

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001469

RECEIVED

Hugh Allen Hoover

L A Blue

Kem Dempsey

JAN 21 2014

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

SC Court of Appeals

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, heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Non-su.); 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 _____

JAN 21 2014
RICHLAND COUNTY
FILED
PA 3:36
JANETTE M. GOSBRON
CLERK

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 PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 November 2013 to attorneys of record or to parties (when appearing pro se) as follows:

John W. Carrigg Jr.

Stephanie Ruotolo Fajardo

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. Gosbron

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Hugh Allen Hoover,)
)
 Plaintiff,)
)
 v.)
)
 L.A. Blue and Kem Dempsey,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 DOCKET NO. 2013-CP-40-1469

**ORDER GRANTING MOTION
 TO DISMISS**

2013 NOV - 8 PM 12:19
 JENNIFER M. WILSON
 C.C.P. & G.S.
 FILED

This matter comes before the Court on October 8, 2013 upon Defendants' Motion to Dismiss based on Plaintiff's failure to state a claim upon which relief can be granted. Plaintiff's causes of actions being compulsory counterclaims not previously pled and therefore waived, and Plaintiff's causes of actions being barred by the statute of limitations. Counsel for Plaintiff and Defendants were present at the hearing. Counsel for Plaintiff objected to the Motion.

In deciding a motion to dismiss for failure to state a claim, the trial court considers only the allegations set forth on the face of the plaintiff's complaint. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). Additionally, when deciding a motion to dismiss for failure to state a claim, the question is whether, in the light most favorable to Plaintiff, the complaint states any valid claim for relief. Rule 12(b)(6), SCRPC; *Id.*

Plaintiff's complaint alleges three causes of action; malicious prosecution, abuse of process, and outrage. Considering Plaintiff's first cause of action, malicious prosecution, Plaintiff fails to allege a cause of action for which he can recover based on his failure to allege a lack of probable cause and malice. Cisson v. Pickens Sav. & Loan Ass'n, lays out the requirements in order to maintain a cause of action for malicious prosecution of a civil proceeding as "(1) defendant instituted a judicial proceeding; (2) want of probable cause; (3)

malice in instituting the proceedings; and (4) resulting injury or damage.” 258 S.C. 37, 43 (1972). In his complaint, Plaintiff relies on the fact that the previous action between these parties resolved in Plaintiff’s favor as satisfying the want of probable cause as well as malice in instituting the proceedings. However, this reliance is misplaced as South Carolina law makes clear that, “the mere fact that defendant was unsuccessful in its defense of the prior action and in its appeal has no bearing upon the issue of probable cause.” *Id.* at 44. Cisson further states that, “it is generally agreed that the termination of the proceeding in favor of the person against whom it is brought is no evidence that probable cause was lacking, since in a civil action there is no preliminary determination of the sufficiency of the evidence to justify the suit.” *Id.*; Prosser on Torts, (3d) Ed., Section 114, p. 874. Although Defendants do not believe that Plaintiff has alleged any actions that would rise to the level of malice, it is important to note that even if Plaintiff was able to successfully iterate malice, “a want of probable cause cannot be inferred from any degree of malice.” Parrot v. Plowden Motor Co., 246 S.C. 318, 322 (1965). Plaintiff makes a variety of remarks in the pleadings regarding Defendants’ intentions in instituting the prior proceedings, including forcing Plaintiff to develop his land in a manner consistent with the surrounding homes. However, nothing regarding these statements rises to the level of malice as the Complaint fails to plead a malicious basis to Defendants’ requests. As evidenced by the Summons and Complaint filed by Defendants in the prior proceeding Plaintiff refers to, Defendants only requested injunctive and declaratory relief to compel Plaintiff to abide by the required zoning and building requirements of the area. Plaintiff does not appear to state any further grounds for a lack of probable cause and malice, and as such, his cause of action for malicious prosecution fails to properly allege a valid claim for relief.

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In considering Plaintiff's abuse of process claim, Plaintiff fails to allege a cause of action for which he can recover. Huggins v. Winn-Dixie Greenville, Inc. details the essential elements of abuse of process as, "first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding." 249 S.C. 206, 209 (1967). In the Complaint, Plaintiff fails to allege a willful act that is improper in the regular conduct of the proceeding. While Plaintiff details the Defendants' prior proceeding against him, Plaintiff does not allege any act that is improper in the regular conduct of a proceeding. As our supreme court clearly stated in Huggins, "some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." *Id.* Considering Plaintiff's allegations in the complaint in the light most favorable to him, Plaintiff fails to allege a willful, improper act on behalf of the Defendants. Therefore, Plaintiff's cause of action for abuse of process fails.

Plaintiff's final cause of action for outrage also fails to allege a valid claim for relief. Our supreme court in Ford v. Hutson stated that:

"in order to recover for the intentional infliction of emotional distress, a plaintiff must establish that (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.'" 276 S.C. 157, 162 (1981) (internal citations omitted).

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Plaintiff relies on the Defendants' filing of a lawsuit against the Plaintiff as the "extreme and outrageous" conduct forming the base of his claim. Without other factual allegations concerning Defendants' conduct, the mere filing of a lawsuit cannot rise to the level of "extreme and outrageous" as it is every citizen's right to institute legal proceedings against a person "when he reasonably believes that he has a good chance of establishing it to the satisfaction of the court or jury." Cisson, 258 S.C. 37, 45.

Furthermore, Plaintiff's causes of action for abuse of process and outrage, even if properly plead, would be barred by the applicable statutes of limitation. South Carolina has a three year statute of limitations for abuse of process, and outrage, if considered a tort independent of traditional torts, has a six year statute of limitations. Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 222 (Ct. App. 1999); Hutson, 276 S.C. 157, 166. In the present case, the filing of the prior suit, which forms the basis of Plaintiff's claims, occurred in October 2006. The present suit was filed on March 11, 2013, well outside the applicable statutes of limitation.

After careful consideration of the pleadings, memoranda, and the arguments of Counsel at the hearing, the Court hereby **GRANTS** Defendants' Motion to Dismiss. Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Columbia, South Carolina
November 8, 2013



G. Thomas Cooper, Jr.
Presiding Judge of the Court of Common
Pleas for the Fifth Judicial Circuit