

Wesley E. Smith J.J.F

465 North Nassau Street .
Charleston, South Carolina 29403
(843)723-8598

May 202014

RECEIVED

MAY 22 2014

SC Court of Appeals

MEMORANDUM TO THE RECORDS

CLERK

Honorable Jenny A. Kitchens
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

IN REF: Mr. Wesley Edward Smith, III Appellant v. Pepsi Bottling Group
Case 2014-000995

Dear Honorable Jenny Kitchen;

In response to this court letter dated may 07, 2014, the court of Common Pleas has not supplied me a copy of an official written order per any Judge findings. I receive a notice stating that under rule 77 my motion is denied and a judgment was handed (similar to the enclosed). This memorandum submitted in support of the Appellant notice for Appeal in the above related captioned civil case is the appellant case court reference number should referred to as case number 2014-00995.

Due to the complexities of this case, this memorandum serves a request to also proceed In forma Pauperis. A believe a non-refundable filing of a \$100.00 at this stage of proceeding (for which I am responding to an act taken against me) would be premature, highly offensive and a procedural due process injustice to a defenseless citizens who has been prematurely sanctioned and being held in contempt by a lower court without the support of proper memorandum of law arguments or applicable enforcement agency. Continued collateral attacks of Mr. Wesley Edward Smith III and his family members should not warrant a preclusion of the facts that PBG has deprive my due process right and failed to comply with the set statutory requirements.

The issues as herein complained of, are systemic from yy counter claim for which I was deprived my due process rights by PBG, based on the reasons to believed that PBG failed to follow the law. My complaint was a discriminatory in nature under statute SC code 1-13-80 et seg. From the reason given to believed based on the written law, it was PBG obligation to provide such rights and not separated and unequal treatment of a private citizen legal rights while employed . I opposed to the adverse treatment and unlawful employment and business practice

in hostile environment that was being taken against me based on my race (African American).

In this action, the Appellant court claims that the act was untimely, but I diametrically object to PBG non-compliance actions for failing to also follow the written rules when it clearly states written notification requirements under rule 203 (1)(B). This issue hereunto pertaining related to a presumption of untimely on its face. Upon closer review of all relevant docketed records this fact which reasons are give to believe negligence due to recklessness (claim cross complaint) exist.

The fact of this undisputed action relates to PBG whom initiated a "just cause" action by terminating Mr. Wesley Edward Smith III from his employment with the Corporations within the boundaries of this court and under the written laws. This court retains the jurisdictional rights over the parties. [The trial court found sustainability when granting the respondents motion for judgment against Mr. Wesley Edward Smith III on their pleadings]. The issue here start with the originality of this case of records. There are no notices that have been served to Mr. Wesley Edward Smith III, by any complaining party. This gives a reason to believe a violation of my recognizable legal rights have, in fact been violated by the respondent while acting either severally or collectively under the color of law which reason is discriminatory within itself based on race, disability age or the other. Rule 56 states in relevant parts that no genuine issue of material fact shall exist. The opposing party must be afforded all opportunities to rain objection and questionable inferences of law. Subsequently, the Appellant was prematurely sanctioned which has ties my hands for any attempts to speak freely while exercising rights. I am being held in contempt by this court as well. On the other hand, my legal rights afforded which afforded equal, impartial and fair treatment of procedural due process have and are continually being violated, On this face this action gives reason to believe that this irregularity, causes the error of law to material fact not presented or supported , for the application of law to be presumed, purely speculated and a mere conjecture of law (as the defense is herein asserted) for which a reversal is in order, redress and motion granted. The prejudgment made against me was not granted based on the rule of law. The alleged violation of PBG breach of duty, breaches the contractual relationships that exist with the citizens private trust and the delegated responsible duty which to inform all opposing parties involved in a suit of law by providing supporting memorandum of law. A complaint of PBG alleged personal injuries sustained and relief requested by complaint should have also accompanied all aforementioned documents which are absent here (proof needed).

Issue on appeal are (Proof required) by law:

- PBG deprived a private citizen due process
- PBG failed to file any notices of being aggrieved of adversely affected by appellant
- PBG failed to proved substantive evidence to support a just cause action for termination of appellant, which actions give reason to believe act were discriminatory by its culture nature.

Sincerely, ~~Person of legal Interest~~ in that case
Mr. Wesley Edward Smith III

cc: Mr. Ashley B. Able, ESQ

material fact shall exist. The opposing party must be afforded all opportunities to raise objection and questionable inferences of law. Subsequently, the Appellant was prematurely sanctioned which has tied my hands for any attempts to speak freely while exercising rights. I am being held in contempt by this court as well. On the other hand, my legal rights afforded which afforded equal, impartial and fair treatment of procedural due process have and are continually being violated. On this face this action gives reason to believe that this irregularity, causes the error of law to material fact not presented or supported, for the application of law to be presumed, purely speculated and a mere conjecture of the rules (as herein defense asserted) for which a reversal is in order, redress and motion granted. The prejudgment made against me was not granted based on the rule of law. The alleged violation of PBG breach of duty, breaches the contractual relationships that exist with the citizens private trust and the delegated responsible duty which to inform all opposing parties involved in a suit of law by providing supporting memorandum of law. A complaint of PBG alleged personal injuries sustained and relief requested by complaint should have also accompanied all aforementioned documents which are absent here (proof needed). Issue on appeal are (Proof required) by law:

- PGB owes Mr. Wesley Edward Smith III money as required under statutory law 41-1-10 et seq and refuses to pay
- PBG deprived a private citizen due process
- PBG failed to file any notices of being aggrieved or adversely affected by appellant
- PBG failed to provide substantive evidence to support a just cause action for termination of appellant, which actions give reason to believe acts were discriminatory by its culture nature.

III. SUPPORTING MEMORANDUM OF LAW ARGUMENT

Article I sect 24

The equal protection clause and the due process clause state in relevant part that NO PERSON shall deprive any protections afforded without due process relating to equal justice under the law, liberty or home furnishing properties.

IV. CONCLUSION

Based on the facts and as supported by law argument, this action that gives reason to believe that such violation to a private citizen due process rights has occurred, the appeal should be respectfully reverse by order and redres of claim premised on such statutory violation to afford relief/remedy and the reconsideration by the courts under the applicable laws

May 20, 2014

Respectfully Submitted



Mr. Wesley Edward Smith III

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56, the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)