

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEALS FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case Number: 2014-000621

Joseph N. Grate,

Appellant

V.

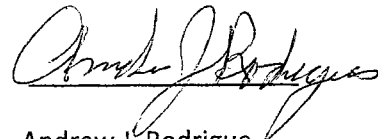
Andrew J. Rodrigues,

Respondent

INITIAL BRIEF OF RESPONDENT

June 19, 2014

JN



Andrew J. Rodrigue
481 Parkersville Rd.
Pawley's Island, SC 29585
(843) 237-9603

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SC Court of Appeals

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1. BECAUSE APPELLANT FAILED TO SET FORTH A STATEMENT OF FACTS IN HIS COMPLAINT TO MEET THE REQUIREMENT'S OF RULES 8(A)(2) and 12(b)(6) OF THE SCRPC FOR AN ACTION FOR DEFAMATION IN HIS COMPLAINT, RESPONDANT'S MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.
2. BECAUSE APPELLANT IN ITEM 3 OF HIS PRAYER FOR RELIEF IN HIS COMPLAINT AND ALSO IN HIS AMENDED COMPLAINT IN ITEMS 10A-10R AND 11-26 IN HIS AMENDED COMPLAINT ADMITTED THAT ALL OF THE ALLEGED DEFAMATORY STATEMENTS, WHICH ARE THE BASIS OF HIS CAUSE OF ACTION WERE MADE IN A JUDICIAL PROCEEDING IN CASE NO. 2013-CP-22-0001; THEY HAVE ABSOLUTE PRIVILEGE AND CANNOT BE THE BASIS FOR AN ACTION IN DEFAMATION, AND RESPONDANT'S, MOTION TO DISMISS THE COMPLAINT AND AMENDED COMPLAINT SHOULD BE GRANTED.
3. BECAUSE THE ALLEGED DEFAMATORY STATEMENT IN ITEM 9 OF APPELLANTS AMENDED COMPLAINT OCCURRED ON SEPTEMBER 1, 2011, AND APELLANT DID NOT FILE AN ACTION UNTIL DECEMBER 23, 2013, TWO YEARS AND FIVE MONTHS AFTER THE EVENT OCCURRED AND THE TWO YEAR STATUTE OF LIMITATIONS BARRED THE ACTION, RESPONDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.
4. BECAUSE APPELLANT RELIED SOLEY UPON HIS PLEADINGS, DID NOT FILE ANY COUNTER AFFIDAVITS OR MOTIONS IN OPPOSITION TO THE RESPONDENT'S MOTION TO DISMISS THE COMPLAINT OR MOTION TO DISMISS THE AMENDED COMPLAINT AND OTHERWISE FAILED TO DEMONSTRATE THAT THERE WAS A GENUINE ISSUE TO ANY MATERIAL FACT CONTAINED IN RESPONDANT'S MOTIONS, THEREFORE, RESPONDANT'S MOTION TO DISMISS THE COMPLAINT AND MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.

TABLE OF AUTHORITIES

CASES

Hainer v. American Med. Intem., Inc., 328 S.C. 128, 492 S.E. 2d 103 (1997)

Holtzscheiter V. Thomson Newspaper, Inc. 332 S.C. 502, 506 S.E. 2d 497 (1998)

Murray v. Holnam, Inc., 344 S.C. 129 (542 S.E. 2d 743, S.C. App. 2000)

Pond Place Partners, Inc. v. Poole, 567 S.E. 881 (S.C. App. 2002), 351 S.C. 1

STATUTES

Rule 8 (a) SCRPC

RULE 9 (H) SCRPC

Rule 12 (b) (6) SCRPC

Rule 15 (a) SCRPC

Rule 15-3-550 SCRPC

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in the granting of the motion to dismiss the complaint because Appellant failed to set forth a statement of facts in his complaint to meet the requirements rule 8(a)(2) SCRPC for an action for defamation
2. Did the Trial Court err in granting the motion to dismiss Item 3 in Appellant's complaint and granting motion to dismiss Items 10A-10R and Items 11-26 in his amended complaint because all of the alleged defamatory statements, which are the basis of his cause of action were made in a judicial proceeding in Case No. 2013-CP-22-0001; they have absolute privilege and cannot be the basis for an action in defamation, and, therefore, Respondents' motion to dismiss the complaint should be granted?
3. Did the Trial Court err in granting the motion to dismiss the amended complaint because the alleged defamatory statement in Item 9 of appellants amended complaint occurred on September 1, 2011, and Appellant did not file an action until December 23, 2013, two years and five months after the event occurred and the two year statute of limitations set forth in Rule 15-3-550 SCRPC barred the action, and, therefore, Respondents' motion to dismiss the amended complaint should be granted?
4. Did the trial court err in granting the motion to dismiss the complaint because all of the alleged defamatory statements set forth in Items 10a-10r and Items 11-26, which are the basis of his cause of action, except for item 9, were made in a judicial proceeding in Case No. 2013-CP-22-0001; they have absolute privilege and cannot be the basis for an action in defamation, and, therefore, Respondent's motion to dismiss the amended complaint should be granted?

5. Did the Trial Court err in the granting of the motion to dismiss the complaint and motion to dismiss the amended complaint because Appellant had relied solely upon his pleadings, did not file any counter affidavits or motions in opposition to the Respondent's motion to dismiss the complaint and motion to dismiss the amended complaint, and otherwise failed to demonstrate that there was a genuine issue to any material fact contained in Respondent's motions?

STATEMENT OF THE CASE

1. On December 23, 2013, Plaintiff filed his Complaint for Defamation. He alleges the defamation occurred in the legal proceedings in Case No. 2013-CP-22-0001, an action for ejectment in which the trial court denied Plaintiff's Motion for Summary Judgment at the motion hearing and dismissed the case with prejudice at the trial.
2. On January 9, 2014, Defendant filed his Motion to Dismiss Plaintiff's Complaint of defamation, on the grounds that Plaintiff failed to meet the requirements set forth in Rule 12(b)(6) SCRPC and that the alleged defamation statement had absolute privilege having been made in a judicial proceeding, Case No. 2013-CP-22-0001.
3. On January 17, 2014, Defendant filed his Answer to Plaintiff's Complaint for Defamation.
4. On February 7, 2014, Plaintiff filed objections to Defendant's Motion to Dismiss Plaintiff's Complaint for Defamation; citing Rule 9 (h) SCRPC Pleading Special Matters—Libel and Slander and Rule 15 (a) SCRPC— Amended and Supplemental Pleadings, and pleading ignorance to the role of absolute privilege in legal proceedings..
5. On February 10, 2014, Plaintiff filed an Amended Complaint, in which he modified Item 3 of his original complaint by adding "**2011**" to form the phrase "That in **2011** and 2013". He added Item 9 containing what he alleged to be a defamatory statement. He also added Items 10A through 10R each containing what he alleged to be defamatory oral statements and Items 11 through 26 each containing what he alleged to be defamatory written statements, all of which, except Item 9, were made in the legal proceedings in Case No. 2013-CP-22-0001, Item 9 was made on September 1, 2011.
6. On February 11, 2014, the hearing of Defendant's Motion to Dismiss commenced but was curtailed and postponed, because Plaintiff had on the day before filed an Amended Complaint. The Judge cancelled the hearing until further notice.
7. On February 18, 2014, Defendant filed a Notice of Motion and a Motion to Dismiss Plaintiff's Amended Complaint, on the basis that Item 9 was barred by the statute-of-limitations and those Items 10A through 10R and Items 11 through 26 had absolute privilege and, therefore, could not be the basis for an action for defamation.
8. On February 20, 2014, Defendant filed an Amended Notice of Motion and a Motion to Dismiss Plaintiff's Amended Complaint, in order to correct the date on which Item 9 actually occurred.

9. On February 20, 2014, the court by mail, dated February 20, 2014, advised the Parties that the hearing was rescheduled for March 6, 2014 at 9:30 a.m. to hear Defendant's Motion to Dismiss Plaintiff's Amended Complaint.
10. On March 4, 2014, Plaintiff filed "Affidavit of Joseph N. Grate In Support of Objection To (all-to date) Defendants Dismissal Notices. Defendant did not receive Plaintiff affidavit until March 7, 2014.
11. On March 6, 2014, the rescheduled hearing of Defendant's Motion to Dismiss Plaintiff's Amended Complaint was held, before Judge Culbertson.
12. On March 12, 2014, Defendant received the Judgment in Civil Case Number 2013-CP-22- 01258, which was an action for defamation. The case was heard by Judge Culbertson, who:
"Ordered and Adjudged:
Statement of Judgment by the Court:
13. "Motion to Dismiss/Rodrigues- Granted."
14. "Motion to Dismiss Amended Complaint/Rodrigues- Granted."
15. "This order ends ... the Case."
16. Additional information: "Actions barred by the Statute of Limitations."
17. Judge Culbertson, after reviewing the case files and hearing the Defendant's and the Plaintiff's arguments at the hearing, orally dismissed the Motion to Dismiss Amended Complaint and said he agreed with Mr. Rodrigues. He then "Ordered and Adjudged: the "Motion to Dismiss/Rodrigues- Granted" and the "Motion to Dismiss Amended Complaint/Rodrigues- Granted," which action dismissed the Plaintiff's Complaint and Amended Complaint and ended the case. Judge Culbertson did so, on the basis of the three grounds in the argument presented by the Defendant.

FACTS

On December 23, 2013 Appellant filed a defamation action in Case No. 2013-CP-22-01258. In his allegation Appellant made the following allegations:

3. That in 2013, Defendant, **maliciously** and **relentlessly** , made verbal and written Defamatory Public Statements about Plaintiff, with the obvious primary intent of Defaming his character and his Personal and Professional Reputation.
4. That defendant's action is injurious to Plaintiff Professionally, as well as to his Character and to his Reputation.
5. That the Defamation is Manifestly Actionable Per Se.
6. That the Defamation is Defamatory Per Se."

In his third item for prayer for relief Appellant requested "For the Purging of all defamatory material contained at **2013-CP-22-0001**; which are substantively at issue in this case."

On January 9, 2014, Respondent filed a Motion to Dismiss Plaintiff's Complaint on two grounds. The pursuant to Rule 12(b)(6) on the grounds that Plaintiff failed "to plead sufficient facts to show the elements required to support a cause of action." In addition Respondent confirmed that the alleged defamatory statements in Items 3, 4, 5, and 6 were made in a judicial proceeding, and as such have absolute privilege and, therefore, could not be the subject of a defamation action.

On January 17, 2014, Respondent filed an Answer to Appellants Complaint, in which he requested the court to dismiss the Complaint for the same reasons set forth in his Motion to Dismiss.

On February 7, 2014, Appellant filed an Objection to Defendant's Motion to Dismiss for three reasons. In doing so, for the first two reasons he merely cited the titles of two rules of the SCRCP; the first was Rule 9(h) Pleading Special Matters—Libel and Slander and the second was Rule 15(a) Amended and Supplemental Pleadings, without setting forth their application to the case. For the third reason Plaintiff merely stated his ignorance of the application of absolute privilege in Judicial Proceedings.

On February 10, 2014, Plaintiff had filed an Amended Complaint, in which he modified Item 3 of his original complaint by adding "**2011**" to form the phrase "That in **2011** and 2013". He added Item 9 containing what he alleged to be defamatory a statement. He also added Items 10A through 10R each containing what he alleged to be defamatory oral statements and Items 11 through 26 each containing what he alleged to be defamatory written statements All of the statements except for that in item 9 were made during the course of legal proceedings in Case No, 2013-CP-22-0001 and had absolute privilege. Item 9 was made on September 1, 2011, more than two years and four months before the Amended Complaint was filed.

On February 11, 2014 the motion hearing was scheduled, but on the day before the hearing on February 10, 2014 the Plaintiff filed his Amended Complaint, which caused the trial Judge to postpone the hearing.

On February 18, 2014, Defendant filed a Notice of Motion and a Motion to Dismiss Plaintiff's Amended Complaint for defamation on the grounds that (1) the alleged defamatory statement in Item 9 of his allegations was barred by Rule 15-3-550 SCRCP that set forth the two year Statute-of-Limitations for libel and slander and (2) that) the alleged defamatory statements in Item 10A through 10R and Items 11 through 26 were made during court proceedings and had absolute privilege and, therefore, could not be used as the basis for an action for defamation.

On February 20, 2014, Defendant filed an Amended Notice of Motion and a Motion to Dismiss Plaintiff's Amended Complaint. He did so because he had obtained a Sheriff's Department Incident Report relating to Item 9 of Plaintiff's Amended Complaint confirming the actual date

of the statement as "9/1/11" contained therein. Which date confirmed that the statement was barred by Rule 15-3-550 SCRPC that set forth the two year Statute-of-Limitations for libel and slander.

The case was rescheduled to March 6, 2014 and heard on that day.

On March 4, 2014, Plaintiff filed "Affidavit of Joseph N. Grate In Support of Objection To (all-to date) Defendants Dismissal Notices. Defendant did not receive Plaintiff affidavit until March 7, 2014.

On March 6, 2014, the rescheduled hearing of Defendant's Motion to Dismiss Plaintiff's Amended Complaint was held, before Judge Culbertson. Judge Culbertson, after reviewing the case files and hearing the Defendant's and the Plaintiff's arguments, ruled "I'm going to grant the motion to dismiss. I agree with Mr. Rodrigues."

On March 12, 2014, Defendant received the Judgment in the case, in which Judge Culbertson "Ordered and Adjudged: Statement of Judgment by the Court: "Motion to Dismiss/Rodrigues- Granted." and "Motion to Dismiss Amended Complaint/Rodrigues- Granted." And that "This order ends ... the Case. Additional information: "Actions barred by the Statute of Limitations."

Judge Culbertson dismissed the Plaintiff's Complaint and Amended Complaint on the arguments set forth in Defendant's Motion to Dismiss and his Motion to Dismiss Amended Complaint and the arguments the Defendant presented at the hearing.

ARGUMENT

1. BECAUSE APPELLANT FAILED TO SET FORTH A STATEMENT OF FACTS IN HIS COMPLAINT TO MEET THE REQUIREMENTS OF RULES 8(A)(2) and 12(b)(6) OF THE SCRPC FOR AN ACTION FOR DEFAMATION IN HIS COMPLAINT, RESPONDANT'S MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.

Defendant in his Motion to Dismiss Plaintiff's Complaint cited Rules 8(a)(2) and 12(b)(6) of the SCRPC as the first of the two basis for his Motion to Dismiss. Those two rules require that In order to state a cause of action for defamation—libel or slander—the Plaintiff must plead sufficient facts to show the elements required to support a cause of action, failure to do so will entitle a defendant to a dismissal of the case. The Plaintiff in the allegations in the pleading in his complaint has failed to set forth any facts to support his cause of action. Plaintiff has failed to provide evidence regarding the following required elements of defamation: (1) any facts regarding the particular words that he alleged defendant made that were defamatory with

respect to him and that those words were not privileged. (2) any facts regarding the publication of those alleged defamatory statements and that they were not privileged,. (3) any facts that those alleged defamatory statements were false and (4) any facts that those alleged defamatory statements injured Plaintiff's personal and professional reputation. Plaintiff in his pleading in the complaint did not provide any facts to show the elements required to support a cause of action for defamation. As a consequence, the Trial Judge properly granted the Respondent's Motion to Dismiss Appellant's complaint.

Defendant in his Motion to Dismiss Plaintiff's Complaint cited the third item of Plaintiff's Prayer for relief as the second of the two basis for his Motion to Dismiss. Plaintiff in the third prayer in his pleadings in his Complaint and Amended Complaint insufficiently stated that "That in 2013, Defendant **maliciously** and **relentlessly**, made verbal and written Defamatory Public Statements about Plaintiff, with the intent of Defaming his Character, and his Personal and Professional Reputation. " However, Plaintiff in the third item in his prayer for relief made a request "For the Purging of all defamatory material contained at: 2013-CP-22-0001; which are substantively at issue in this case." From the wording of the Plaintiff's prayer for relief, it is clear that the references in Plaintiff allegations in Items 3, 4, 5, and 6 regarding defamatory statements allegedly made by the Defendant were made in a judicial proceeding and would, if made, have had absolute privilege. Defendant cited these facts as one of the two basis for his Motion to Dismiss. Case No. 2013-CP-22-0001 was an action for eviction that Plaintiff filed against the Defendant, which was "dismissed with prejudice" at the hearing before the trial began. On the basis of Plaintiff failure to meet the requirements of Rules 8(a)(2) and 12(b)(6) SCRCF, and the fact that all of the defamatory statements had absolute privilege, the Trial Judge properly granted the Respondent's Motion to Dismiss Appellant's complain

2. BECAUSE APPELLANT IN ITEM 3 OF HIS PRAYER FOR RELIEF IN HIS COMPLAINT AND ITEMS 10A-10R AND ITEMS 11-26 IN HIS AMENDED COMPLAINT ADMITTED THAT ALL OF THE ALLEGED DEFAMATORY STATEMENTS, WHICH ARE THE BASIS OF HIS CAUSE OF ACTION WERE MADE IN A JUDICIAL PROCEEDING IN CASE NO. 2013-CP-22-0001; THOSE STATEMENTS HAVE ABSOLUTE PRIVILEGE AND CANNOT BE THE BASIS FOR AN ACTION IN DEFAMATION, AND RESPONDANT'S, MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED.

With respect to Plaintiff's concern about "an important issue of consideration is whether a special provision exists, which allow for blatant malicious Defamation, with impunity." In Pond Place Partners, Inc. v. Poole, 567 S.E. 881 (S.C. App. 2002), 351 S.C. 1, the court stated that "South Carolina has long recognized that relevant pleadings, even if defamatory are absolutely privileged. *McKesson & Robbins v. Newsome*, 206 S.C. 269, 33S.E. 2d 585 (1945); *Texas Co. v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936); *Rodgers v. Wise*.193 S.C. 5, 7 S.E. 2d 517 (1940); *Sanders v. Rollison*, 33 S.C. Law (2 Strob.) 447 (1848) ... ("It is well established that

statements written or oral made by judges, attorneys, witnesses, parties or jurors in the course of a judicial proceedings, which have some relation thereto, are absolutely privileged from libel or defamation actions, even if the statements are made with malice.”); *Kropp v. Prather*, 526 S.W. 2d (Tex. Civ. App. 1975) (“Any communication, oral or written uttered [351 S.C. 24] or published in the due course of a judicial proceeding is absolutely privileged and cannot form the basis for a cause of action in libel or slander.”)

With respect to Item 3 of Plaintiff’s Objection to Defendant’s Dismissal Motion, Plaintiff states in part as follows: “Finally, with respect to Absolute Privilege or immunity from so many lies presented to any court, Plaintiff pleads total ignorance; however, an important issue of consideration is whether a special provision exists, which allow for blatant malicious Defamation, with impunity.” That statement confirms the fact that Items 3, 4, 5, and 6 referring to defamation in his allegations and Item 3 of his prayer in both his original complaint and amended complaints in this case—2013-CP-22-01258—all relate to the Court proceedings in case no. 2012-CP-22-00001.” Plaintiff in the third item in his prayer for relief made a request “For the Purging of all defamatory material contained at: 2013-CP-22-00001; which are **substantively** at issue in this case.” (Emphasis added.) From the wording of the Plaintiff’s prayer for relief, it is clear that the references in Plaintiff allegations in Items 3, 4, 5, and 6 regarding defamatory statement allegedly made by the Defendant were all made in a judicial proceeding and would, if made, have had absolute privilege. Case No. 2013-CP-22-00001 was an action for eviction that Plaintiff filed against the Defendant, which was “dismissed with prejudice” at the hearing before the trial began. ”

Plaintiff in his Amended Complaint made the two following admissions: (1) **“Defendant made verbal statements, of which every assertion was totally untrue, to the Georgetown Circuit Court, to wit:”** Items 10(A) through 10(R) of plaintiff’s amended complaint. (2) **“That Defendant submitted documents, wherein every assertion against Plaintiff are totally untrue to the Georgetown Circuit Court, to wit:”** Items 11 through 26 of plaintiff’s amended complaint.

Plaintiff in his amended complaint admits that Items 10(A) through 10(R) were oral statements made by the Defendant during court proceeding and admitted that Items 11 through 26 were written documents submitted by the Defendant during court proceeding. Plaintiff, however falsely alleged “every assertion was totally untrue.” However, Defendant swears that every one of those statements is true. The issue, herein, is not whether those assertions that occurred in the course of a judicial proceeding are untrue or true, but whether they are “absolutely privileged and cannot form the basis for a cause of action in libel or slander.” Plaintiff in his pleading in the Amended Complaint did not provide any facts to show that these alleged defamatory statements were not relevant to the action for Ejectment in Case No. 2013 –CP-22-0001. Since all of the defamatory statements—except for Item 9—had absolute privilege and, therefore could not be the basis for a cause of action in defamation and Item 9 was barred by

the two year statute-of-limitations set forth in Rule 15-3-550 SCRPC, therefore, they could not be the basis of an action in defamation. As a consequence, the Trial Judge properly granted Respondent's Motion to Dismiss the Amended Complaint.

3. BECAUSE THE ALLEGED DEFAMATORY STATEMENT IN ITEM 9 OF APPELLANTS AMENDED COMPLAINT OCCURRED ON SEPTEMBER 1, 2011, AND APPELLANT DID NOT FILE AN ACTION UNTIL DECEMBER 23, 2013, TWO YEARS AND FIVE MONTHS AFTER THE EVENT OCCURRED AND THE TWO YEAR STATUTE OF LIMITATIONS BARRED THE ACTION, RESPONDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.

Rule 15-3-550 SCRPC. Regarding statute of limitations provides that, "Within two years: (1) an action for, libel, slander, or false imprisonment; and (2) an action upon a statute for forfeiture or penalty to the state." Two year statute of limitations applies to the filing of an action for defamation involving libel or slander. Rule 15-3-550 SCRPC requires that such actions be filed within two years from the day the defamatory act occurred.

With respect to Item 9 of Plaintiff's Amended Complaint, Plaintiff did not specifically mention the time that the event occurred or provide any facts to determine the time. Item 9 of Plaintiff's Amended Complaint reads as follows: "***That That Defendant made verbal statement to the Georgetown Sherrif Department, accusing Plaintiff here-in of trespassing.***" It is noteworthy; however, that Item 9 is the only item alleging defamation in Plaintiff's amended complaint that did not occur within the Georgetown County Court's proceedings in the year 2013, as did Items 10(A) through 10(R) and Items 11 through 26 of Plaintiff's Amended Complaint. Therefore, it is reasonable to conclude that the statement contained in Item 9 occurred in the year 2011.

Defendant after the Motion hearing on February 11, 2014, when he and the Trial Judge were first made aware that Plaintiff had filed his Amended Complaint on February 10, 2011, contacted the Sheriff's Office. Defendant did so, in order to determine whether the deputy sheriffs who were involved in the incident had filed a report, and found out that an incident report had been filed. (A copy of which is attached.) That incident report indicated that the event stated in Item 9 had not occurred "on or about August 16, 2011," as set forth in Defendant's Motion to Dismiss the Amended Complaint but it had actually occurred on September 1, 2011.

The original Complaint, which did not contain Item 9 of the Amended Complaint, was filed on December 23, 2013, some four months after the statute-of-limitation had elapsed. The Amended Complaint, which contains Item 9 was filed on February 10, 2014, some six months after the statute of limitation elapsed. The statement contained in Item 9 of the Amended

Complaint having been filed after the statute-of-limitation for defamation had elapsed, could not be the subject of a court action for defamation.

Since all of the defamatory statements—except for Item 9—had absolute privilege and, therefore could not be the basis for a cause of action in defamation and Item 9 was barred by the two year statute-of-limitations set forth in Rule 15-3-550 SCRCP, therefore, they could not be the basis of an action in defamation. As a consequence, the Trial Judge properly granted Respondent’s Motion to Dismiss the Amended Complaint.

4. BECAUSE APPELLANT RELIED SOLEY UPON HIS PLEADINGS, DID NOT FILE ANY COUNTER AFFIDAVITS OR MOTIONS IN OPPOSITION TO THE RESPONDENT’S MOTION TO DISMISS THE COMPLAINT OR MOTION TO DISMISS THE AMENDED COMPLAINT AND OTHERWISE FAILED TO DEMONSTRATE THAT THERE WAS A GENUINE ISSUE TO ANY MATERIAL FACT CONTAINED IN RESPONDANT’S MOTIONS, THEREFORE, RESPONDANT’S MOTION TO DISMISS THE COMPLAINT AND MOTION TO DISMISS THE AMENDED COMPLAINT SHOULD BE GRANTED.

Plaintiff did not offer any responses to Defendants Motion to Dismiss or Motion to Dismiss the Amended Complaint that set forth any specific facts that showed a genuine issue for trial. By not filing any pleadings, depositions, answer to interrogatories, and admission on file, together with affidavits and thereby, relied solely on the pleadings in his Complaint and/or his Amended Complaint. Plaintiff by his own failure to do so did not demonstrate that there was genuine issue for trial and as a result, he denied his own self the right to have a trial. In effect, the Trial Court did not deny the Plaintiff due process, instead he denied himself of due process.

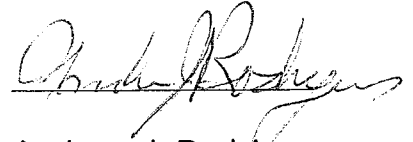
CONCLUSION

Defendant set forth two arguments why the Court dismissed Plaintiff’s Complaint. The first argument was that the Appellant did not set forth a brief statement of the facts to support an action for defamation, as required by Rules 8(a)(2) and 12(b)(6) SCRCP. The second argument was that the Plaintiff admitted that the statements he alleged to be defamatory in Item 3 of his prayer for relief were all made during the judicial proceedings in Case No. 2013-CP-22-0001. Accordingly, they were barred by absolute privilege from being used in an action for defamation and, therefore, the Trial Judge appropriately dismissed them, by granting Defendant’s Motion to Dismiss the complaint.

Defendant set forth two arguments why the Court dismissed Plaintiff’s Amended Complaint. The first argument was that the statement in Item 9 was barred by the two year statute-of-limitations for defamation, of Rule 15-3-550 SCRCP. The second argument was that the Plaintiff admitted in his amended complaint that the statements contained in Items 10A through 10R each containing what Plaintiff alleged to be defamatory oral statements and the statements in Items 11 through 26 each containing what Plaintiff alleged to be defamatory written

statements were all made during the judicial proceedings in Case No. 2013-CP-22-00001. Accordingly, they were barred by absolute privilege from being used in an action for defamation and, therefore, the Trial Judge appropriately dismissed them, by granting Defendant's Motion to Dismiss the Amended Complaint.

June 19, 2014



Andrew J. Rodrigues
481 Parkersville Rd.
Pawleys Island, SC 29585
(843) 237-9603

INCIDENT REPORT

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
INFORMATION ONLY		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	RESIDENCE/HOME		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 421 PETIGRU DR., PAWLEYS ISLAND, SC		ZIP CODE 29585-		WEAPON TYPE		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	
09/01/2011	15:40		09/01/2011	15:59	DISP. DATE	DISP. TIME
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT			RESIDENT	RACE
		#1	#2	#3		SEX
ADDRESS		CITY			STATE	ZIP CODE
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT			RESIDENT	RACE
RODRIGUES, ANDREW, J		#1	#2	#3	J	B
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
510	155	GREY	BROWN			
ADDRESS		CITY			STATE	ZIP CODE
481 PARKERSVILLE RD		PAWLEYS ISLAND			SC	29585-
VISIBLE INJURY (VCT.1) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN-				COMPLAINT OF ANY NON-VISIBLE INJURES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		
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				*J-This Jurisdiction. S-State. O-Out of State. U-Unknown.		
<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)			RACE	SEX	AGE
	GRATE, JOSEPH, N			B	M	57 / 63
<input type="checkbox"/> RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			ETH.	DATE OF BIRTH	HEIGHT
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<input type="checkbox"/> SUMMONS	DAY OF THE WEEK			HOW REPORTED		A= OFFICER DISPATCHED ON CALL
	S M T W T F S UNK			C O		D= COMPLAINT WRITTEN IN
						E= OFFICER INITIATED
						F= OTHER
						G= RESISTANCE/HOSTILITY
						H= WEAPONS
						I= UNFOUNDED CALLS
						J= MENTAL SUBJECT
						K= COMPLAINANT FREQUENTLY INTOXICATED
						L= DOMESTIC
						M= NORMAL
INFORMATION ONLY						
DIGITAL ALLY						
ON 9-1-11 AT APPROX. 1559 HOURS I, DEPUTY DELVAL, DEPUTY MCCONNELL AND DEPUTY BURBAGE RESPONDED TO 421 PETIGRU DR. (GEORGETOWN COUNTY) IN REFERENCE TO A POSSIBLE DISPUTE. UPON ARRIVAL OFFICERS SPOKE WITH THE VICTIM/COMPLAINANT, ANDREW RODRIGUES. MR. RODRIGUES STATED HE AND HIS WIFE HAVE OWNED AND OPERATED THE GULLAH MUSEUM ON PETIGRU DR. FOR MANY YEARS AND HAVE RENTED THE PROPERTY FROM THE GRATE FAMILY THE ENTIRE TIME. HE SAID TODAY (9-1-11) ONE OF THE PROPERTY OWNERS, JOSEPH N. GRATE, CAME TO THE BUSINESS AND BEGAN CAUSING PROBLEMS.						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)						TOTAL VALUE
STOLEN						0
DAMAGED						0
BURNED						0
RECOVERED						0
SEIZED						0
SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		S. F.	<input type="checkbox"/> ACTIVE <input checked="" type="checkbox"/> ADM. CLOSED	<input type="checkbox"/> ARRESTED UNDER 18
					<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY.						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
DELVAL, BRIAN		9/1/2011 3:44:00 PM	1DE83	MCCONNELL, BRANDON		
		9/1/2011 3:59:00 PM	1MC86	FOLLOWUP OFFICER		
				INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		

ADDITIONAL NARRATIVE

Agency Name: Georgetown County Sheriff	ORI #: SC0220000	Report Date/Time: 9/1/2011 3:40:00 PM	OCA #: 09110041
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MR. RODRIGUES STATED MR. GRATE HANDED HIM A LETTER STATING MR. RODRIGUES AND HIS WIFE NEEDED TO VACATE THE PREMISES IMMEDIATELY AND TAKE ALL OF THEIR PROPERTY WITH THEM. MR. RODRIGUES SAID HE ASKED MR. GRATE TO LEAVE SEVERAL TIMES AND AFTER MR. GRATE REFUSED SEVERAL TIMES HE CONTACTED THE POLICE. MR. RODRIGUES WAS ADVISED OF THE PROPER EVICTION PROCESS IF THE GRATE FAMILY DESIRED TO PURSUE THAT AVENUE. HE REQUESTED THAT MR. JOSEPH N. GRATE BE PLACED ON TRESPASS NOTICE FOR THE BUSINESS.

OFFICERS THEN ATTEMPTED TO SPEAK WITH MR. GRATE. HE REFUSED TO COOPERATE WITH OFFICERS AND ASKED OFFICERS TO GET OFF HIS PROPERTY IMMEDIATELY. HE WAS ADVISED OFFICERS WERE CONDUCTING AN INVESTIGATION AND HAD THE RIGHT TO BE THERE TO DO SO. MR. GRATE AGAIN REFUSED TO COOPERATE SO OFFICERS ADVISED HIM OF THE TRESPASS NOTICE FOR THE BUSINESS AND THE CONSEQUENCES IF HE RETURNED TO THE BUSINESS' PROPERTY WITHOUT PERMISSION.

WHILE SPEAKING WITH MR. RODRIGUES HE ADVISED THE PROPERTY THAT THE BUSINESS IS LOCATED ON IS OWNED BY JOSEPH GRATE, A BROTHER OF JOSEPH'S AND A SISTER OF JOSEPH'S. MR. RODRIGUES PROVIDED A LETTER THAT APPEARED TO BE FROM THE SISTER OF MR. GRATE STATING THAT SHE AND HER OTHER BROTHER DID NOT WANT MR. RODRIGUES OR THE BUSINESS REMOVED FROM THE PROPERTY. THE LETTER STATED THAT JOSEPH GRATE HAS MADE NO CONTRIBUTIONS IN UPKEEP OF THE PROPERTY SINCE THE PASSING OF THEIR MOTHER AND HAS CONTINUOUSLY CAUSED PROBLEMS IN THE FAMILY.

ALL PARTIES WERE ADVISED OF THE NATURE OF THIS INCIDENT BEING A CIVIL MATTER AND IF THEY DESIRED TO THEY COULD SEE JUDGE FURR TO INQUIRE ABOUT MORE OPTIONS.

NOTHING FURTHER.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEALS FROM GEORGETOWN COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case Number: 2014-000621

Joseph N. Grate,

Appellant

V.

Andrew J. Rodrigues,

Respondent

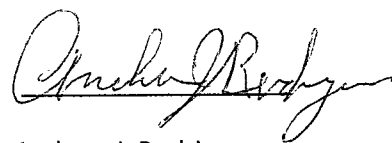
PROOF OF SERVICE

I certify that I served the Initial Brief of Respondent on Joseph N. Grate by Certified U.S. Mail on June 17, 2014, at:

P.O. Box 1294
Pawleys Island, SC 29585

June 17, 2014
gr

RECEIVED
JUN 23 2014
SC Court of Appeals



Andrew J. Rodrigue
481 Parkersville Rd.
Pawley's Island, SC 29585
(843) 237-9603

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Spartanburg, SC, 29585



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Columbia, South Carolina 29211

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