

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS FOR
)
) THE FIRST JUDICIAL CIRCUIT

Audrey Kate Durham,
Plaintiff,

) Case No.: 2012-CP-18-2686
)
)

vs.

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

South Carolina Department of
Transportation,

Defendant.

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2013 JUL -2 PM 12:48
CERTIFIED COPY
DORCHESTER COUNTY
CLERK OF COURT

Plaintiff filed this case on November 29, 2012 and alleged two (2) causes of action: disability discrimination in violation of S.C. Code § 1-13-80(A)(1) and failure to provide reasonable accommodations in violation of S.C. Code § 1-13-80(D)(2). Defendant filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b) (6), SCRCP on the basis that the Court lacked subject matter jurisdiction. Specifically, Defendant alleges there is no private cause of action against the state for discrimination because S.C. Code § 1-13-90 (c) requires the South Carolina Human Affairs Commission (SCHAC) to investigate charges of discrimination against a state agency and either issue an order awarding damages or an order dismissing the complaint.

Defendant's Motion to Dismiss was heard before me on April 1, 2013 in the Dorchester County Courthouse. Present at the Motion Hearing were counsel for Plaintiff, Nancy Bloodgood, and counsel for Defendant, Bob J. Conley. After reviewing the pleadings, briefs and exhibits submitted by each party, case law, and hearing oral argument from counsel, I make the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Plaintiff filed a charge of discrimination with the South Carolina Human Affairs Commission on March 19, 2012 and was issued a Right to Sue letter from the South Carolina Human Affairs Commission on September 21, 2012. (Compl. ¶¶ 5-6.)
2. Plaintiff alleges she is a qualified individual with a disability within the meaning of S.C. Code § 1-13-30(S). (Compl. ¶¶ 11-13.)
3. Plaintiff alleges Defendant could have provided reasonable accommodations for Plaintiff but refused to do so even though doing so would not have been an undue hardship. (Compl. ¶¶ 14, 25-26, 33, 40-46.)
4. Plaintiff alleges Defendant discriminated against Plaintiff on the basis of her disability by terminating her from her job on February 29, 2012. (Compl. ¶¶ 20-22, 29-32, 35, 38-41.)
5. Plaintiff also alleges Defendant discriminated against Plaintiff on the basis of Plaintiff's record of disabilities related to Plaintiff's back injuries and diagnosis of diabetes. (Compl. ¶¶ 15-17, 23-25, 27, 50.)

II. STANDARD OF REVIEW

When ruling on a motion to dismiss pursuant to Rule 12(b) (6) of the South Carolina Rules of Civil Procedure, "the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint" and must deny the motion "if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory." *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) (citing *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007)). "[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Id.* (quoting *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005)).

III. LEGAL ARGUMENT

South Carolina prohibits employment discrimination on the basis of one's disability and also mandates that employers, including state agencies, provide reasonable accommodations to qualified individuals with disabilities. S.C. Code § 1-13-80. The South Carolina State Human Affairs Commission (SCHAC) was created to "eliminate and prevent discrimination because of race, religion, color, sex, age, national origin, or disability," to "encourage fair treatment for, and to eliminate and prevent discrimination against [members of protected classes] and to foster mutual understanding and respect among all people in this State." S.C. Code §§ 1-13-20, 1-13-40(a). SCHAC has the power to promulgate regulations in accordance with the provisions of the South Carolina Human Affairs Law, formulate policies to effectuate the purposes of this chapter, and to cooperate with the EEOC to achieve the purposes of the Civil Rights Act of 1964. S.C. Code §1-13-70(c), (d), and (k). SCHAC also has the power to investigate problems in human affairs in the State. S.C. Code §1-13-70(n). SCHAC has promulgated regulations and these regulations "shall be liberally constructed to effectuate the purpose and provisions of [the South Carolina Human Affairs Law] and the policies of the South Carolina Human Affairs Commission." S.C. Code Regs. 65-12.

According to S.C. Code Ann. Section 1-13-90, upon receipt of a complaint against an entity of the State of South Carolina, the Commission *shall* issue an order for an internal hearing. However, no internal hearing was conducted in this case and it is this Court's understanding that, although the Legislature has given SCHAC the express statutory obligation to carry out this process, no internal hearing has ever been conducted, due to lack of funding or other considerations. Instead, SCHAC regularly issues "Notices of Right to Sue," intending that the complainant seek redress in SC Circuit Court.

Here, SCHAC did not issue an order for an internal hearing, which order is a prerequisite for administrative review under the statute. S.C. Code § 1-13-90 (c). Rather, a Notice of Right to Sue

was issued. The Notice of Right to Sue states that Plaintiff has a right to sue Defendant and must do so within one year from the alleged violation or within one hundred twenty (120) days from the date of the issuance of the Notice of Right to Sue, *or the right to sue will be lost*. Plaintiff complied with these time constraints. The Notice also states that SCHAC is terminating any further processing of the charge of discrimination and that the charging party (Plaintiff) can contact SCHAC's Staff Attorney for "advice on which Circuit Court has jurisdiction to hear [her] case."

Because SCHAC has apparently *never* conducted internal hearings, a strict reading of the statutes, as suggested by the Defendant, would effectively leave a complainant with *no redress* for even an admittedly egregious violation of her rights. The Court finds that the remedial nature of the statutes and a liberal construction thereof require the Court to allow some form of redress for the Plaintiff. As such, the Court is denying the Defendant's Motion to Dismiss.

Based on the language of the policies and purposes of the South Carolina Human Affairs Law, the this Court finds the Legislature did not intend for these statutes to be interpreted in a way that would completely shield state agencies from lawsuits alleging discrimination based on a protected class and denies Defendant's Motion to Dismiss. The Court hereby also grants the Plaintiff leave to amend her Complaint, if desired, to add the South Carolina Human Affairs Commission as a party to this action.

AND IT IS SO ORDERED!



The ~~Honorable~~ Edgar Warren Dickson
Judge for the First Judicial Circuit

Orangeburg, South Carolina

Date: 6/26/13

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802686

CERTIFIED COPY

2013 JUL -2 PM 12:48

Audrey Kate Durham

Department Of
Transportation South
Carolina

Cheryl K. ...
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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. See Page 2 for additional information.
- 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: _____
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

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Edgar Dickson
Circuit Court Judge

2153
Judge Code

7/2/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on 7/2/2013, and a copy mailed first class or placed in the appropriate attorney's box on 7/2/2013, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Nancy Bloodgood 895 Island Park Drive Ste 202 Charleston, SC 29492

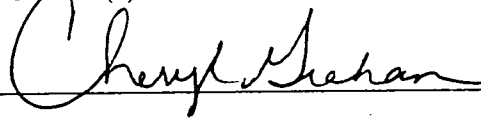
Caroline Wrenn Cleveland 171 Church St., Ste. 310 Charleston, SC 294013140

Bob J. Conley 171 Church St., Ste. 310 Charleston, SC 29401

Joshua Drew Cagle One Seventy One Church Street Suite 310 Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
