

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4000301

Basil W Akbar

South Carolina Dept of Corrections

PLAINTIFF(S)

Bill Byars

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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 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 27 September 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Basil W #065498 Akbar

Erin Farrell Farthing

Basil W #065498 Akbar

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Basil W. Akbar, #310671,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of Corrections,)
 Bill Byers, Martha Roof, Debrah Long,)
 Lisia Johnson, Ann and John Doe,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No: 2013-CP-40-0301

ORDER

This matter came before me on August 7, 2013, for hearings on Defendants’ Motion to Dismiss/Strike Punitive Damages; Defendants’ Motion to Dismiss and for Summary Judgment; Defendants’ Motion for Protective Order and to Stay Discovery; Plaintiff’s Motion to File a Supplemental Complaint; Plaintiff’s Motion for Appointment of Counsel; and Plaintiff’s Motion to Compel. Present at the hearings were *pro se* Plaintiff, Basil W. Akbar, #310671, and counsel for Defendants, Erin Farrell Farthing.

Defendants moved to dismiss, and to strike, Plaintiff’s prayer for punitive damages against all Defendants pursuant to Rule 12(b)(6) and 56, SCRPC, and pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-170(b).

Defendants also moved to dismiss this action and for summary judgment pursuant to Rules 12(b)(1), (2), (4), (5), and (6), and Rule 56, SCRPC, on the grounds of lack of subject matter jurisdiction, lack of jurisdiction over the person, insufficiency of process and insufficiency of service of process, and that the claims fail to state a cause of action upon which relief can be granted. Specifically, Defendants moved to dismiss Plaintiff’s Complaint and for summary judgment as Plaintiff failed to state a cause of action and that there is no genuine issue as to any material fact and that the Complaint does not state a claim upon which relief can be granted. Furthermore, Defendants moved to dismiss Plaintiff’s Complaint on the grounds that Plaintiff failed to properly serve the Defendants and other necessary parties pursuant to Rule 4, SCRPC. Also, Defendants move to dismiss Plaintiff’s Complaint on the grounds Plaintiff improperly named as Defendants individual employees of a governmental entity pursuant to S.C.

CODE ANN. § 15-78-70 and 15-78-200, in that any individually named Defendants must be dismissed from the suit pursuant to S.C. CODE ANN. § 15-78-70(c). Defendants also move to dismiss Plaintiff's Complaint on the grounds that Plaintiff's claims are barred by the applicable statutes of limitations.

Defendants also moved for a protective order and to stay discovery in this case pursuant to Rule 26, SCRPC.

Plaintiff moved to file a supplemental Complaint. Plaintiff also moved for appointment of counsel and moved to compel discovery responses from Defendants.

Having reviewed the materials on file in this case, and the arguments of the parties, the Court finds that (1) Defendants' Motion to Dismiss/Strike Punitive Damages should be granted; (2) Defendants' Motion to Dismiss and for Summary Judgment should be granted; (3) that all other pending Motions should be denied as moot; and (4) Plaintiff's Complaint and this action should be dismissed with prejudice.

APPLICABLE LAW AND FINDINGS OF FACT

Plaintiff, Basil W. Akbar, #310671 ("Plaintiff"), is presently confined to the Lee Correctional Institution of the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. Plaintiff was convicted of murder September 1971. Plaintiff received a life sentence, but is eligible for parole. Plaintiff was released on parole in or around April 1981. Plaintiff was arrested for a number of drug offenses, and his parole was revoked in 1985. At that time, Plaintiff was returned to the custody of the SCDC, where he has been held since that time, and is currently serving the remainder of his life sentence.

Broadly construed, Plaintiff's Complaint alleges that he was employed in an SCDC Work Release Program from July 1979 through April 1981, and that, during that time weekly deductions were taken for "Mandatory Long Term Escrow Savings Account" and for room and board. Plaintiff contends that, at the time of his release on parole in 1981, the balance of his escrow account was not released.

While Plaintiff was returned to the custody of the SCDC in 1985, Plaintiff apparently did not inquire regarding the funds he alleges he did not receive until October 2008. Plaintiff filed three separate grievances regarding these alleged funds in 2009 and 2010, but each were unprocessed as untimely. Plaintiff appealed the decision from one of these grievances to the

South Carolina Administrative Law Court, but his appeal was dismissed by Order dated April 28, 2011 based on Plaintiff's failure to exhaust his administrative remedies. There is no indication that the Plaintiff appealed that decision.

Plaintiff filed the present action on January 16, 2013. Defendants filed a Motion to Dismiss on February 27, 2013, as well as a Motion to Dismiss/Strike Plaintiff's claims for punitive damages under S.C. CODE ANN. § 15-78-120(b). In addition to the Motion to Dismiss, Defendants also filed a Motion for Summary Judgment on all allegations within Plaintiff's Complaint. Defendants contend that Plaintiff failed to file his Complaint within the statutorily prescribed period of time, and therefore should be barred by the applicable statute of limitations, and that Plaintiff has failed to set forth a claim against Defendants upon which relief can be granted.

Under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.*, a claimant must commence an action for damages within two (2) years after the date the loss was or should have been discovered. S.C. CODE ANN. § 15-78-110. According to the statute, "loss" is defined as "bodily injury, disease, death, or damage to tangible property, **including lost wages and economic loss** to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm." S.C. CODE ANN. § 15-78-30(f) (emphasis added).

Under the discovery rule, "the statute of limitations does not run from the date of the negligent act, but from the date when the *injury* resulting from the wrongful conduct either is discovered or *may be* discovered by the exercise of reasonable diligence." *McClain v. Jarrard, M.D.*, 354 S.C. 218, 220, 580 S.E. 2d 763, 764 (Ct. App. 2003) (citing *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (Ct. App. 1989)).

The date on which discovery should be made is an objective, not subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). In other words,

whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. South Carolina Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999). The fact that the injured party does not comprehend the full extent of his injuries is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). "The statute of limitations is not tolled during the period of time in which a plaintiff is merely unaware of the extent of an actionable injury." *Young* 333 S.C. at 720, 511 S.E.2d at 416.

In applying this reasonable diligence analysis under the discovery rule, the Court has stated, "an injured party must act with some promptness where facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." *McClain*, 354 S.C. 218, 580 S.E. 2d 763. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery is developed. *Id.*

In the present case, Plaintiff contends that a portion of the wages he earned from 1979-1981 were withheld by the SCDC in an escrow account. Plaintiff further contends that the funds contained in this account should have been disbursed to him upon his release on parole in 1981, but that they were not. It appears Plaintiff did not file the present lawsuit until January 16, 2013, more than 30 years after any cause of action he may have arising out of his allegations accrued.

Furthermore, while Plaintiff contends that he was only informed "for the first time 'February 9, 2009'" that he did not have a "Work Center" funds account, it appears that Plaintiff has not accounted for why he waited 27 years after he was released on parole, and 23 years after he was placed back into the custody of the SCDC to inquire into these funds. Also, it appears that Plaintiff did not file the present lawsuit until almost four years after he was informed that he did not have a "Work Center" funds account.

Therefore, this Court finds that any cause of action Plaintiff might have had, based on the allegations set forth in his Complaint, arose more than two years prior to the commencement of the lawsuit. Therefore, this Court finds that Plaintiff's claims are barred by the applicable statute of limitations.

Additionally, this Court finds that Plaintiff's legal basis for his belief that a portion of his wages from 1979 through 1981 was withheld and maintained in an escrow account to be distributed to him on his release appears to be S.C. CODE ANN. § 24-3-40. Section 24-3-40 dictates the disposition of wages of prisoners allowed to work at paid employment. Specifically, § 24-3-40(A) as currently written sets forth that the wages are to be paid directly to the Director

of the SCDC, who shall make certain deductions from the prisoner's gross wages, including restitution, victim assistance programs, child support, etc. Section 24-3-40(5) as currently written provides that "[t]en percent must be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B), as currently written sets forth how the funds maintained in a prisoner's escrow is to be returned to the prisoner.

It appears Plaintiff has provided no evidence that the above provision, or any similar law, was in effect at the time Plaintiff allegedly earned his wages in 1979 to 1981. Further, the version of § 24-3-40 enacted in 1994 did not include any provision regarding withholding any amount of a prisoner's wages for an escrow account. The 1994 version provided that:

Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404'. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner. No prisoner who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351 is eligible for unemployment compensation upon termination from the program.¹

Therefore, it appears there was not any statutory requirement for SCDC to make such withholding.

This Court also finds that Plaintiff has failed to establish that Defendants, or any other employees of the SCDC, withheld or misappropriated any of Plaintiff's wages. Therefore, the Court finds that Plaintiff's claims should be dismissed.

Additionally, this Court finds that the individual Defendants should be dismissed from the case pursuant to the provisions of the South Carolina Tort Claims Act. Under S.C. CODE ANN. §§ 15-78-70 and 200, all individually named defendants must be dismissed from this suit

¹ The version of § 24-3-40 enacted in 1996 also did not include any requirement that any portion of a prisoner's wages be withheld in an escrow account. It appears that the first version of § 24-3-40 to include a requirement that a portion of a prisoner's wages be withheld in an escrow account was in the version enacted in 1999.

and the agency substituted in their place for all actions taken by defendants “while acting within the scope of the employee’s official duty.” *Faile v. South Carolina Dep’t. of Juvenile Justice*, 566 S.E.2d 536 (2002).

Upon review of Plaintiff’s Complaint, this Court finds that the present action is brought pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.* This Court further finds that the individually named Defendants in the present action were acting as agents and employees of the SCDC at all times relevant herein, and therefore, the proper entity to defend this matter is the SCDC pursuant to S.C. CODE ANN. § 15-78-70(c). Therefore, this Court finds the appropriate party defendant to this action is the SCDC, and that Defendants Bill Byers, Martha Roof, Debrah Long, Lisia Johnson, and Ann and John Doe should be dismissed from this case.

As to Defendants’ Motion to Dismiss/Strike Punitive Damages, Defendants argue that the any claim of Plaintiff for punitive damages is barred by S.C. CODE ANN. §15-78-120(b). S.C. CODE ANN. §15-78-120(b) provides that, “[n]o award for damages under this Chapter shall include punitive or exemplary damages or interest prior to judgment.” Upon review of Plaintiff’s Complaint, this Court finds that the present action is brought pursuant to the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.* Therefore, as a matter of law, this Court finds that the Plaintiff’s claim for punitive damages must be dismissed.

NOW, THEREFORE, IT IS ORDERED:

1. Defendants’ Motion to Dismiss and for Summary Judgment is granted;
2. All requests or prayers for damages are dismissed and stricken from Plaintiff’s Complaint;
3. Plaintiff’s Complaint fails to state a cause of action against all Defendants upon which relief can be granted and fails to state facts sufficient to constitute a cause of action;
4. This action is dismissed with prejudice; and
5. All other pending Motions are denied as moot, including Plaintiff’s Motion to file a Supplemental Complaint, Motion to Compel, and Motion for Appointment of Counsel, as well as Defendants’ Motion for Protective Oder and to Stay Discovery.

