LaFave to prepare an
23 order for my signature.

24 MR. MATHEWS: Judge, would you make sure it
25 is a detailed order, because I'll have to appeal

1 it? Thank you.

2 THE COURT: Yes, of course. Okay.

3 MR. LaFAVE: All right. Thank you, Judge.

4 THE COURT: Thank you, folks.

5 (Whereupon, the Webex audio/video concluded
6 for this case.)

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CERTIFICATE OF TRANSCRIBER

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Case Name: Suzanne Young v. Richland County,
Sheriff Leon Lott in his Official Capacity

Case No.: 2022-CP-40-03483

Date of Hearing: April 15, 2024

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; that said proceedings
were transcribed to the best of my ability from
the audio recording.

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, RPR

therefore, all references to joint and several liability should be stricken from Plaintiff's Complaint.

4. The Plaintiff cannot seek punitive damages against the Defendants, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-120(b), and therefore, all claims for punitive damages must be stricken from the Plaintiff's Complaint. This specifically includes Paragraph Seven (7) and that portion of the prayer of the Complaint.

The Defendants' motion is based upon the pleadings filed in this case, the statutory and common law of the State of South Carolina, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

s/ Robert D. Garfield
Robert D. Garfield, S.C. Bar 6557
CROWE LAFAYE GARFIELD & BAGLEY, LLC
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Counsel for Defendants

Columbia, South Carolina
December 14, 2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Suzanne Young,

Plaintiff,

vs.

Richland County Sheriff Leon Lott in his
Official Capacity as Sheriff of Richland
County,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-40-03484

**NOTICE OF MOTION AND MOTION
TO DISMISS THE AMENDED
COMPLAINT ON BEHALF OF
DEFENDANT**

**TO: KENNETH MATHEWS, ESQUIRE AND FOSTER MATHEWS, ESQUIRE,
ATTORNEYS FOR PLAINTIFF SUZANNE YOUNG:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County [hereinafter referred to as "Defendant"] will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center in Columbia, South Carolina, at such time and place as may be set by the Court, for an Order granting Defendant's motion to dismiss based upon the following grounds:

1. The action was not timely commenced against Defendant pursuant the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* [hereinafter "SCTCA"], as the Amended Complaint presenting Plaintiff's claim for negligence as to Defendant, *for the first time*, was filed on July 19, 2023, was filed more than two (2) years after the incident¹ giving rise to this cause of action, and, therefore, must be dismissed as a matter of law. *See* S.C. Code Ann. § 15-78-

¹ This civil action arises from an April 30, 2021, motor vehicle collision between a Richland County Sheriff's Department patrol car that was operated by Richland County Sheriff's Deputy Aiden Sean Evans while he was actively responding to an emergency call and a vehicle that was operated by Plaintiff Suzanne Young.

110 (“Any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered.”). Ordinarily, when a “claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.” Rule 15(c), S.C. Rules of Civ. P. However, an exception exists as to this rule for an amendment changing the party against whom a claim is asserted. When there is a change in the party the amendment relates back when the claim asserted arose out of the conduct set forth in the original pleading *and* the amendment is brought”

within the period provided by law for commencing the action against him the party may be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.²

Defendant’s motion is based upon the pleadings filed in this case, the statutory and common law of the State of South Carolina, the rules of court, and such other matters as may be presented to the Court at the time of the hearing.

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² On July 8, 2022, Plaintiff filed an initial Summons and Complaint, improperly naming “Aiden Sean Evans and Richland County, SC” as defendants to the action. Plaintiff wholly failed to name Defendant Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County as required pursuant to the SCTCA, S.C. Code Ann. § 15-78-70 (a) & (c). In response, the named defendants Aiden Sean Evans and Richland County, SC, filed a motion to dismiss the action.

Prior to a hearing on this motion to dismiss, Plaintiff agreed to amend her Complaint to replace the current party defendants with Sheriff Leon Lott, in his Official Capacity, as Sheriff of Richland County. A consent order to formalizing this agreement was filed on July 11, 2023. In this order, the parties specifically agreed that the applicability of Rule 15(c), SCRCP, was not abrogated by the consent order and that Sheriff Leon Lott, upon being named, reserved a right to file a motion pursuant to Rule 12(b)(6), SCRCP.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave

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Robert D. Garfield, SC Bar No. 6557
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ATTORNEY FOR DEFENDANTS

This 2nd day of August 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Suzanne Young,

Plaintiff,

vs.

Richland County Sheriff Leon Lott in his
Official Capacity as Sheriff of Richland
County,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2022-CP-40-03484

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF HIS MOTION TO
DISMISS OR, ALTERNATIVELY, FOR
SUMMARY JUDGMENT**

Defendant, Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County [hereinafter referred to as "Defendant"], by and through his undersigned counsel, respectfully moves this Court pursuant to the South Carolina Rules of Civil Procedure Rules 12(b)(6) and 12(c), or alternatively for summary judgment pursuant to Rule 56, for an order dismissing or rendering judgment in favor of Defendant for all claims asserted by Plaintiff. Defendant moves for relief on the sole ground that these claims are time-barred by the applicable statute of limitations.

PROCEDURAL POSTURE

Plaintiff's original lawsuit was e-filed on July 8, 2022, and arises out of a motor vehicle collision that occurred on April 30, 2021. *See generally* Plaintiff's Complaint. Plaintiff named, as Defendants, Aiden Sean Evans and Richland County. Following the filing of this lawsuit Plaintiff proceeded to serve same only on Leonardo Brown, of Richland County, on November 15, 2022. It does not appear that the Complaint was ever served on Evans or his employer. In response to the lawsuit filed on July 8, 2022, Defendants Evans and Richland County timely filed a Motion to Dismiss and/or Strike on December 14, 2022. The motion, as pertaining to the instant motion, was

premised on two (2) arguments. First, Defendant Evans was not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70(c), as he was, at the time of the accident, acting in the scope of his official duties. Second, Defendant Richland County was not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 as they were not the employer for Defendant Evans.

Prior to the hearing on this motion, which was scheduled for June 27, 2023, the parties entered into a Consent Order, which permitted Plaintiff to amend the Complaint to name the proper party defendant. Defendant, in entering into the Consent Order retained his rights to file a future motion to dismiss pursuant to Rule 12(b)(c), S.C. Rules of Civ. P. Plaintiff thereafter amended the Complaint, as agreed upon, and filed same on July 19, 2023. In response to the Amended Complaint Defendant filed the instant motion.

STANDARD OF REVIEW

The circuit court may dismiss a claim when the defendant demonstrates a plaintiff's "failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct.App. 2006) (quoting *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct.App. 2002) (quoting Rule 12(b)(6), SCRCF). The circuit court "must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint." *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted). "All properly pleaded factual allegations are deemed admitted for ... a motion for judgment on the pleadings." *FOC Lawshe Ltd. P'ship*, 352 S.C. at 413, 574 S.E.2d at 230.

A claim may be dismissed pursuant to Rule 12(b)(6) 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*, 374 S.C. 261, 262 S.E.2d 737 (1980). However, if on a motion under Rule 12(b)(6), “matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” Rule 12(b)(6).

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. It is well established that the Court, in considering a motion for summary judgment, must view the facts and any reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment is warranted. *Ellis v. Davidson*, 358 S.C. 509, 517-18, 595 S.E. 2d 817, 821.

FACTUAL BACKGROUND

It is uncontested that on April 30, 2021, a motor vehicle collision occurred at Gibbes Street and Saint Andrews Road in Irmo, South Carolina at approximately 4:30 p.m. It is also uncontested that Aiden Sean Evans, a deputy with Defendant RCSD, was in his service vehicle, in his jurisdiction with his gun and badge and was acting within the course and scope of his official duties with Defendant Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County. Further, it is uncontested that Aiden Sean Evans was not an employee of Richland County. Plaintiff, in light of these uncontested facts, agreed to amend the Complaint naming the present party Defendant. Finally, Plaintiff filed the Amended Complaint on July 19, 2023, which is well beyond the two (2) year statute of limitations as same had expired April 30, 2022.

DISCUSSION

I. The South Carolina Tort Claims Act Controls Plaintiff's Claims.

a. The South Carolina Tort Claims Act is Plaintiff's Exclusive Remedy.

The South Carolina Tort Claims Act [hereinafter referred to as the "TCA"] governs all tort claims against South Carolina governmental entities and is a plaintiff's exclusive civil remedy available in an action against a governmental entity or its employees. *Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206 (Ct.App. 1999) (quoting *Murphy v. Richland Memorial Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995)). This case is inarguably an action against an employee of the Richland County Sheriff's Department thus making the TCA Plaintiff's exclusive remedy.

b. The Tort Claims Act Establishes the Applicable Statute of Limitations and Plaintiff has not Complied with Requirements to be Afforded a Three-Year Statute of Limitations.

An action for damages under the TCA may be instituted at any time "within two years after the loss was or should have been discovered." S.C. Code Ann. 15-78-100(a). "Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered..." S.C. Code Ann. § 15-78-110. There is only one germane exception to the two-year statute of limitations as espoused by S.C. Code Ann. § 15-78-110 and that is where a verified claim has been served in compliance with the requirements of S.C. Code Ann. § 15-78-80. S.C. Code Ann. § 15-78-80 sets forth specific requirements for filing a verified claim, which include that the claim be "verified", *served on the governmental entity "employing the employee"* within one (1) year after the loss, contain the circumstances that brought about the loss, extent of the loss, time and place of the loss, names of those involved and the amount of the loss. (*emphasis added*).

“Filing is accomplished by receipt of certified mail or by compliance with service of process.”
Vines v. Self Memorial Hospital, 314 S.C. 305 307, 443 S.E.2d 909, 910 (1994).

Plaintiff’s counsel, in the present case, contends that communication occurred in this case regarding this loss within one (1) year of the loss. In furtherance of this contention a copy of a letter of representation, dated June 11, 2021, was produced, along with correspondence that followed same. The documents produced included a denial letter from PAI, which is the third-party claims administrator for Richland County, and a follow-up letter to Richland County advising them of the impending lawsuit.

South Carolina Courts construe the requirements for a verified claim strictly. “Substantial compliance is not sufficient” to bestow upon a plaintiff the three (3) year statute of limitations. *Id.*; (quoting *Rink v. Richland Memorial Hospital*, 310 S.C. 193, 422 S.E.2d 747 (1992); *Cochran v. City of Sumter*, 242 S.C. 382, 131 S.E.2d 153 (1963), overruled on other grounds; *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985); *Searcy v. Dep’t of Educ. Transp. Div.*, 305 S.C. 544, 402 S.E.2d 486 (Ct.App. 1991)). In fact, the Supreme Court held in *Vines* that “to the Extent that *Braudie v. Richland County* holds that substantial compliance is sufficient, it is overruled.” *Id.*, S.C. at 307, 443 S.C. at 910. Moreover, in accordance with S.C. Code Ann. § 15-78-20(f) “[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of *limiting* the liability of the State.” (*emphasis added*).

A final requirement, which Plaintiff has failed to satisfy, is the establishment that the report to Defendants “is supported by an oath....” *Searcy v. South Carolina Department of Education, Transportation Division*, 303 S.C. 544, 547 402 S.E.2d 486, 488 (Ct.App.1991). Plaintiff has failed to present the notice upon which she relies to argue entitlement to a three (3) year statute of

limitations, nor does she appear to contend that any such notice was verified. It is well settled that submission of an unverified notice is insufficient to satisfy the requirement of S.C. Code Ann. § 15-78-80. *Id.*; (see *Cochran v. City of Sumter*, 242 S.C. 382, 131 S.E.2d 153 (1963) (wherein the Supreme Court, when interpreting Section 47-71 of the Code of Laws of South Carolina (1962), which required the filing of a “verified claim” as a prerequisite of the bringing of an action, held that an unverified letter advising the municipality of an injury caused by its employee did not satisfy the requirement that a verified claim be filed.))

Accordingly, and irrefutably, Plaintiff has failed to comply with the requirements established by the TCA affording her the benefits of a three (3) year statute of limitations. Therefore, having filed this claim beyond the statutory two (2) year limitation under S.C. Code Ann. § 15-78-110 Defendant is entitled to summary disposition on Plaintiff’s claims.

c. Plaintiff’s Amended Complaint does not Relate Back to the Original Complaint.

As established hereinabove Plaintiff filed the original Complaint on July 8, 2022, which was, inarguably, within two (2) years of the date of the accident giving rise to this lawsuit. However, the Complaint named, as party defendants, Aiden Sean Evans and Richland County. Plaintiff, as evidenced by entering into the Consent Order filed July 11, 2023, acknowledged that neither were proper party defendants under the applicable sections of the South Carolina Tort Claims Act. Thereafter, Plaintiff, on July 19, 2023, filed the Amended Complaint naming the proper party defendant, Richland County Sheriff Leon Lott in his Official Capacity as Sheriff of Richland County.

Ordinarily, when a “claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.” Rule 15(c), S.C. Rules of Civ. P.

However, this rule contains additional requirements that must be satisfied for the change in party to relate back. Specifically, for an amended pleading, changing a party defendant to relate back:

the foregoing provision [must be] satisfied *and*, within the period provided by law for commencing the action against him the party may be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(emphasis added)

Defendant does not dispute that the claim asserted in the amended pleading arose out of the same occurrence as set forth in the original pleadings. Likewise, Defendant acknowledges that the amended pleadings represent the changing of a party defendant rather than the addition of a party defendant. Therefore, the initial provision of Rule 15(c), is undisputedly satisfied. However, Plaintiff's amended pleadings fail to satisfy a clear requirement of the remaining provisions of Rule 15(c). For the amended pleadings to relate back the change must be made "within the period provided by law for commencing the action against him." Rule 15(c), S.C. Rules of Civ. P. The amended pleadings were filed July 19, 2023, with the statute of limitations for this action having expired on April 30, 2023. Therefore, the amended pleadings, under the Rule, do not relate back as they were not brought within the period provided by law.

CONCLUSION

Pursuant to Rules 12(b)(6), 12(c), and/or 56 of the South Carolina Rules of Civil Procedure and based on the prevailing precedent in this State Plaintiff has failed to state a claim for which relief can be granted and judgment as a matter of law in favor of Defendant is warranted.

[SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave

Matthew C. LaFave, SC BAR #75365

Robert D. Garfield, SC BAR #6557

CROWE LAFAVE GARFIELD & BAGLEY, LLC

2019 Park Street

Columbia, SC 29201

803.724.5727

matt@crowelafave.com

robert@crowelafave.com

Attorney for Defendant

This 10th day of April 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF COMMON
COUNTY OF RICHLAND)	PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
)	Docket No.: 2022-CP-40-03484
Suzanne Young,)	
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM IN OPPOSITION
)	OF DEFENDANT'S MOTION TO DISMISS
Richland County Sheriff)	
Leon Lott in his Capacity as)	
Sheriff of Richland County,)	
)	
<u>Defendant.</u>)	

The Plaintiff, Suzanne Young, by and through her undersigned counsel opposes the Defendant's Motion to Dismiss or Alternatively for Summary Judgment.

I. PROCEDURAL HISTORY

The Plaintiff originally filed a lawsuit on or about the 8th day of July 2022, naming Aiden Sean Evans and Richland County as the Defendants. The lawsuit was served on Aiden S Evans on the 14th day of November 2022 and Leonardo Brown and Richland County on the 15th day of November 2022. (See both attached Affidavits of the Process Server).

In response to the lawsuit Defendant's Evans and Richland County filed a Notice of Motion and Motion to Dismiss and/or Strike on Behalf of the Defendants on the 14th day of December 2022.

As a result of the Notice of Motion and Motion to Dismiss and/or Strike on Behalf of the Defendants, the parties entered into an agreement whereby the Plaintiff was allowed to amend her Complaint.

An amended complaint was filed on the 19th day of July 2023 which did nothing more than to name the Sheriff as the opposing party as opposed to the County and the individual deputy.

II. STANDARD OF REVIEW

It is uncontested that a motor vehicle accident occurred between Richland County Deputy Aiden Sean Evans and the Plaintiff on or about the 30th day of April 2021 while he was within the scope of his employment/official duties of the Richland County Sheriff's Office, Leon Lott.

There is no question that the action was brought within the two (2) years statute of limitations. The only argument by the Defendant is that the amendment is what puts the lawsuit outside of the two (2) year statute of limitations.

There is no question that based on the fact that the Defendant filed a Notice of Motion and Motion to Dismiss and/or Strike on Behalf of the Defendants on or about the 22nd day of December 2022 which is what resulted the Plaintiff filing an amended complaint that the Defendants were aware of and had notice of the lawsuit.

It is further uncontradicted that the Defendant, Richland County, was put on notice and in fact, conducted an investigation. (See the letters B, C, and D attached hereto).

III. DISCUSSION

In regard to Civil Remedies and Procedures, South Carolina Tort Claims Act provides under SC Code § 15-78-100(a)(2022) that:

(a) Except as provided for in Section 15-3-40, an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

Reiterated under SC Code § 15-78-110 (2022) it is further provided that:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

It is the Plaintiff's position that if in fact, the Court deems that there is an issue with the statute of limitations that she had three (3) years to file based on putting Richland County and the deputy on notice. It is interesting to note that currently neither the original Defendant's nor the Sheriff's Department can deny notice as they filed a motion to dismiss originally.

It is further the position of the Plaintiff that the amended complaint does relate back to the original complaint as far as the date of filing is concerned.

Rule 15(c), SCRCP specifically deals with this question and states:

(c) Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

The Defendant appears to concede that the time limits would relate back to the date of the amended complaint but takes the position that she had not satisfied the 2nd paragraph of Rule 15(c), SCRCP which states that:

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

It is the Plaintiff's position that this has been complied with and that the action was commenced within the time limits and that the Defendant's were on notice of the action. There was no prejudice as they were fully aware of the action and filed the original Motion to Dismiss. As such, they certainly knew or should have known that an action would have been brought against them but for the fact that there was a mistake concerning the identity of the proper party.

IV. CONCLUSION

For the reasons listed above, the Plaintiff moves to dismiss the Defendant's Motion to Dismiss or Alternatively for Summary Judgment.

RESPECTFULLY SUBMITTED,



Kenneth M. Mathews
1331 Laurel Street
P.O. Box 7335
Columbia, SC 29202
(803) 252-1242

ATTORNEY FOR PLAINTIFF

Columbia, SC
April 11, 2024

Affidavit of Process Server

County of Richland in the Court of Common Pleas for the Fifth Judicial Circuit

(NAME OF COURT)

Suzanne K Young
PLAINTIFF/PETITIONER

vs Aiden Sean Evans and Richland County, S.C.
DEFENDANT/RESPONDENT

2022-CP-40-3484
CASE NUMBER

I, Stace B Day, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Aiden S Evans
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) Summons & Complaint

by leaving with Aiden S. Evans Self At

Residence 220 Clearbrook Circle Lexington/South Carolina
ADDRESS CITY / STATE

Business _____
ADDRESS CITY / STATE

On November 14, 2022 AT 5:05 p.m.
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
DATE
from _____
CITY STATE ZIP

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other _____

Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME

(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 17th day of November, 2022, by Stace B Day
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of South Carolina



Affidavit of Process Server

County of Richland in the Court of Common Pleas for the Fifth Judicial Circuit

(NAME OF COURT)

Suzanne K Young

vs AidenSean Evans and Richland County, S.C.

2022-CP-40-3484

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I, Stace B Day, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Richland County, S.C. (Richland County Administrator)

NAME OF PERSON / ENTITY BEING SERVED

with (list documents) Summons & Complaint

by leaving with Leonardo Brown Richland County Administrator At

NAME

RELATIONSHIP

Residence

ADDRESS

CITY / STATE

Business 2020 Hampton Street/ Rm#4069

Columbia/South Carolina

ADDRESS

CITY / STATE

On November 15, 2022 AT 1:14 p.m.

DATE

TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____ DATE

from _____ CITY STATE ZIP

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other _____

Service Attempts: Service was attempted on: (1) _____ DATE TIME (2) _____ DATE TIME

(3) _____ DATE TIME (4) _____ DATE TIME (5) _____ DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 17th day of November, 2022, by Stace B Day Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Crystal M. Raymur

SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of South Carolina

55



LAW OFFICE OF
KENNETH M. MATHEWS
ATTORNEY AND COUNSELOR AT LAW

(803) 252-1242 | FAX (803) 252-6484

KENNETH M. MATHEWS
KEN@KENMATHEWSLAW.COM

FOSTER M. MATHEWS
FOSTER@KENMATHEWSLAW.COM

April 7, 2022

Richland County
2020 Hampton Street, Suite 3064
Columbia, SC 29204

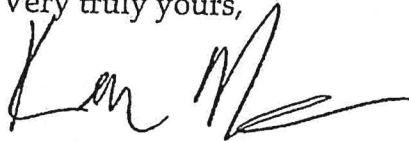
Re: My client: Suzanne Young
Your employee: Aiden Sean Evans
Accident date: 4/30/2021

To whom it may concern:

Enclosed please find a copy of the lawsuit I am prepared to file in this matter.
Please contact me within 10 days to discuss settlement of this claim.

Thank you in advance for your attention to this matter.

Very truly yours,



Kenneth M. Mathews

KMM/dhd

ELECTRONICALLY FILED - 2024 Apr 11 2:22 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003484

LAW OFFICE OF
KENNETH M. MATHEWS
ATTORNEY AND COUNSELOR AT LAW

(803) 252-1242 | FAX (803) 252-6484

KENNETH M. MATHEWS
KEN@KENMATHEWSLAW.COM

FOSTER M. MATHEWS
FOSTER@KENMATHEWSLAW.COM

June 11, 2021

Richland County
2020 Hampton Street, Suite 3064
Columbia, SC 29204

Re: My client: Suzanne Young
Accident date: 4/30/2021

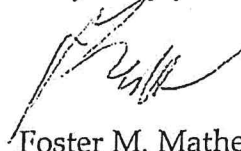
Your employee: Aiden Sean Evans

To whom it may concern:

Please take notice this firm has been retained to represent Ms. Young in connection with the above referenced accident date. Ms. Young was involved in an auto accident with your insured.

Please contact me to discuss this matter. I look forward to speaking with you.

Very truly yours,



Foster M. Mathews

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September 1, 2021

Kenneth M. Matthews
PO Box 7335
Columbia, South Carolina 29202

RE: Our Insured: Richland County
Your Client: Suzanne Young
Claim Number: 9200000000117
Date of Loss: April 30, 2021

Dear Mr. Matthews:

This letter is to advise you that I am the adjuster currently assigned to investigate the above-mentioned claim.

The South Carolina Tort Claims Acts governs your request for reimbursement. Under the Act, there must be evidence of negligence of negligence on the part of the Richland County Government or any of its employees.

We've completed our investigation into your claim and do not feel the County is liable for your client's damages. We are declining to make any settlement offers.

If you have any questions regarding the content of this letter, feel free to contact me so that I may assist you with your request.

Sincerely,
LeToya Gibson
LeToya Gibson, MBA
Claims Representative
(803)264-6867

ELECTRONICALLY FILED - 2024 Apr 11 2:22 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003484

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Suzanne Young,)
Plaintiff,)
vs.)
Richland County Sheriff)
Leon Lott in his Official Capacity)
as Sheriff of Richland County,)
Defendant.)

IN THE FAMILY COURT OF COMMON
PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Docket No.: 2022-CP-40-03484

**NOTICE OF MOTION AND MOTION FOR
RECONSIDERATION, AND/OR RELIEF
FROM JUDGMENT OR ORDER; TO
AMEND, ALTER, OR MODIFY PURSUANT
TO SCRPC 52(b), 59(e), 60(a), 60(b) and
§63-3-530(25)**

**TO: THE HONORABLE JOCELYN NEWMAN
THE DEFENDANT AND THE ATTORNEY’S FOR THE DEFENDANT,
MATTHEW C. LAFAVE, ESQUIRE AND ROBERT D. GARFIELD:**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorney, will move before the Honorable Jocelyn Newman, Presiding Judge, at the Richland County Court of Common Pleas, located at the Richland County Courthouse, 1701 Main Street, Columbia, South Carolina, after ten (10) days, or as soon thereafter as counsel may be heard for an Order reconsidering, altering, amending, modifying or granting relief from the Order signed by the Honorable Jocelyn Newman on May 9, 2024, filed on May 9, 2024 and received by the Plaintiff on May 9, 2024, attached hereto.

The Court should reconsider its order of dismissal on statute of limitations grounds and should alter and amend the order and deny the motion to dismiss, upon a finding that Rule 15(c) of the South Carolina Rules of Civil Procedure has been satisfied. The Court has misconstrued Rule 15(c) in finding it does not allow

relation back under the unique circumstances of this case. All the requirements of Rule 15(c) are satisfied.

The amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleadings, as all parties acknowledge. The remaining factors of the relation-back provision are also satisfied, for the following reasons:

Within the two-year period of the statute of limitations, the Defendant, Richland County Sheriff Leon Lott, had notice of the institution of the lawsuit through the personal service of the summons and complaint on his employee, Aiden Sean Evans. Within the two-year period of the statute of limitations, Sheriff Lott further had notice of the institution of the lawsuit, because Sheriff Lott's own attorney represented Sheriff Lott's employee Evans in the defense of this action.

Within the two-year period of the statute of limitations, the Defendant, Richland County Sheriff Leon Lott, knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. Sheriff Lott's employee had actual knowledge of the lawsuit, through personal service, and also had actual knowledge of the mistake as to the named defendant, Richland County, who was not his employer. Sheriff Lott's own attorney also had knowledge of the mistake in the identity of the proper defendant and brought the motion to dismiss as to the incorrect governmental defendant, Richland County. The same law firm represented all the named defendants – the individual defendant, Evans; the incorrect governmental defendant, Richland County; and the proper defendant, Richland County Sheriff Leon Lott. Under these

unique circumstances, Sheriff Lott knew or should have known of the mistake in the identity of the proper defendant.

Sheriff Lott's own attorney represented his employee, the individual defendant, Aiden Sean Evans. Sheriff Lott's attorney brought the motion to have his employee, the individual defendant Evans, dismissed. That motion was premised upon and specifically invoked S.C. Code Ann. § 15-78-70(c), which provides: "In the event that the employee is individually named, the agency or political subdivision for which the employee was acting *must* be substituted as the party defendant." See S.C. Code Ann. § 15-78-70(c) (emphasis added). Notwithstanding the mandate of the statute, the motion to dismiss filed by Sheriff Lott's attorney on behalf of Sheriff Lott's employee did not seek the required substitution. Based on the clear language of the statute, Sheriff Lott should not be allowed to escape responsibility for answering this lawsuit, where his own attorney failed to pursue the mandated substitution.

As our Supreme Court recognizes, "[t]he purpose of Rule 15(c) of the South Carolina Rules of Civil Procedure is to salvage causes of action otherwise barred by the statute of limitations." *Thomas v. Grayson*, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995). "The rule does not defeat the legitimate use of the statute of limitations. It, however, prevents the defendant from defeating the plaintiff's claim on a technicality in the pleading." *Id.*, 318 S.C. at 89, 456 S.E.2d at 380. The civil procedure rules, including Rule 15(c), "should be liberally construed." *Hughes v. Water World Water Slide, Inc.*, 314 S.C. 211, 215, 442 S.E.2d 584, 586 (1994). Under the liberal construction of Rule 15(c) espoused by the Supreme Court, Sheriff

Lott should not be allowed to defeat the plaintiff's claim in this case, especially where his own attorney sought dismissal of his employee without pursuing the substitution of the proper defendant required by the plain language of the Tort Claims Act: "the agency or political subdivision for which the employee was acting **must** be substituted as the party defendant." See S.C. Code Ann. § 15-78-70(c) (emphasis added).

Sheriff Lott should not be allowed to invoke the statute of limitations to defeat the plaintiff's claim in this action, where the requirements of Rule 15(c) are met. The amendment relates back to the date of the original pleading, and the action should not be dismissed. The Court should alter and amend its order of dismissal, deny the motion to dismiss, and allow the action to proceed.

Alternatively, if the Court believes some aspect of Rule 15(c) is not technically satisfied, Sheriff Lott should be estopped to invoke the statute of limitations, under the unique circumstances of this case.

In addition to the above-stated reasons for altering and amending its order, the Court should also alter an incorrect statement contained in its order. On page 6, the order incorrectly states: "For the amended pleading to relate back the change must be made 'within the period provided by law for commencing the action against him.'" This statement is not a correct explanation of the language of Rule 15(c). What must occur within the period provided by law for commencing the action are the numbered factors of the Rule 15(c) test. The "change" referred to in the quoted sentence – the amendment itself – does not have to occur within the period of

limitations. The Court's order should be altered and amended to delete this incorrect statement of the meaning of Rule 15(c).

RESPECTFULLY SUBMITTED,

s: Kenneth M. Mathews
Kenneth M. Mathews
1331 Laurel Street
P.O. Box 7335
Columbia, SC 29202
(803) 252-1242

ATTORNEY FOR PLAINTIFF

Columbia, SC
May 17, 2024

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