

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07273
Appellate Case No. 2014-000961

Betty J. Keitt..... Appellant,

v.

City of Columbia..... Respondent.

RECORD ON APPEAL

Julius W. Babb, IV, SC Bar #77216
J. LEWIS CROMER & ASSOCIATES, L.L.C.
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
803-799-9530
jayb@jlewiscromerlaw.com
Attorney for Appellant

W. Allen Nickles, III, SC Bar #4226
NICKLES LAW FIRM, LLC
1122 Lady Street
Columbia, South Carolina 29201
(803) 779-8080
wanickles@nickleslaw.com
Attorney for Respondent

RECEIVED
DEC 23 2014
Circuit Court of Appeals

INDEX

Order Denying Motion to Reconsider.....	1
Order Granting Defendant's Motion for Summary Judgment.....	5
Order Denying Defendant's Motion to Dismiss.....	12
Plaintiff's Complaint.....	19
Defendant's Answer and Motion to Dismiss.....	26
Transcript of the Record.....	37
Plaintiff's Proposed Order Denying Defendant City of Columbia's Motion to Dismiss.....	53
Plaintiff's Motion for Reconsideration.....	59
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.....	67
Defendant's Motion and Memorandum in Support of Summary Judgment.....	81
Memorandum in Support of Defendant's Motion to Dismiss.....	112
Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss.....	118
U.S. Equal Employment Opportunity Commission Dismissal and Notice of Rights.....	125
South Carolina Human Affairs Commission Dismissal and Notice of Right to Sue.....	128
Plaintiff's Response to Request for Admissions dated July 29, 2013.....	131
Affidavit of Pam Benjamin dated July 11, 2013 with attachment.....	147
Certificate of Appellant.....	151

Order Denying Motion to Reconsider

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2012CP4007273**

Betty J Keitt

City Of Columbia

PLAINTIFF(S)

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 1 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Julius Wistar Babb IV

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-07273

ORDER

RICHLAND COUNTY
FILED
2014 APR -1 PM 2:59
JEANETTE V. LEBRON OF
S.C. C.P. & GS.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In its Motion filed January 27, 2014, Plaintiff did not present any fact or argument that was not considered and ruled upon in the Court's Order filed January 3, 2014.

Plaintiff asserted in both her written memorandum and in her Motion for Reconsideration that reasonableness is a key component to the analysis for a claim for wrongful termination in violation of public policy that the Court did not consider. Plaintiff bases this argument upon language in *Stiles v. American General Life Insurance Co.*, 335 S.C. 222, 516 S.E.2d 449 (1999), stating that a claim for termination in violation of public policy should "provide a remedy for a clear violation of public policy where no reasonable means of redress exists." However, this statement was made in the concurring opinion of the case. There is no binding precedent in this State requiring reasonableness to be considered when analyzing a claim for wrongful termination in violation of public policy.

Relatedly, Plaintiff argues that she has no other available means of recourse. As stated in its Order, this Court disagrees; Plaintiff elected not to file suit against the City based upon other charges. Despite the Complaint only presenting a cause of action for wrongful discharge in violation of public policy, Plaintiff had other potential statutory remedies. Even if Plaintiff might not have been successful, the law is clear that if another cause of action exists pursuant to statute, this case must be dismissed. *See, e.g. Lawson v. S.C. Dep't of Corr.*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) ("[W]hen a statute creates a substantive right . . . and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy.").

Plaintiff also argues in her Motion for Reconsideration that this Court improperly relied upon unpublished opinions from the United States District Court for the District of South Carolina in the order granting summary judgment. However, these cases were merely provided as additional examples of the governing law in this State set forth in *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985), and subsequent cases.

Accordingly, this Court hereby **DENIES** Plaintiff's Motion for Reconsideration. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENÉE LEE
Presiding Judge

March 27, 2014
Columbia, South Carolina

Order Granting Defendant's Motion for Summary Judgment

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

RECEIVED

JAN 10 2014

City Of Columbia

Betty J Keitt

J. LEWIS CHOMER

& ASSOCIATES, L.L.C.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007273

PLAINTIFF(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 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
		\$
		\$
		\$

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

W. Allen Nickles III

Judge Code

Date

1/2/2014

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 7 day of Jan 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Julius Wistar Babb IV

W. Allen Nickles III

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

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2012-CP-407273

ORDER

RICHLAND COUNTY
FILED
14 JAN -3 PM 4:30
CLERK W. McBRIDE
C.P. & C.S.

This matter comes before the Court on motion of the Defendant, City of Columbia ("City"), for summary judgment seeking dismissal of all claims in this action. The City asserts that Plaintiff has failed to state a cause of action upon which relief may be granted.¹ Having considered the written materials presented by both parties, and having heard oral argument on September 5, 2013, for the following reasons, the City's motion is granted and this action is dismissed with prejudice.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRPC; Green v. Cottrell, 346 S.C. 53, 60, 550 S.E.2d 324, 328 (Ct. App. 2001); Bruce v. Durney, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000); see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d. 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.").

Under Rule 56(c), SCRPC, the party seeking summary judgment has an initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). In responding to a motion for summary judgment, a plaintiff must offer evidence that a genuine

¹ Plaintiff has withdrawn her request for punitive damages in this action.

issue of material fact exists as to each element necessary to establish the asserted claims. McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008).

RELEVANT FACTS

1. Plaintiff was formerly employed with the City as a Violations Clerk in the Municipal court, a position she held for approximately six years.

2. The City is a municipal subdivision of the State of South Carolina with a council-manager form of government. S.C. Code Ann. § 5-13-10 et seq. (Supp. 2012).

3. Plaintiff was supervised by Chief Administrative Judge Dana Turner.

4. Plaintiff filed an official written complaint with the Commission on Judicial Conduct's Office of Disciplinary Counsel ("ODC"), along with supporting documentation, on or about August 21, 2011. Plaintiff had previously reported to Human Resources complaints and concerns she had regarding Judge Turner without a resolution to her satisfaction.

5. In December 2011, ODC notified Plaintiff that it had concluded its investigation and that the final disposition was confidential.

6. Plaintiff continued to make complaints about Judge Turner to Human Resources and on June 11, 2012, emailed complaints to each City Council member and Mayor Benjamin.

7. Plaintiff was terminated for failure to follow supervisory directives and insubordination on July 3, 2012.

8. Plaintiff filed a grievance of her termination with the City. The City's Grievance Committee conducted a hearing on August 2, 2012. On or about August 13, 2012, Plaintiff was notified that the Grievance Committee upheld her termination.

9. During her employment and following her discharge, Plaintiff filed charges of discrimination with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission alleging race discrimination, age discrimination, and retaliation.

10. Plaintiff received notices of right to sue on all charges filed against the City.

11. Plaintiff did not file suit against the City on any of the charges of discrimination filed with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission.

12. Plaintiff did not file suit against the City alleging any claim under the South Carolina Whistleblower's Act arising out of the reports of alleged misconduct, unethical acts, or unlawful acts.

ad
82

13. The only suit brought by Plaintiff against the City is the present case that seeks relief only on the basis of alleged wrongful termination.

DISCUSSION

Plaintiff's only cause of action in the present case is under common law for wrongful termination in violation of public policy. (Complaint ¶¶ 24 and 25). In South Carolina, an at-will employee generally may be discharged for any reason. See generally Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 221-22, 337 S.E.2d 213, 214-15 (1985) (explaining the history and adoption of the doctrine of at-will employment in South Carolina). One exception to the rule is the common law "public policy exception." See generally id. at 223-25, 337 S.E.2d at 215-16 (adopting the exception). The South Carolina Supreme Court held that "[w]here the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises." Id. at 225, 337 S.E.2d at 216. However, there are limits to the availability of bringing a cause of action for wrongful discharge in violation of public policy. A claim for common law wrongful termination is not available to an at-will employee "where the employee has a statutory remedy." See Stiles v. American General Life Ins. Co., 335 S.C. 222, 228, 516 S.E.2d 449, 452 (1999) (citing Dockins v. Ingles Markets, Inc., 306 S.C. 496, 413 S.E.2d 18 (1992) (FLSA claim available)); Epps v. Clarendon County, Inc., 304 S.C. 424, 405 S.E.2d 386 (1991) (42 U.S.C. § 1983 claim available)). Even when the employee is not subject to at-will termination, if statutory remedies are available, no common law claim may be pursued. See Newman v. S.C. Dep't of Employment & Workforce, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010), *adopted* 2010 WL 4666360 (D.S.C. Nov. 18, 2010) (dismissing wrongful discharge cause of action based upon availability of statutory remedies even though untimely).

The affidavit of Pamela Benjamin, Human Resources Director for the City, establishes that Plaintiff filed a claim with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission alleging discrimination based upon race and age and retaliation. After her termination, Plaintiff filed a separate claim alleging her discharge was in retaliation for her previous claims. The claims were dismissed and Plaintiff received a Right to Sue letter from the Commission. Plaintiff elected not to file suit against the City on the charges despite the opportunity to do so to seek relief provided by the state and federal statutes based upon discrimination claims. Per South Carolina precedent, because Plaintiff had statutory

remedies available, her claim for common law wrongful termination in violation of public policy is precluded, and this Court must dismiss her claim.

Additionally, Plaintiff alleges that her termination was in retaliation for making reports of unethical and unlawful conduct to the City's Human Resources Department and to the Office of Disciplinary Council. (Complaint ¶¶ 6, 7, 21 and 25). The exclusive statutory remedy for adverse employment action resulting from reports of public wrongdoing or malfeasance is through the South Carolina Whistleblower's Act. See S.C. Code Ann. § 8-27-10 et seq. Plaintiff elected not to pursue any relief under this statute. Plaintiff asserts that even if she had asserted it, the Whistleblower Act would not have provided her relief because she did not meet its requirements. However, regardless of whether a cause of action arising under the statute would have been successful; Plaintiff's failure to invoke the Act prevents her from maintaining a common law claim for wrongful discharge. See Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 350 S.E.2d 259, 260 (2000).

Plaintiff argues that she did not pursue any claims in court under the Right to Sue letter because she did not think she would be successful. These arguments do not negate the fact that other statutory remedies were available to her, and she chose not to pursue those claims. Under Frazier v. Target Corp., 2009 WL 3459221 (D.S.C. Oct. 27, 2009), wrongful termination claims must be dismissed as a matter of law if another cause of action **can be stated**. See Frazier, 2009 WL 3459221, at *3; see also Lawson v. Gault, 2013 WL 2010224 (D.S.C. May 13, 2013) (requiring dismissal if an alternative claim is available). Whether the Plaintiff believes the other claims would be successful is irrelevant. The precedent is clear, and a common law cause of action for wrongful termination may not be invoked if another cause of action can be stated, regardless of whether counsel thinks it will be successful.

Plaintiff's post-termination filing of discrimination claims and her status as a former public employee demonstrate that she had the opportunity to seek relief under Title VII and 42 U.S.C. § 1983. In addition, Plaintiff had the opportunity to seek relief under the state's Whistleblower Act. As a matter of law, the availability of these potential remedies bars Plaintiff's common law cause of action for wrongful discharge.

al
#4

ORDER

The pleadings, affidavit and admissions on file confirm that Plaintiff had available remedies through the State Human Affairs Act, Title VII of the Civil Rights Act of 1991, 42 U.S.C. § 1983, and the South Carolina Whistleblower's Act, S.C. Code Ann. § 8-27-20(A). Plaintiff's failure to invoke these potential statutory remedies precludes her cause of action for common law wrongful termination. For these reasons, the City of Columbia is entitled to judgment as a matter of law pursuant to Rule 56, SCRPC, and Defendant's Motion for Summary Judgment is **GRANTED**. Accordingly, this case is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
January 2, 2014

af
#5

Order Denying Defendant's Motion to Dismiss

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007273

Betty J Keitt

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litant

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 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
		\$
		\$
		\$

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

W. Allen Nickles III

Judge Code _____

Date

4/3/2013

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 4 day of April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Tandi Ross Card

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

RECEIVED

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-4052273

ORDER ON
MOTION TO DISMISS

RICHLAND COUNTY
FILED
2013 APR -4 AM 10:10
JANETTE M. HENRIDE
C.C.P. & G.S.

This matter came before the Court on January 29, 2013 on Defendant City of Columbia's Motion to Dismiss. Present at the hearing were Tandi Card, Esquire, attorney for Plaintiff Betty J. Keitt and Allen Nickles, Esquire, counsel for Defendant City of Columbia. After considering the law, the arguments of counsel, and all matters submitted, Defendant City of Columbia's motion to dismiss filed pursuant to S.C. Rule of Civil Procedure 12(b)(6) is partially **DENIED** and partially **GRANTED**. Defendant's Motion to Dismiss Plaintiff's wrongful termination cause of action is **DENIED**. Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is **GRANTED**.

FACTS

Plaintiff Betty J. Keitt ("Keitt") worked as a Violations Clerk for Defendant City of Columbia ("City") in the Municipal court under the supervision of Chief Administrative Judge Dana Turner for approximately six years. Plaintiff alleges Judge Turner frequently instructed Plaintiff to change the dispositions of cases as announced in court to a disposition with a harsher penalty than ordered in court. Plaintiff reported concerns she had involving Judge Turner's actions to Human Resources. Plaintiff complaints were not resolved. On August 21, 2011 Plaintiff filed a written complaint and accompanying documents with the Commission on Judicial Conduct's Office of Disciplinary Counsel ("ODC") asserting Judge Turner was improperly altering the sentence and/or fines assessed against various defendants.

According to Plaintiff, on October 31, 2011 Judge Turner questioned Plaintiff regarding the ODC complaint and supplementary documents. Subsequently, Judge Turner retaliated against Plaintiff by causing Plaintiff to leave the building no later than 6:30 P.M., holding Plaintiff to a higher standard than other Violation Clerks, denying Plaintiff opportunities for

training, photographing Plaintiff's work station, and not answering or responding to Plaintiff's phone calls.

In December of 2011 Plaintiff was notified by ODC that it had concluded its investigation, and that the final disposition was confidential pursuant to the Rules for Judicial Disciplinary Enforcement. Still, Plaintiff persistently complained to Human Resources about Judge Turner. On June 11, 2012, Plaintiff emailed her concerns and complaints to each City Council member and Mayor Benjamin. Thereafter, On July 3, 2012, Plaintiff was terminated. Plaintiff filed a grievance of her termination with the City and a hearing was held on August 2, 2012. The Grievance Committee upheld her termination and Plaintiff filed a complaint against the City on October 29, 2012, alleging wrongful termination in violation of public policy. On November 19, 2012 Defendant filed an answer and motion to dismiss asserting the public policy exception is not available to Plaintiff, because S.C. Code Ann. § 8-37-10 et seq. (hereinafter "Whistleblower statute") provides Plaintiff a statutory remedy. Plaintiff now dismisses her claim for punitive damages against City.

DISCUSSION

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that a complaint may be dismissed if it fails to state facts sufficient to constitute a cause of action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Spence v. Spence*, 368 S.C. 106, 116 (2006). "The trial court must presume all well pled facts to be true." *Hunt Corp. v. Town of Lexington*, 389 S.C. 623, 632, 699 S.E.2d 699, 703 (Ct. App. 2010) (citing *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988)). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Baird v. Charleston County*, 333 S.C. 519, 527 (1999) (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)). All facts and inferences must be drawn in the light most favorable to the plaintiff. *Toussiant v. Ham*, 292 S.C. 415, 357 S.E.2d (1987). A court may grant a motion to dismiss only if the facts alleged on the face of the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

In South Carolina, an employee is presumed to be employed at-will in the absence of a specific contract of employment. *Mathis v. Brown of South Carolina, Inc.*, 389 S.C. 299, 310, 698 S.E.2d 773, 778 (2010). S.C. Code Ann. § 5-13-90(1) provides that municipal employees

are employed at-will. Although at-will employees can "be terminated at any time, for any reason, even at-will employees can bring a cause of action for wrongful termination when the employer's reason for termination violates a clear mandate of public policy. Our courts have found the public policy exception to clearly apply in cases where the employer either (1) requires the employee to violate the law, or (2) the reason for the employee's termination is itself a violation of criminal law." *Southern Glass & Plastics Co. v. Duke*, 367 S.C. 421, 431 (Ct. App. 2005) (citing *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985); *Lawson v. South Carolina Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)). The public policy exception is not available if there is an existing statutory remedy. *Barron v. Labor Finders of South Carolina*, 393 S.C. 609, 615, 713 S.E.2d 634, 637 (citing *Dockings v. Ingles Markets, Inc.*, 306 S.C. 496, 413 S.E.2d 18 (1992) (employee allegedly terminated in retaliation for filing complaint under the Fair Labor Standards Act had existing statutory remedy for wrongful termination); see *Epps v. Clarendon County*, 304 S.C. 424, 405 S.E.2d 386 (1991) (employee had an existing remedy for wrongful termination under Title 42 U.S.C. § 1983).

Defendant City asserts Plaintiff's cause of action must be dismissed because the public policy exception only applies when the employee does not have an existing statutory remedy, and Plaintiff can pursue recovery under the Whistleblower statute. The Whistleblower statute provides that an employee who is dismissed from employment within one year after having reported an alleged wrongdoing can commence a suit against the employer, if the employee has exhausted all remedies, and "any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of the alleged wrongdoing." S.C. Code Ann. § 8-27-30(A). Plaintiff filed a grievance through the Defendant's employee grievance policy and thus exhausted her administrative remedies. However, her grievance resulted in a finding upholding her termination. Therefore, the Whistleblower statute does not appear to apply.

Further, it is unclear whether Plaintiff satisfied all the other requirements of the Whistleblower statute. To bring suit under the Whistleblower statute, an employee must make a report in writing within 60 days of the alleged wrongdoing to an appropriate authority. S.C. Code Ann. § 8-27-10(4). An appropriate authority includes the public body that employs the reporting employee or the governmental body having jurisdiction over "professional conducts or

and
#3

ethics..." S.C. Code Ann. § 8-27-10(3). If the written report is not made to the employing public body, "the employing public body must be notified as soon as practicable by the entity that received the report." *Id.* The facts do not demonstrate whether Plaintiff fulfilled these requirements and thus the Whistleblower statute may not apply.

On the face of the Complaint, the facts are sufficient to allege that Plaintiff may have been wrongfully terminated in violation of a clear mandate of public policy. The public policy that the employer violated either (1) required Plaintiff to violate the law, or (2) the reason for Plaintiff's termination was itself a violation of criminal law. *Southern Glass & Plastics Co. v. Duke*, 367 S.C. 421, 431 (Ct. App. 2005). The public policy exception is not limited to those two circumstances. *Barron*, 393 S.C. at 713. "The determination of what constitutes public policy is a question of law for the courts to decide." *Barron*, 393 S.C. at 616-617 (*interpreting Citizens' Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709, 713 (1925) ("The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.")).

Plaintiff, an at-will employee, may bring suit against her employer for wrongful termination if no other remedy is available. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194 (S.C. 2001). The Whistleblower statute does not appear to provide Plaintiff an avenue of recovery. Therefore, Plaintiff may bring a suit against City for wrongful termination and Defendant's Motion to Dismiss is denied.

Additionally, Plaintiff sought an award of actual and punitive damages against the City. Pursuant to the South Carolina Tort Claims Act, a public entity cannot be held liable for punitive damages. S.C. Code Ann. § 15-78-120(b). The Plaintiff conceded that she is unable to recover punitive damages from a public body. Therefore, Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is granted.

ORDER

For the reasons set forth above it is **ORDERED** that the Defendant's Motion to Dismiss pursuant to S.C. Rule of Civil Procedure 12(b)(6) is partially **DENIED** and partially **GRANTED**. Defendant's Motion to Dismiss Plaintiff's wrongful termination cause of action is **DENIED**. Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is **GRANTED**.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 3, 2013

Plaintiff's Complaint

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-____

COMPLAINT
(Jury Trial Demanded)

2012 OCT 29 AM 11:07

The Plaintiff, complaining of the Defendant, respectfully alleges as follows:

1. The Plaintiff, Betty J. Keitt, is a citizen and resident of the County of Richland, State of South Carolina, and was at all times mentioned herein a Violations Clerk in the Municipal Court for the City of Columbia, a position she had held for approximately six years.
2. The Defendant, City of Columbia (hereinafter "City"), is a municipal subdivision of the State of South Carolina with its principal place of business in Richland County, South Carolina where it maintains and operates its municipal offices and services.
3. In her position, the Plaintiff was supervised by the Chief Administrative Judge, Dana Turner, who was Court Administrator and Chief Administrative Judge.
4. On numerous occasions, Judge Turner instructed the Plaintiff to change the documented disposition of cases that had been heard in her court earlier after ruling a certain way in open court. Such dispositions resulted in higher and stiffer penalties to the defendants than the Judge ordered in court where the defendants were present.
5. The Plaintiff questioned such actions on the part of Judge Turner and asked Judge Turner to initial all documentation that the Judge was instructing her to alter.
6. After several instances of Judge Turner improperly altering the sentence and/or fine

assessed against defendants, the Plaintiff filed an official complaint with the Commission on Judicial Conduct in or about August 2011. The Plaintiff did not make such complaint confidentially, and instead, signed her name to the complaint. The Plaintiff had previously reported to Human Resources complaints and concerns she had and others had regarding Judge Turner to no avail.

7. In her complaint, the Plaintiff presented documentation to the Office of Disciplinary Counsel ("ODC") of Judge Turner's altering of sentences and fines and the Plaintiff cooperated fully with the ODC during its investigation.
8. On or about October 31, 2011, Judge Turner called the Plaintiff in to her office to question where the Plaintiff got the documentation that was sent to ODC. It was apparent to the Plaintiff that Judge Turner had received notification of the complaint against her and was aware that the Plaintiff made such complaint.
9. After Judge Turner became aware that the Plaintiff made the complaint to ODC, Judge Turner began a ruthless and malicious campaign of retaliation against the Plaintiff.
10. The Plaintiff was held to a higher and different standards than the other Violations Clerks and was denied the opportunity to go to training that was necessary for her to perform her job duties because of her report to ODC and her reports to the City's Human Resources. When the Plaintiff needed release discharged signed, Judge Turner would refuse to answer her telephone until the Plaintiff called from another employee's extension.
11. Upon information and belief, Judge Turner began photographing the Plaintiff's work station and going through her work station, while not doing the same to other

employees' stations.

12. In December 2011, the Plaintiff was notified by the ODC that it had concluded its investigation, that her complaint was not dismissed but that the final disposition was confidential pursuant to the Rules for Judicial Disciplinary Enforcement.
13. The Plaintiff continued to make complaints about Judge Turner to the Deputy Director of Human Resources Hattie Halsay and Director of Human Resources Pamela Benjamin at their request. Her complaints to Human Resources continued until her termination from the City.
14. Judge Turner, in contravention of City policy, required the Plaintiff to submit notes from doctors if she was to be out of work one day ill. Other employees were not required to submit doctor's excuses for a single day absence.
15. Judge Turner took the two other Clerks to mandatory computer training over a period of several months beginning in January 2012 and denied the Plaintiff the opportunity to attend. The Plaintiff was expected to remain at the Clerk's Office and perform the duties without the two other Clerks to help to ensure that the citizens of Richland County to come to the Court were assisted and processed properly and timely.
16. Judge Turner issued a memorandum to the Plaintiff instructing her to be out of the Municipal Court building no later than 6:30 p.m. but did not require the other Clerks to leave by that time period. Judge Turner further instructed the Plaintiff that if she needed to be in the building after 6:30 p.m., the Plaintiff had to inform her and obtain prior consent. When the Plaintiff attempted to do so on an evening when no other Clerks were working, Judge Turner ignored the Plaintiff's telephone calls. When the Plaintiff used a different telephone extension, Judge Turner immediately answered.

17. It was known to Judge Turner and the law enforcement personnel assigned to the Court that another employee slept overnight in the building as he had been discovered in there late at night and photographs were taken of his personal clothing stashed in the Court. This employee was not issued the memorandum ordering him out of the building no later than 6:30 p.m.
18. The Plaintiff was expected to complete training and be proficient in the new computer software prior to the software being installed in July 2012, but was not allowed to attend training until the end of June 2012. The other clerks were allowed to attend the training each week from January until June.
19. After Judge Turner's continued to harass and berate the Plaintiff, including an incident on June 8, 2012 when Judge Turner harassed the Plaintiff about her daily cash reports and deposit, the Plaintiff was instructed by each Ms. Halsay and Ms. Benjamin that if a complaint concerned Judge Turner, she needed to take it to City Council because it was "over [their] head". On June 11, 2012, the Plaintiff emailed each City Council member and Mayor Benjamin about the harassment and hostile work environment that she had endured for numerous months.
20. On June 27, 2012, Judge Turner instructed the Plaintiff to stop contacting City Council about her and that she had authority to terminate the Plaintiff if she so chose. The Plaintiff notified City Council of Judge Turner's statements to her in an email the same day.
21. The Plaintiff was terminated by Judge Turner on July 3, 2012, with apparently authority from Steve Gantt, City Manager, for alleged insubordination stemming from the June 8, 2012 incident.

22. The Plaintiff filed a grievance in accordance with the City's employee grievance policy. A hearing was held before the City's Grievance Committee on August 2, 2012. On or about August 13, 2012, the Plaintiff was notified that the Grievance Committee decided to uphold her termination, thus exhausting her administrative remedies.

**FOR A FIRST CAUSE OF ACTION
(Wrongful Discharge in Violation of Public Policy)**

23. The plaintiff realleges paragraphs 1 through 22 aforesaid.

24. To punish and discharge a valued and proven employee for personal, pretextual and retaliatory purposes violates the public policy of the State of South Carolina.. The actions of the Defendant by and through Judge Turner violate a clear mandate of public policy, law and conduct when the Plaintiff was retaliated against for making reports and complaints against the Judge for potential violations of judicial ethics, due process rights of accused persons, and criminal procedures, in which such reports and complaints resulted in a malicious and hostile campaign against the Plaintiff. The Plaintiff's refusal to participate in the City's and Judge Turner's unethical acts and her reports of such behavior led to her wrongful termination in violation of public policy in this state.

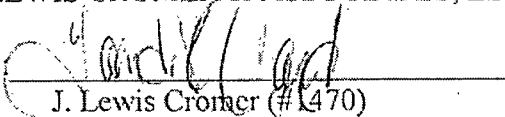
25. As a direct and proximate result of the foregoing, the plaintiff has lost her job with the City, has sustained a loss of earning capacity, retirement and other benefits, mental and emotional distress, all to great damage in an appropriate amount to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant City of Columbia in an appropriate amount of actual and punitive damages to be determined by a jury and for the

costs of this action.

J. LEWIS CROMER & ASSOCIATES, LLC

BY



J. Lewis Cromer (#470)

Tandi R. Card (#76623)

1522 Lady Street

Post Office Box 11675

Columbia, South Carolina 29211

Phone 803-799-9530

Fax 803-799-9533

Attorneys for Plaintiff

October 2nd, 2012

Defendant's Answer and Motion to Dismiss

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Betty J. Keitt)

Plaintiff,)

vs.)

City of Columbia)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-7273

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Tandi R. Card, Bar No. 76623
Address:
P. O. Box 11675, Columbia, SC 29211
Phone: 803-799-9530 Fax 803-799-9533
E-mail: Other:

Defendant's Attorney:
W. Allen Nickles, Bar No. 4226
Address:
1519 Richland Street
Phone: 803-779-8080 Fax 803-256-1816
E-mail: wanickles@nickleslaw.com Other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 30 min

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT:** \$ 255.00

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED:** \$ _____

☐ **CONTESTED - AMOUNT DUE:** \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Betty J. Keitt,)
)
Plaintiff,)
)
vs.)
)
City of Columbia,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT

Civil Action File No.: 2012-CP-40-7273

DEFENDANT'S MOTION TO DISMISS

The above-named Defendant appears before this Court to dismiss the Complaint filed October 29, 2012 and served on the Office of the City Clerk for the Defendant City of Columbia on or about October 30, 2012. Defendant's Motion to Dismiss pursuant to Rule 12(b) SCRPC includes all claims asserted by the Plaintiff, based upon the following grounds:

1. Failure to state a claim upon which relief can be granted. The Complaint asserts a wrongful termination in violation of public policy cause of action based upon Plaintiff's allegations that Defendant City terminated her for making reports and complaints of wrongdoing by her supervisor. Plaintiff's asserted cause of action is precluded by the exclusive remedy provided to Plaintiff as set forth in the Whistleblower statute, S.C. Code Ann. § 8-27-10 et seq. (Supp. 1999).

2. Failure to assert cognizable claim for punitive damages. Plaintiff cannot sustain punitive damages against a public entity.

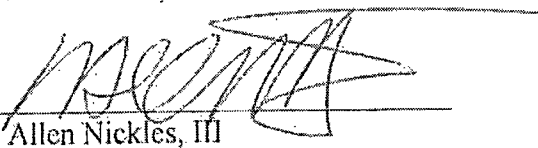
As shall be more fully set forth in written material and oral argument presented in support of this motion, each of the above grounds independently requires dismissal of this proceeding. Defendant requests this matter be scheduled for hearing at the Court's first available date.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,

NICKLES LAW FIRM, LLC

By: _____


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

November 19 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for the Defendant, hereby certify that I have served the foregoing Motion to Dismiss by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Tandi R. Card, Esquire
J. Lewis Cromer & Associates
Post Office Box 11675
Columbia, SC 29211

This 19th day of November 2012.



Paula Bregovi

Columbia, South Carolina

)

)

)

)

)

)

2

ANSWER

5. Denied.

6. Defendant admits only that Plaintiff communicated with the Human Resources Department regarding perceived mistreatment by Judge Turner and that Plaintiff filed a complaint with the Commission on Judicial Conduct. All remaining allegations of this Paragraph are denied.

7. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

8. Admitted.

9. Denied.

10. Denied.

11. Defendant admits only that Judge Turner photographed Plaintiff's work station on one occasion. All remaining allegations of this Paragraph are denied.

12. Admitted.

13. Defendant admits only that Plaintiff communicated with the Deputy Director of Human Resources and the Director of Human Resources concerning perceived unfair treatment. All other allegations of this Paragraph are denied.

14. Denied.

15. Denied.

16. Defendant admits only that Judge Turner instructed Plaintiff, verbally and in writing, regarding her work hours and directed that Plaintiff obtain authorization to remain in the workplace after hours. All remaining allegations of this Paragraph are denied.

17. Defendant admits only that a Municipal Court employee was discovered to be staying at the courthouse for long periods of time and perhaps overnight. All remaining allegations of this Paragraph are denied.

18. Denied.

19. Defendant admits only that Plaintiff communicated with City Council and the Mayor concerning perceived mistreatment. All remaining allegations of this Paragraph are denied.

20. Defendant admits only that Judge Turner met with Plaintiff on or about June 27, 2012 to discuss Plaintiff's behavior during an earlier incident. Plaintiff was informed that she was subject to discharge. Upon information and belief, Plaintiff sent an email to City Council following the meeting on June 27, 2012. All remaining allegations of this Paragraph are denied.

21. In response to the allegations of this Paragraph, Defendant craves reference to the notice of termination provided to Plaintiff. All remaining allegations of this Paragraph are denied.

22. Defendant admits only that Plaintiff presented an appeal to the City's Grievance Committee, that a hearing was held and that the City Manager accepted the recommendation by the Committee that Plaintiff's termination from employment would be upheld. All remaining allegations of this Paragraph are denied.

RESPONSE TO FIRST CAUSE OF ACTION
(Wrongful Discharge in Violation of Public Policy)

23. Defendant incorporates its response to the allegations of each of the above paragraphs as if set forth verbatim.

24. Denied.

25. Denied.

FOR A FOURTH DEFENSE
(Waiver and Estoppel)

IV. Defendant asserts that the Plaintiff's claims are barred by the doctrines of waiver and estoppel.

FOR A FIFTH DEFENSE
(No Proximate Cause)

V. The conduct of the Defendant was not the proximate cause of any damages or injuries alleged in the Complaint.

FOR A SIXTH DEFENSE
(Sovereign Immunity)

VI. Plaintiff's claims, in whole or part, are barred or limited by the doctrine of sovereign immunity as preserved in the South Carolina Tort Claims Act and the Civil Rights Act of 1991 as amended.

FOR A SEVENTH DEFENSE
(Legislative Relief)

VII. Plaintiff's claims, in whole or part, are governed by the doctrine of legislative relief. By way of illustration, Plaintiff may not seek any remedy beyond that provided by the General Assembly.

FOR AN EIGHTH DEFENSE
(Statute of Limitations)

VIII. Defendant asserts and reserves all limitations provided by law.

FOR A NINTH DEFENSE
(Workers' Compensation Act)

IX. To the extent that Plaintiff makes claims based upon alleged injuries sustained in the workplace, such claims are barred by the exclusive remedies of the South Carolina Workers' Compensation Act.

FOR A TENTH DEFENSE
(Legitimate Non-Retaliatory Basis)

X. Defendant had legitimate, non-retaliatory grounds for termination of Plaintiff's at will employment.

FOR AN ELEVENTH DEFENSE
(Punitive Damages)

XI. Pursuant to state and federal law, punitive damages are not available against this Defendant and any claims for such damages must be stricken.

FOR A TWELFTH DEFENSE
(Immunity)

XII. Defendant asserts and reserves all statutory and common law immunity, including all qualified immunity available under law.

WHEREFORE, having fully answered the Complaint herein and accompanying Motion to Dismiss, the Defendant demands that the Complaint be dismissed with prejudice, that the Defendant be awarded its costs and attorney's fees under applicable provisions of contract, statute, and rule. Defendant further requests that the Court award such other relief as deemed just and proper including, but not limited to, relief available for defense of frivolous claims and proceedings.

NICKLES LAW FIRM, LLC

By: _____


W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

Attorney for Defendant City of Columbia

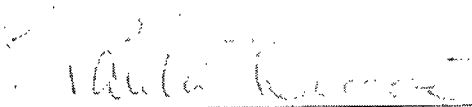
November 19, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for the Defendant, hereby certify that I have served the foregoing Answer by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Tandi R. Card, Esquire
J. Lewis Cromer & Associates
Post Office Box 11675
Columbia, SC 29211

This 19th day of November 2012.



Paula Bregovi

Columbia, South Carolina

Transcript of the Record

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2012-CP-40-7273

Betty Keitt,)
Plaintiff,)
vs.) Transcript of Record
City of Columbia,)
Defendant.)
_____)

September 5, 2013
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

Julius Wistar Babb, Esquire
Attorney for the Plaintiff

W. Allen Nickles, III, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Motion by Mr. Nickles..	3
Certificate Page.	15

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
------------	--------------------	-------------	------------

No Exhibits Introduced.

1 THE COURT: Our first case this morning is *Betty Keitt*
2 *vs. The City of Columbia*. It's docket number
3 2012-CP-40-07273. The plaintiff is represented by?

4 MR. BABB: Jay Babb, Your Honor.

5 THE COURT: Also known as Julius Babb, right?

6 MR. BABB: Yes, Your Honor.

7 THE COURT: And the defendant is represented by Allen
8 Nickles?

9 MR. NICKLES: That's correct, Your Honor.

10 THE COURT: We are here on a motion for summary
11 judgment. I received a number of documents from the
12 parties in memos, and hopefully I have everything. I've
13 got multiple copies; I probably printed out several things
14 several times. So, I'll be happy to hear you on the
15 motion.

16 MR. NICKLES: Thank you, Your Honor.

17 THE COURT: Unless there's something else.

18 MR. BABB: Your Honor, I have an extra copy of my
19 memo.

20 THE COURT: I've got them, I think, and as you all
21 make your arguments, I'll double check.

22 MR. BABB: Yes, Your Honor.

23 THE COURT: Thank you.

24 Yes, sir.

25 MR. NICKLES: Your Honor, we are before you again on

1 the matter of *Betty Keitt vs. City of Columbia*.

2 THE COURT: It was a familiar name.

3 MR. NICKLES: Yes. Ms. Keitt is a former employee of
4 the city's municipal court. She was terminated from
5 employment for insubordination back in July of 2012.
6 Thereafter, she appealed her termination to the city's
7 grievance committee. It was affirmed, and the city
8 manager, as required by law, then confirmed her
9 termination.

10 Thereafter on August the 17th, 2012, Ms. Keitt filed a
11 charge of discrimination with the State Human Affairs
12 Commission and the EEOC. This is attachment D to our
13 memorandum in support of summary judgment. Ms. Keitt, by
14 way of response to admissions, has conceded that she filed
15 this charge. It is her charge; it is her signature. She
16 did receive a notice of right to sue under this charge.

17 This document and the complaint are all we need to
18 have to dispose of this proceeding because in this charge
19 of discrimination, Ms. Keitt makes the same allegations of
20 retaliation and improper conduct as she makes in her case
21 before you.

22 Now, that's interesting for a number of reasons and
23 dispositive because our Supreme Court has decided back in
24 1991 that if you want to seek relief under the very rare
25 and narrow exception to the equitable employment doctrine

1 for wrongful termination under common law, which is the
2 only claim in this case, there must be no other claim
3 available to you.

4 Now, Ms. Keitt clearly had a claim available to her.
5 She sought relief through the State Human Affairs
6 Commission and the EEOC. They, I believe correctly, found
7 that she did not have a meritorious claim from their
8 perspective. But that did not bar her from bringing any
9 legal action under that claim.

10 In fact, I found it somewhat curious in the memo
11 opposing summary judgment that there was some inference
12 that a no-cause determination from the State Human Affairs
13 or EEOC would have a bearing on the outcome of her claim in
14 the federal court. Your Honor, I'm now defending a number
15 of no-cause terminations from Mr. Babb's own law firm in
16 federal court. So, he knows that it is not a bar to a
17 claim, and it doesn't really slow them down in bringing a
18 claim.

19 Your Honor, the plaintiff in this case concedes that
20 she had the opportunity to bring this claim. She now says,
21 well, I don't think I would have won. That is not
22 relevant. What our courts have said, it's the availability
23 of the claim, not the meritorious nature of the claim. And
24 if you look at *Epps* back in 1991, you look at *Dawkins* in
25 1992, and you look at *Styles* in 1999, all cases from our

1 Supreme Court, they've confirmed that.

2 Now, Your Honor, I have offered to you by way of
3 illustration some decisions by Judge Anderson, Judge Kane,
4 Judge Duffy, all applying state law as recently as May of
5 this year and affirmed by the Fourth Circuit, finding that
6 it's the availability of a claim under a statute that is
7 the bar to bringing a common-law wrongful termination claim
8 in South Carolina. And these are all federal judges
9 applying state law in summary judgment, motion to dismiss
10 contexts. And if you'll look at the *Epps* case back in
11 1991, that was a affirmance of summary judgment by the
12 Supreme Court on this very issue.

13 So, Your Honor, we think that this is a no-brainer.
14 That this is a situation in which a plaintiff had another
15 claim, whether or not that claim was meritorious, and that
16 that bars seeking a remedy under this very narrow exception
17 to the equitable doctrine. So, Your Honor, for these
18 reasons alone this case is ripe for summary judgment. We
19 have the admissions by the plaintiff. We've offered you
20 the affidavit of the human resource director for the City
21 of Columbia.

22 There was a mention, I think, in a footnote by
23 plaintiff's counsel that, well, we haven't done any
24 depositions. This case was filed back in October of 2012,
25 and we've had ten months to do anything, and I, you know,

1 I've been around. Been practicing law in the same building
2 since that time. Hadn't had any requests for depositions.
3 So, Your Honor, I think that we are ready, set, and go to
4 dispose of this case.

5 It would be inappropriate to impose further costs on
6 the City of Columbia to defend this case beyond this
7 proceeding, and we respectfully request that you consider
8 the draft order that we provided to you. We'd be happy to
9 modify that in any way that you see fit, but this is a
10 situation in which it is not the case that a plaintiff has
11 to show that he or she could win on a statutory claim.

12 In fact, that would turn the jurisprudence of this
13 state upside down, and what you'd have is situations where
14 you have to have trials within a trial. And so, Your
15 Honor, the procedural standpoint of this case is ripe for
16 disposition. The law is clear. There are no further facts
17 that need to be developed, and we suggest to you very
18 strongly that this is the time and the place and the moment
19 to dispose of this case.

20 If there are any questions, I'd be happy to respond.

21 THE COURT: None at this time. Thank you.

22 MR. NICKLES: Yes, ma'am.

23 MR. BABB: Your Honor, may it please the court?

24 THE COURT: Yes, sir.

25 MR. BABB: As I stated, my name is Jay Babb or Julius

1 Babb. Named by my parents.

2 But Ms. Card was the attorney previously on this case.
3 She's no longer with our firm, and so I've stepped in and
4 am now representing Ms. Keitt. I believe Ms. Card was the
5 one before you on the previous hearing for the motion to
6 dismiss.

7 Your Honor, we of course take a much different view
8 than counsel on this. Under counsel's interpretation, as I
9 view it, he is essentially asserting that even if the
10 claim, it's -- or under his view, even if the claim was
11 frivolous, even if the claim was just, just totally not a
12 valid claim, we should still bring it, and that's not what
13 the case law says, Your Honor.

14 The case law talks about an available remedy. The
15 case law, it specifically in *Dawkins* references the -- and
16 that's the case for them, they found there was an available
17 remedy under FLSA. But the court in its holding said it
18 appears there's a valid claim under the act, referring to
19 the FLSA. In other words, they're looking at the validity
20 of it, whether it's in what's being actually pled or
21 whether the plaintiff actually brought the other claim
22 within the same proceeding, in which case the plaintiff
23 brings the other claim. They certainly -- there is an
24 available remedy, whether it's valid or not. They
25 certainly would have to assert to the court under Rule 11

1 it's valid and not frivolous, thereby -- the fact that they
2 bring that claim could, could preclude it.

3 But that's not the case here. We brought only the
4 public policy discharge or wrongful termination violation
5 of policy. We haven't brought any other claims. The
6 allegations are not alleging race discrimination in
7 violation of Title VII or 1983, and it's not alleging
8 whistleblower.

9 And I feel like the whistleblower, the arguments for
10 whistleblower claim has already been addressed before this
11 court. There is nothing new that's been provided. The
12 affidavit and the admissions don't provide anything new on
13 the whistleblower. I mean, I think the law of the case is
14 that that is not an available remedy. The grievance
15 committee did not find for my client. That's sort of
16 prerequisite under the whistleblower act. Therefore,
17 that's not an available remedy; it's not a valid claim. As
18 far as the Title VII 1983 claims go, of course as I
19 mentioned earlier, there's no allegations of race
20 discrimination.

21 If you look at some of the other cases, specifically
22 the *Styles* case, it talks about the public policy exception
23 applies when an employee has no other reasonable means of
24 redress. Once again, the court looking at the
25 reasonableness, the validity of it.

1 Here we have a SHAC EEOC claim filed by the
2 complainant. There's no fault, and certainly we're not
3 asserting that no cause is an absolute bar to bringing that
4 type of claim. But it certainly can, can be determinative
5 of the reasonableness and the validity of it. And if it's
6 determined that there's no cause and it would be an invalid
7 claim or a frivolous claim, then to bring that would be a
8 violation of Rule 11 in the Frivolous Proceedings Act.
9 Therefore, we don't think that we should be required to
10 have to bring those claims just because she filed a SHAC
11 EEOC claim.

12 Your Honor, there's also some unpublished case law
13 that was cited, you know, under, under Rule 268(d)(ii) of
14 the Appellate Court Rules. There's no precedential value.
15 They're nothing but unpublished case law. We object on
16 those grounds.

17 Your Honor, just to take a quick look at another case
18 that counsel cited, the *Epps* case. In that case, the
19 plaintiff alleged a breach of employment contract in public
20 policy, discharge in violation of constitutional rights to
21 free speech and association. The court found the plaintiff
22 presented evidence that he was terminated for political
23 associations. So, in the case there is evidence or
24 allegations by the plaintiff before the court establishing
25 a valid, or at least reasonable, 1983 claim. His public

1 policy discharge claim is based on a violation of his
2 constitutional rights. Once again it's absolutely
3 different from the case at hand. We're not alleging race
4 discrimination.

5 Also counsel cited to the-- in the, in the memorandum
6 cited to the *Lawson vs. SCDC* case. In that case, the
7 plaintiff actually filed a whistleblower claim, along with
8 the wrongful termination violation of public policy, and
9 the court found that, you know, you can't have both of
10 those. I think the whistleblower claim is an available
11 remedy there. So, once again, different from this case.
12 We're not alleging those claims, have not brought those
13 claims, and we've not alleged facts that would support
14 those claims, Your Honor. So, that's our position on it.

15 We believe that this is nothing more really than an
16 extension of the motion to dismiss. Even the affidavit or
17 the admissions don't provide any new information. The SHAC
18 EEOC motion -- SHAC EEOC determinations were already
19 present. Counsel already I'm sure had those available and,
20 in fact, I think he tried to bring those in at the last
21 motion to dismiss here, and they weren't considered before
22 the court. So, Your Honor, we just feel like for those
23 reasons, the court should deny the motion for summary
24 judgment.

25 THE COURT: Any response, Mr. Nickles?

1 MR. NICKLES: Yes, Your Honor. I think it's
2 interesting that the argument by plaintiff here is that
3 this is not a bar, statutory bar case. This is a
4 plaintiff's choice case. That's what the argument is. If
5 I have other claims and I choose not to bring them, then I
6 can avoid the statutory bar by asserting, well, I didn't
7 bring those claims. Your Honor, that's not the law.

8 What the law is, that if you have the availability of
9 a claim, you can't seek this remedy. It doesn't compel
10 this plaintiff to bring a frivolous claim. It just means
11 that you can't bring this claim.

12 Now, we're not saying Mr. Babb or his law firm was
13 compelled to bring a Title VII claim. Far be it, but it's
14 the availability of that claim -- not the merits or lack
15 thereof -- that bars the access to this common law relief.

16 And, Your Honor, if you look at the *Bradley* case,
17 Judge Anderson's case, I know that there's an argument by
18 counsel that this shouldn't be considered. But, Your
19 Honor, unpublished decisions of the district courts in this
20 jurisdiction are considered since 2007. I've argued them
21 to the South Carolina Supreme Court without objection.
22 They are there to be considered. Whether you give them any
23 weight or not of course is your prerogative.

24 But what this case says is very clear, and it says
25 that where you have an available claim and you don't bring

1 it, your wrongful termination claim is barred. And if you
2 look at the *Bradley* case, these other cases I've cited to
3 you, you will see that in those claims where other claims
4 were brought, those were also dismissed as being not
5 meritorious. It didn't -- the court didn't say oh, and now
6 for -- because these were not meritorious, you can go back
7 and bring a wrongful termination claim. That's essentially
8 the argument in this case: that we'll make a decision. We,
9 the plaintiff, will make a decision that we don't want to
10 pursue this statutory remedy and, therefore, avoid the bar
11 and bring this claim under common law. The Supreme Court
12 has said no. The district courts of this state have
13 repeatedly said no. That's not your option; it's not your
14 choice.

15 Your Honor, I think this case is clear. Had she
16 wished to bring a claim under Title VII, she could have.
17 Obviously she, with counsel's advice, made the right
18 decision not to do so, but it doesn't then give her access
19 to a common law claim that didn't otherwise exist. Thank
20 you.

21 THE COURT: What I will do is I will review all the
22 materials that you've given and provided, and I have two
23 memos, and I some letters in response to the various memos
24 with case law attached. And I'll review all of that and
25 write a brief order or use a proposed order that may have

1 been provided and edit it appropriately.

2 MR. NICKLES: Thank you very much.

3 MR. BABB: Your Honor, we haven't provided an order
4 yet. We provided a memorandum in opposition. If Your
5 Honor wants it, we could certainly provide a proposed
6 order.

7 THE COURT: And if I determine that it will be
8 appropriate, I may take portions of that memo and turn it
9 into an order, but I will review it again. I either use
10 the order or I use the memo, whichever is convenient to me.

11 MR. BABB: I understand, Your Honor. Thank you.
12 Thank you very much.

13 THE COURT: Thank you.

14 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 5TH DAY OF SEPTEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 22ND, 2014

Plaintiff's Proposed Order Denying Defendant City of Columbia's Motion to Dismiss

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-7273

**ORDER DENYING DEFENDANT
CITY OF COLUMBIA'S
MOTION TO DISMISS**

This matter comes before the Court on Defendant City of Columbia's Motion to Dismiss filed pursuant to S.C. Rules of Civil Procedure, Rule 12(b)(6). For the following reasons, the Defendant's motion is hereby DENIED.

STATEMENT OF THE PLEADINGS

The Plaintiff asserted a single cause of action against the Defendant for Wrongful Termination in Violation of Public Policy stemming from her termination from her position with the Defendant. The Plaintiff was employed as a Violations Clerk in Municipal Court. (Compl. ¶ 1). The Plaintiff's supervisor was the Chief Administrative Judge, Judge Turner, who instructed the Plaintiff to change the "documented disposition of cases" and impose higher penalties on defendants than those previously ordered in court. (Compl. ¶¶ 3-4). After numerous instances of Judge Turner altering the sentence and/or fine of defendants, the Plaintiff filed a complaint with the Commission of Judicial Conduct in or about August 2011. (Compl. ¶ 6). The Plaintiff cooperated with the Office of Disciplinary Counsel's (hereinafter "ODC") investigation and it became known to Judge Turner that the Plaintiff was participating in the investigation because Judge Turner questioned the Plaintiff as to where the Plaintiff got the documentation that was sent to ODC. (Compl. ¶ 8).

The Plaintiff was then retaliated against by Judge Turner and held to different and higher

standards than her counter-parts. (Compl. ¶¶ 9-11, 14-18). On July 3, 2012, the Plaintiff was terminated for pretextual reasons. (Compl. ¶ 21). The Plaintiff filed a grievance in accordance with the Defendant's employee grievance policy. (Compl. ¶ 22). The Plaintiff was notified on or about August 13, 2012 that the Defendant's Grievance Committee voted to uphold her termination. (Compl. ¶ 22).

STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 116 (2006); Baird v. Charleston County, 333 S.C. 519, 527 (1999). A court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Baird, 333 S.C. at 527 (citing Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)). "[A] ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff." Williams, 347 S.C. at 233. If, in viewing the facts and inferences reasonably drawn therefrom in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory of the case, then the Rule 12(b)(6) motion to dismiss should be denied. Baird, 333 S.C. at 511; Gentry v. Yonce, 337 S.C. 1, 5 (1999); and Stiles, 318 S.C. at 300. Looking at facts in the light most favorable to plaintiff, and with all doubts resolved in her behalf, the court must consider whether the pleadings articulate any valid claim for relief. Id.

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The court may grant

a motion to dismiss only if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

LEGAL ANALYSIS

A. Wrongful Termination in Violation of Public Policy claim

The Defendant seeks dismissal on the grounds the facts alleged in the Complaint cannot support the Plaintiff's cause of action for wrongful termination in violation of public policy. For the following reasons, the Defendant's Motion to Dismiss is denied.

South Carolina follows the doctrine of employment at will, wherein an employee can be terminated for any reason or no reason; however, an exception exists when the employer violates a clear mandate of public policy. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). As the Supreme Court clearly has identified, the public policy exception to at-will employment applies when “(1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law.” Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011) (citing Ludwick, 287 S.C. at 219; Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992) (employee was terminated after he refused to contribute to political action fund, and his termination violated S.C. Code Ann. §16-17-560)). Barron refused to limit the public policy exception to those two specific circumstances. Instead, the Court held that the public policy exception applies to circumstances beyond an employer asking an employee to violate the law or where the reason for the termination itself violates the law. Id.

The case law is clear that the public policy exception only applies when the employee does not have an existing statutory remedy. See Dockins v. Ingles Market, Inc., 306 S.C. 496, 413, S.E.2d 18 (1992). The Defendant argues that the Plaintiff has the existing remedy of

violation of the South Carolina Whistleblower statute (hereinafter “Whistleblower statute”), S.C. Code Ann. § 8-27-10 et seq. (Supp. 1999). Def. Mem. Supp. 1.

The Plaintiff, however, does not meet the various statutory requirements for remedy under the Whistleblower statute. First, the Whistleblower statute requires an employee to make a *written report within 60 days* of learning of the alleged wrongdoing. S.C. Code Ann. § 8-27-10(4). (emphasis added). Second, the written report must be made to an “appropriate authority.” An “appropriate authority” includes the public body that employs the reporting employee or the governmental body having jurisdiction over, among other things, “professional conducts or ethics” Id. at subsection (3). The statute requires that if the report is not made to the employing public body, “the employing public body must be notified as soon as practicable by the entity that received the report.” Id.

The Complaint does not state that the Plaintiff’s complaint to the Commission on Judicial Conduct was made within the statutorily required 60 days of the Plaintiff learning of the alleged violation. (Compl. ¶¶ 6-7). Further, the Complaint states that while she signed her name to the complaint to the Commission on Judicial Conduct, seemingly indicating the report was in writing, the Plaintiff “previously reported to Human Resources.” Id. at ¶ 6. The Complaint does not state whether the reports to Human Resources were in person or in writing, nor whether Human Resources for the City of Columbia is an “appropriate authority” within the terms of the statute for reporting alleged misconduct of a judge. Id.

Third, the Whistleblower statute requires a the public employee to exhaust all administrative remedies. S.C. Code Ann. § 8-27-30(A). And finally, such exhaustion of administrative remedies must result in a finding that “the employee would not have been disciplined but for the reporting of an alleged wrongdoing.” Id. The Plaintiff grieved her

termination through the Defendant's employee grievance policy thus exhausting her administrative remedies. However, her grievance resulted in a finding upholding her termination. (Compl. ¶ 22).

A grant of the Defendant's Motion to Dismiss is improper at this stage because on the face of the Complaint, by which this Court's review is limited, it is not clear that there is no theory of law under which the Plaintiff can prevail. Tatum, 346 S.C. at 194. Discovery is necessarily to fully establish the facts of the case.

B. Punitive Damages claim

Plaintiff sought an award of actual and punitive damages against the City. Pursuant to the South Carolina Tort Claims Act, a public entity cannot be held liable for punitive damages. S.C. Code Ann. § 15-78-120(b) (2012). The Plaintiff conceded in her memorandum in opposition to summary judgment that she is unable to recover punitive damages from a public body. Therefore, Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is granted.

ORDER

For the foregoing reasons, the Defendant's Motion to Dismiss is partially DENIED and partially GRANTED. Defendant's Motion to Dismiss Plaintiff's wrongful termination cause of action is DENIED. Defendant's motion to dismiss Plaintiff's claim for punitive damages is GRANTED. The parties are to proceed with discovery as to Plaintiff's cause of action for Wrongful Termination in Violation of Public Policy.

AND IT IS SO ORDERED.

Alison R. Lee
Circuit Court Judge
Fifth Judicial Circuit

January __, 2013
Columbia, South Carolina

Plaintiff's Motion for Reconsideration

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

CASE NO.: 2012-CP-40-7273

Betty J. Keitt)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

City of Columbia)

Defendant.)

Plaintiff's Attorney: Julius W. Babb, IV, Bar No. 77216 Address: 1522 Lady St, Columbia, SC 29201 Phone: 803-799-9530 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: W. Allen Nickles, III, Bar No. _____ Address: 1519 Richland St, Columbia, SC 29201 Phone: 803-779-8080 Fax _____ E-mail: _____ Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 1/27/14 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Betty J. Keitt)
)
Plaintiff,)
)
vs.)
)
City of Columbia)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-40-7273

**PLAINTIFF'S MOTION
FOR RECONSIDERATION**

2014 JAN 27 PM 1:41

Pursuant to SCRCP Rule 59(e), the Plaintiff, through her undersigned counsel, asks this Honorable Court to reconsider and set aside its January 2, 2014,¹ order granting Defendant's Motion for Summary Judgment (the "Order"). The order granting summary judgment should be set aside as Defendant has failed to establish that there was another remedy available such that the public policy discharge claim should be dismissed. The Affidavit of Pamela Benjamin and Plaintiff's Admissions that are proffered by Defendant do not establish that the alleged alternative remedies are actually available and viable remedies; nor does the precedential case law establish that the Plaintiff in this case had another reasonable remedy available or viable. Accordingly, Defendant fails to establish that there is no genuine issue as to any material fact or that summary judgment should be granted as a matter of law.

DISCUSSION

The Order Granting Defendant's Motion for Summary Judgment should be denied based upon the reasons set forth herein. Plaintiff further relies upon her Memorandum in Opposition to

¹ The Order was filed on January 3, 2013. Written notice of the Order was received by Plaintiff on January 16, 2014.

Defendant's Motion for Summary Judgment and her Memorandum in Opposition to Defendant's Motion to Dismiss.

Plaintiff has alleged an action for wrongful termination in violation of public policy. (Complaint ¶¶ 24 and 25).² Although South Carolina follows the doctrine of employment at will, wherein an employee can be terminated for any reason or no reason, an exception exists when the employer violates a clear mandate of public policy. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). As the Court clearly has identified, the public policy exception to at-will employment applies when “(1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law.” Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011) (citing Ludwick, 287 S.C. at 219; Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992) (employee was terminated after he refused to contribute to political action fund, and his termination violated S.C. Code Ann. §16-17-560)). Barron, however, refused to limit the public policy exception to those two limited circumstances. Instead, the Court held that the public policy exception applies to circumstances beyond an employer asking an employee to violate the law or where the reason for the termination itself violates the law. Id.

The Court discusses several cases to support the finding that a wrongful discharge in violation of public policy claim is not available to an at-will employee “where the employee has a statutory remedy.” (Order, p. 3)(citing Stiles v. American General Life Insurance Co., 335 S.C. 222, 228, 516 S.E.2d 449, 452 (1999) (citing Dockins v. Ingles Markets, Inc., 306 S.C. 496, 413 S.E.2d 18 (1992); Epps v. Clarendon County, 304 S.C. 424, 405 S.E.2d 386 (1991))).

² As an initial matter, Plaintiff argues that summary judgment should not be granted as this motion is premature. While initial written discovery has been conducted, no depositions have been taken at this stage.

In Stiles, the court held that a claim for termination in violation of public policy should “provide a remedy for a clear violation of public policy where no other *reasonable* means of redress exist.” Stiles, 335 S.C. at 228, 516 S.E.2d at 452 (1999) (*Emphasis added*). Thus Reasonableness is a key component to the analysis.

In Dockins, the plaintiff filed a wrongful termination claim for being terminated for filing a complaint of violations of the Fair Labor Standards with the United States Department of Labor. That court found there was a “valid claim” under the FLSA; and that court also refused to extend the public policy exception (which we now know is not so limited per the Barron case). This case differs from the current action, as the plaintiff in that action articulated a claim for retaliation under the FLSA but instead brought it as a wrongful discharge claim. In the present action, the Complaint does not articulate racial motivations nor does it allege retaliation for filing discrimination complaints with the EEOC or SHAC.

In Epps, that plaintiff actually brought a claim for wrongful discharge in violation of his constitutional rights to free speech and association. Again, the case is distinguishable from the present action for the same reasons addressed in the preceding paragraph, as that plaintiff specifically plead all the elements necessary for a 42 U.S.C. § 1983 claim yet called it a claim for wrongful discharge in violation of public policy.

Finally, the Court cites to an unpublished magistrate’s report and recommendation and district judge order in federal district court. (Order, p. 3) (citing Newman v. S.C. Dep’t of Employment & Workforce, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010), *adopted* 2010 WL 4666360 (D.S.C. Nov. 18, 2010)). The Court further cites to other unpublished federal opinions to support the Order. (Order, p. 4)(citing Frazier v. Target Corp., 2009 WL 3459221 (D.S.C. Oct. 27, 2009); Lawson v. Gault, 2013 WL 2010224 (D.S.C. May 13, 2013)). As an initial

matter, these cases are unpublished and arise in federal court, thus they hold no precedential value and should not have been relied upon by the Court in support of the Order. Rule 268(d)(2), SCACR. Subject to that objection, this case again is distinguishable from the present action for the reasons addressed herein as well as the previous memoranda filed by Plaintiff in this action.³

This action is distinguishable from the other cases addressed above. The Complaint does not allege facts that would support a discrimination or retaliation claim under Title VII, 42 U.S.C. § 1983 or the South Carolina Human Affairs law. Moreover, the EEOC/SHAC investigated the claims and dismissed for no cause found to support the allegations in the charge of discrimination. While this in and of itself does not preclude a lawsuit since a right to sue is issued, it certainly is reasonable that Plaintiff and her attorney would believe that other motivations led to the termination outside of those under Title VII, S.C. Human Affairs Law or 42 U.S.C. § 1983. The Complaint alleges retaliation that clearly violates the public policy of South Carolina and supports the Plaintiff's single claim for wrongful discharge in violation of public policy.

The Court also found that the Plaintiff has an existing remedy under the South Carolina Whistleblower statute (hereinafter "Whistleblower statute"), S.C. Code Ann. § 8-27-10 et seq. (Order, p. 4). First, this same argument was addressed in the Defendant's motion to dismiss and the honorable Judge Lee found that the Whistleblower statute does not provide an avenue of relief by way of an Order dated April 3, 2013. There has been no additional evidence presented that would alter this legal decision, yet the Court has now issued an Order with the opposite holding. The previous order should be the law of the case and summary judgment should be

³ For example, in both the Lawson v. Gault and Frazier v. Target Corp. cases, the plaintiffs brought other claims for retaliation in addition to the wrongful discharge in violation of public policy and tried to argue that they could bring these claims in the alternative. In the present action, Plaintiff brings no such other claims.

denied. Second, the Plaintiff does not have an available remedy under the Whistleblower statute for the reasons previously addressed in the Plaintiff's memoranda at both the motion to dismiss and motion for summary judgment stages. The Whistleblower statute states, "No action may be brought under this chapter unless (1) the employee has exhausted all available grievance or other administrative remedies; and (2) any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing." The Plaintiff exhausted her administrative remedies through the grievance process, however the termination was upheld. The Court found that "regardless of whether a cause of action arising under the statute would have been successful, Plaintiff's failure to invoke the Act prevents her from maintaining a common law claim for wrongful discharge." (Order, p. 4). This finding is in error, as it would be impossible to invoke the Whistleblower statute since the grievance upheld the termination and the statute clearly says "[n]o action may be brought under this chapter" unless the previous proceeding found the employee would not have been terminated but for the report. There was no failure to invoke the Act. Accordingly, the Defendant's motion for summary judgment should be denied.

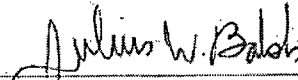
CONCLUSION

For the reasons stated above, Plaintiff has provided sufficient grounds upon which the Court should grant the Plaintiff's 59(e) motion. The Plaintiff respectfully requests that the Court alter the Order and DENY the Defendant's Motion for Summary Judgment.

[Signature Block on Following Page]

J. LEWIS CROMER AND ASSOCIATES, LLC

BY:



J. Lewis Cromer (#1470)

Julius W. Babb, IV (#77216)

1522 Lady Street

Columbia, South Carolina 29201

Phone 803-799-9530

Fax 803-799-9533

January 27, 2014
Columbia, SC

Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-7273

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

2013 AUG 29 PM 2:24

The Plaintiff, Betty J. Keitt, by and through her undersigned counsel, requests that this Honorable Court deny the Defendant, City of Columbia's, Motion for Summary Judgment filed pursuant to South Carolina Rule of Civil Procedure 56. The Defendant's motion should be denied for the following reasons:

STATEMENT OF THE CASE

The Plaintiff asserted a single cause of action against the Defendant for Wrongful Termination in Violation of Public Policy stemming from her termination from her position with the Defendant. The Plaintiff was employed as a Violations Clerk in Municipal Court. (Compl. ¶ 1). The Plaintiff's supervisor was the Chief Administrative Judge, Judge Turner, who instructed the Plaintiff to change the "documented disposition of cases" and impose higher penalties on defendants than those previously ordered in court. (Compl. ¶¶ 3-4). After numerous instances of Judge Turner altering the sentence and/or fine of defendants, the Plaintiff filed a complaint with the Commission of Judicial Conduct in or about August 2011. (Compl. ¶ 6). The Plaintiff cooperated with the Office of Disciplinary Counsel's (hereinafter "ODC") investigation and it became known to Judge Turner that the Plaintiff was participating in the investigation because Judge Turner questioned the Plaintiff as to where the Plaintiff got the documentation that was

sent to ODC. (Compl. ¶ 8).

The Plaintiff was then retaliated against by Judge Turner and held to different and higher standards than her counter-parts. (Compl. ¶¶ 9-11, 14-18). On July 3, 2012, the Plaintiff was terminated for pretextual reasons. (Compl. ¶ 21). The Plaintiff filed a grievance in accordance with the Defendant's employee grievance policy. (Compl. ¶ 22). The Plaintiff was notified on or about August 13, 2012, that the Defendant's Grievance Committee voted to uphold her termination. (Compl. ¶ 22).

STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings and evidence "together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Englert, Inc. v. LeafGaurd USA, Inc., 377 S.C. 129, 134, 659 S.E. 2d 496, 498 (S.C. 2008) (quoting Rule 56(c), SCRPC). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Wilson v. Style Crest Prods., Inc., 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), *reh'g denied* (Mar. 18, 2009).

ARGUMENT

The Defendant's Motion for Summary Judgment should be denied because the facts in the record would allow a reasonable jury to find that the Plaintiff was terminated in violation of

public policy.¹ Although South Carolina follows the doctrine of employment at will, wherein an employee can be terminated for any reason or no reason, an exception exists when the employer violates a clear mandate of public policy. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). As the Court clearly has identified, the public policy exception to at-will employment applies when “(1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law.” Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011) (citing Ludwick, 287 S.C. at 219; Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992) (employee was terminated after he refused to contribute to political action fund, and his termination violated S.C. Code Ann. §16-17-560)). Barron, however, refused to limit the public policy exception to those two limited circumstances. Instead, the Court held that the public policy exception applies to circumstances beyond an employer asking an employee to violate the law or where the reason for the termination itself violates the law. Id.

The Court is clear that the public policy exception applies when the employee does not have any other reasonable means of redress. *See* Stiles v. American General Life Insurance Co., 335 S.C. 222, 228, 516 S.E.2d 449, 452 (1999). Defendant argues that the Plaintiff has an existing remedy of violation of the South Carolina Whistleblower statute (hereinafter “Whistleblower statute”), S.C. Code Ann. § 8-27-10 et seq. (Supp. 1999). [Def. Mot. 1-2]. However, as Plaintiff has already pointed out at the Motion to Dismiss stage, Plaintiff does not meet the statutory requirements for remedy under the Whistleblower statute. In support of this, Plaintiff includes by reference and incorporates herein Plaintiff's Memorandum in Opposition to

¹ As an initial matter, Plaintiff argues that summary judgment should not be granted as this motion is premature. While initial written discovery has been conducted, no depositions have been taken at this stage.

Defendant's Motion to Dismiss that was filed on January 23, 2013.

Defendant previously raised this same argument in their Motion to Dismiss, which this very Court denied. In its Order on the Motion to Dismiss, this Court stated that the Whistleblower statute does not appear to apply to the Plaintiff. [Order p. 3] Plaintiff has attached a copy of the Order to this Memorandum. (Attachment A). No additional evidence has been introduced that would alter or change the Court's decision thus this argument fails. A reintroduction of the same defense in this separate motion is improper and this motion should be denied.

Defendant further states that Plaintiff had available remedies through the State Human Affairs Act, Title VII of the Civil Rights Act of 1991, and 42 U.S.C. § 1983. [Def. Mot. 2]. Defendant apparently bases this assertion on the fact that Plaintiff filed charges of discrimination with the South Carolina Human Affairs Commission (SHAC) and Equal Employment Opportunity Commission (EEOC) alleging race discrimination and retaliation.² However, such charges were filed early in this matter prior to any lawsuit and based on Plaintiff's belief at that time that may have been one of the reasons she was terminated. The SHAC conducted an investigation and subsequently issued a Dismissal and Notice of Right to Sue finding No cause as to the violations; and the SHAC findings were adopted by the EEOC. [Def. Mot. Attachments

² Defendant's motion for summary judgment should be denied for failure to raise the alleged defenses of alternate available remedies under the State Human Affairs Act, Title VII, and §1983 pursuant to Rule 12(g), SCRCPP. Rule 12(g), SCRCPP, states that "If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted." The Affidavit of Pamela Benjamin and Plaintiff's Admissions do not provide any new or additional information available to the Defendant that was otherwise unavailable at the time the motion to dismiss was filed. Defendant's motion, while purporting to be under Rule 56, SCRCPP, essentially is a 12(b)(6) motion in disguise. Defendant's failure to raise these defenses in the previous motion should prevent Defendant from now asserting them in a subsequent motion.

E & F]. Prior to drafting the Complaint, Plaintiff and her counsel determined that there was not a valid cause of action under Title VII or § 1983. However, based on the allegations which have been set forth in the Complaint, there is a valid claim for wrongful termination in violation of public policy. Defendant's position that a claim must be brought just because there was an SHAC/EEOC investigation resulting in a no cause finding is unreasonable. Such a requirement would force plaintiffs to file frivolous claims that could be in violation of Rule 11, SCRCP and the Frivolous Proceedings Act.

A claim for termination in violation of public policy should "provide a remedy for a clear violation of public policy where no other *reasonable* means of redress exist." Stiles, 335 S.C. at 228, 516 S.E.2d at 452 (1999) (*Emphasis added*). However, this limitation on public policy claims should not be interpreted to require a plaintiff to bring claims that his or her counsel has determined to be invalid or even frivolous. Therefore, the alternative remedies that Defendant suggests are not reasonable means of redress.

In support of their position, Defendant cites to various cases which are clearly distinguishable from the current case.³ In most of the cited cases where the court found the public policy discharge claim was improper due to other available remedies, that plaintiff brought another cause of action in the complaint that was determined to be an alternative remedy. The present case is distinguishable, wherein Plaintiff has only brought one cause of action for wrongful discharge in violation for public policy. Some of the cases also found that there were alternative remedies available even though they were not pled in the complaint. Once again, these cases are distinguishable as the Plaintiff in the present case does not allege facts to

³ Defendant's motion and supporting memorandum include cites to unpublished cases. Pursuant to Rule 268(d)(2) of the South Carolina Appellate Court Rules, "unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."

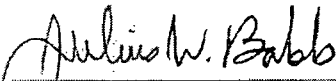
support other available remedies, nor are such facts in evidence before this Court. For example, the Complaint does not allege that Plaintiff was terminated for racial reasons in violation of Title VII or § 1983, nor does it allege the requirements and *prima facie* elements for a claim under the Whistleblower statute. Defendant has failed to establish that there was another remedy available such that the public policy discharge claim should be dismissed. The Affidavit of Pamela Benjamin and Plaintiff's Admissions that are proffered by Defendant do not establish that the alleged alternative remedies are actually available and viable remedies, thus Defendant fails to establish that there is no genuine issue as to any material fact or that summary judgment should be granted as a matter of law.

CONCLUSION

For the reasons set forth herein, the Defendant's Motion for Summary Judgment should be denied and this case allowed to proceed with further discovery and trial.

Respectfully submitted,

J. LEWIS CROMER & ASSOCIATES, LLC



Julius W. Babb, IV (#77216)

J. Lewis Cromer (#1470)

1522 Lady Street

Columbia, South Carolina 29201

Phone 803-799-9530

Fax 803-799-9533

August 28, 2013

Columbia, South Carolina

ATTACHMENT A

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2012CP4007273

Betty J Keitt

City Of Columbia

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Liant

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(i), 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 RESPONS'BLE 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
		\$
		\$
		\$
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 W. Allen Nickles III

Judge Code _____

Date

4/3/2013

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of April, 20 13 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of April, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Tandl Ross Card

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

RECEIVED

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

v.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-4052273

ORDER ON
MOTION TO DISMISS

RICHLAND COUNTY, SC
FILED
2013 APR -4 AM 10:10
JANETTE W. HARRIS
Clerk, S.C. J.C.P.

This matter came before the Court on January 29, 2013 on Defendant City of Columbia's Motion to Dismiss. Present at the hearing were Tandi Card, Esquire, attorney for Plaintiff Betty J. Keitt and Allen Nickles, Esquire, counsel for Defendant City of Columbia. After considering the law, the arguments of counsel, and all matters submitted, Defendant City of Columbia's motion to dismiss filed pursuant to S.C. Rule of Civil Procedure 12(b)(6) is partially **DENIED** and partially **GRANTED**. Defendant's Motion to Dismiss Plaintiff's wrongful termination cause of action is **DENIED**. Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is **GRANTED**.

FACTS

Plaintiff Betty J. Keitt ("Keitt") worked as a Violations Clerk for Defendant City of Columbia ("City") in the Municipal court under the supervision of Chief Administrative Judge Dana Turner for approximately six years. Plaintiff alleges Judge Turner frequently instructed Plaintiff to change the dispositions of cases as announced in court to a disposition with a harsher penalty than ordered in court. Plaintiff reported concerns she had involving Judge Turner's actions to Human Resources. Plaintiff complaints were not resolved. On August 21, 2011 Plaintiff filed a written complaint and accompanying documents with the Commission on Judicial Conduct's Office of Disciplinary Counsel ("ODC") asserting Judge Turner was improperly altering the sentence and/or fines assessed against various defendants.

According to Plaintiff, on October 31, 2011 Judge Turner questioned Plaintiff regarding the ODC complaint and supplementary documents. Subsequently, Judge Turner retaliated against Plaintiff by causing Plaintiff to leave the building no later than 6:30 P.M., holding Plaintiff to a higher standard than other Violation Clerks, denying Plaintiff opportunities for

ad
#1

training, photographing Plaintiff's work station, and not answering or responding to Plaintiff's phone calls.

In December of 2011 Plaintiff was notified by ODC that it had concluded its investigation, and that the final disposition was confidential pursuant to the Rules for Judicial Disciplinary Enforcement. Still, Plaintiff persistently complained to Human Resources about Judge Turner. On June 11, 2012, Plaintiff emailed her concerns and complaints to each City Council member and Mayor Benjamin. Thereafter, On July 3, 2012, Plaintiff was terminated. Plaintiff filed a grievance of her termination with the City and a hearing was held on August 2, 2012. The Grievance Committee upheld her termination and Plaintiff filed a complaint against the City on October 29, 2012, alleging wrongful termination in violation of public policy. On November 19, 2012 Defendant filed an answer and motion to dismiss asserting the public policy exception is not available to Plaintiff, because S.C. Code Ann. § 8-37-10 et seq. (hereinafter "Whistleblower statute") provides Plaintiff a statutory remedy. Plaintiff now dismisses her claim for punitive damages against City.

DISCUSSION

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that a complaint may be dismissed if it fails to state facts sufficient to constitute a cause of action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Spence v. Spence*, 368 S.C. 106, 116 (2006). "The trial court must presume all well pled facts to be true." *Hunt Corp. v. Town of Lexington*, 389 S.C. 623, 632, 699 S.E.2d 699, 703 (Ct. App. 2010) (citing *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988)). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Baird v. Charleston County*, 333 S.C. 519, 527 (1999) (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)). All facts and inferences must be drawn in the light most favorable to the plaintiff. *Toussiant v. Ham*, 292 S.C. 415, 357 S.E.2d (1987). A court may grant a motion to dismiss only if the facts alleged on the face of the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001).

In South Carolina, an employee is presumed to be employed at-will in the absence of a specific contract of employment. *Mathis v. Brown of South Carolina, Inc.*, 389 S.C. 299, 310, 698 S.E.2d 773, 778 (2010). S.C. Code Ann. § 5-13-90(1) provides that municipal employees

are employed at-will. Although at-will employees can "be terminated at any time, for any reason, even at-will employees can bring a cause of action for wrongful termination when the employer's reason for termination violates a clear mandate of public policy. Our courts have found the public policy exception to clearly apply in cases where the employer either (1) requires the employee to violate the law, or (2) the reason for the employee's termination is itself a violation of criminal law." *Southern Glass & Plastics Co. v. Duke*, 367 S.C. 421, 431 (Ct. App. 2005) (citing *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985); *Lawson v. South Carolina Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 260 (2000)). The public policy exception is not available if there is an existing statutory remedy. *Barron v. Labor Finders of South Carolina*, 393 S.C. 609, 615, 713 S.E.2d 634, 637 (citing *Dockings v. Ingles Markets, Inc.*, 306 S.C. 496, 413 S.E.2d 18 (1992) (employee allegedly terminated in retaliation for filing complaint under the Fair Labor Standards Act had existing statutory remedy for wrongful termination); see *Epps v. Clarendon County*, 304 S.C. 424, 405 S.E.2d 386 (1991) (employee had an existing remedy for wrongful termination under Title 42 U.S.C. § 1983).

Defendant City asserts Plaintiff's cause of action must be dismissed because the public policy exception only applies when the employee does not have an existing statutory remedy, and Plaintiff can pursue recovery under the Whistleblower statute. The Whistleblower statute provides that an employee who is dismissed from employment within one year after having reported an alleged wrongdoing can commence a suit against the employer, if the employee has exhausted all remedies, and "any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of the alleged wrongdoing." S.C. Code Ann. § 8-27-30(A). Plaintiff filed a grievance through the Defendant's employee grievance policy and thus exhausted her administrative remedies. However, her grievance resulted in a finding upholding her termination. Therefore, the Whistleblower statute does not appear to apply.

Further, it is unclear whether Plaintiff satisfied all the other requirements of the Whistleblower statute. To bring suit under the Whistleblower statute, an employee must make a report in writing within 60 days of the alleged wrongdoing to an appropriate authority. S.C. Code Ann. § 8-27-10(4). An appropriate authority includes the public body that employs the reporting employee or the governmental body having jurisdiction over "professional conducts or

ethics..." S.C. Code Ann. § 8-27-10(3). If the written report is not made to the employing public body, "the employing public body must be notified as soon as practicable by the entity that received the report." *Id.* The facts do not demonstrate whether Plaintiff fulfilled these requirements and thus the Whistleblower statute may not apply.

On the face of the Complaint, the facts are sufficient to allege that Plaintiff may have been wrongfully terminated in violation of a clear mandate of public policy. The public policy that the employer violated either (1) required Plaintiff to violate the law, or (2) the reason for Plaintiff's termination was itself a violation of criminal law. *Southern Glass & Plastics Co. v. Duke*, 367 S.C. 421, 431 (Ct. App. 2005). The public policy exception is not limited to those two circumstances. *Barron*, 393 S.C. at 713. "The determination of what constitutes public policy is a question of law for the courts to decide." *Barron*, 393 S.C. at 616-617 (*interpreting Citizens' Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709, 713 (1925) ("The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.")).

Plaintiff, an at-will employee, may bring suit against her employer for wrongful termination if no other remedy is available. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194 (S.C. 2001). The Whistleblower statute does not appear to provide Plaintiff an avenue of recovery. Therefore, Plaintiff may bring a suit against City for wrongful termination and Defendant's Motion to Dismiss is denied.

Additionally, Plaintiff sought an award of actual and punitive damages against the City. Pursuant to the South Carolina Tort Claims Act, a public entity cannot be held liable for punitive damages. S.C. Code Ann. § 15-78-120(b). The Plaintiff conceded that she is unable to recover punitive damages from a public body. Therefore, Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is granted.

af
#4

ORDER

For the reasons set forth above it is **ORDERED** that the Defendant's Motion to Dismiss pursuant to S.C. Rule of Civil Procedure 12(b)(6) is partially **DENIED** and partially **GRANTED**. Defendant's Motion to Dismiss Plaintiff's wrongful termination cause of action is **DENIED**. Defendant's Motion to Dismiss Plaintiff's claim for punitive damages is **GRANTED**.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 3, 2013

Defendant's Motion and Memorandum in Support of Summary Judgment

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Betty J. Keitt

Plaintiff,

vs.

City of Columbia

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-7273

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

W. Allen Nickles, III, Bar No. 4266

Address:

1519 Richland Street, Columbia, SC 29201

Phone: 803-779-8080 Fax 803-256-1816

E-mail: wanickles@nickleslaw.com Other: _____

Defendant's Attorney:

Julius W. Babb, IV, Bar No. 77216

Address:

P. O. Box 11675, Columbia, SC 29211

Phone: 803-799-9530 Fax 803-799-9533

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Summary Judgment

Estimated Time Needed: 30 min

Court Reporter Needed: ☐ YES/ ☒ NO**SECTION II: Motion/Order Type**☐ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____**SECTION III: Motion Fee**☒ **PAID - AMOUNT: \$ 25.00**☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action File No.: 2012-CP-40-7273

DEFENDANT'S MOTION AND
MEMORANDUM IN SUPPORT
OF
SUMMARY JUDGMENT

Defendant City of Columbia ("City") hereby moves for summary judgment pursuant to Rule 56 of the SCRCF in the above matter. As supported by the Affidavit of Pamela Benjamin filed as Attachment A hereto, and such other materials as may be presented, Plaintiff cannot establish the elements necessary for the relief requested in the Complaint.

By way of illustration, as verified in the Affidavit provided by Pamela Benjamin, City of Columbia Human Resources Director, Plaintiff filed charges of discrimination with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission alleging, among other charges, race discrimination and retaliation. Plaintiff elected not to file suit against the City on these charges despite the potential availability of relief provided by state and federal civil rights statutes.

Plaintiff alleges that her termination was in retaliation for making reports of alleged unethical and unlawful conduct to the City's Human Resources Department and to the Office of Disciplinary Council. (Complaint ¶¶ 6, 7, 21 and 25) The exclusive statutory remedy for adverse employment action resulting from reports of public wrongdoing or malfeasance is through the South Carolina Whistleblower's Act. S.C. Code Ann. § 8-27-10 et seq. Plaintiff

elected not to pursue any relief under this statute.

Plaintiff's only cause of action in the present case is under the common law for wrongful termination in violation of public policy. (Complaint ¶¶ 24 and 25) Controlling Supreme Court precedent establishes that a claim for common law wrongful termination is not available "where the employee has a statutory remedy." Stiles v. American General Life Ins. Co., 335 S.C. 222, 228, 516 S.E.2d 449, 452 (1999), *citing* Dockins v. Ingles Markets, Inc., 306 S.C. 496, 413 S.E.2d 18 (1992) (FLSA claim available) and Epps v. Clarendon County, 304 S.C. 424, 405 S.E.2d 386 (1991) (42 U.S.C. § 1983 claim available); *see also*, Lawson v. S.C. Dep't. of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000) (dismissing wrongful discharge cause of action based upon availability of a statutory remedy under the state's Whistleblower Act even though the plaintiff did not invoke it); Newman v. S.C. Department of Employment and Workforce, 2010 WL 4791932 (D.S.C. September 22, 2010), *adopted* 2010 WL 4666360 (D.S.C. November 18, 2010) (dismissing wrongful discharge cause of action based upon availability of statutory remedies even though untimely) (Opinions provided as Attachments B and C)

CONCLUSION

Plaintiff had available remedies through the State Human Affairs Act, Title VII of the Civil Rights Act of 1991, 42 U.S.C. § 1983 and the South Carolina Whistleblower's Act, S.C. Code Ann. § 8-27-20(A). Plaintiff's failure to invoke these potential statutory remedies precludes her cause of action for common law wrongful termination. For these reasons, the City of Columbia is entitled to judgment as a matter of law pursuant to Rule 56, S.C.R.P.

*****SIGNATURE PAGE FOLLOWS*****

Respectfully submitted,

NICKLES LAW FIRM, LLC

By: 

W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

ATTORNEY FOR DEFENDANT

July 5 2013
Columbia, South Carolina

ATTACHMENT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action File No.: 2012-CP-40-7273

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

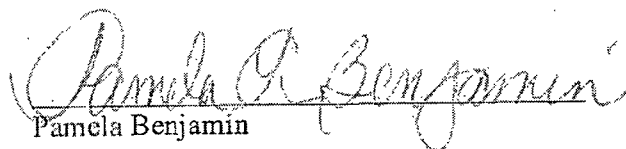
AFFIDAVIT OF PAMELA BENJAMIN

Pamela Benjamin, being first duly sworn, deposes and says:

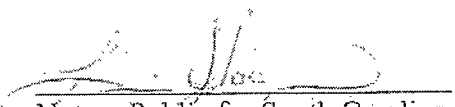
1. I am the Director of Human Resources for the City of Columbia. In that capacity, I am the custodian of records for City employees.
2. According to her personnel file, Ms. Keitt was hired on August 7, 2006 as a Court Clerk in the Violations Division of the Municipal Court.
3. By statute and agreement, Ms. Keitt served in an at-will capacity. A copy of the acknowledgment of at-will employment is provided as Attachment A.
4. On July 3, 2012, Ms. Keitt was terminated from employment for failure to follow supervisory directives and insubordination. A copy of the notice of termination is provided as Attachment B.
5. During her employment and following her discharge, Ms. Keitt filed charges of discrimination with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission alleging race discrimination, age discrimination and retaliation. A copy Ms. Keitt's initial charge no. 14C-2012-037 filed November 4, 2011 is provided as Attachment C. A copy of Ms. Keitt's post-termination charge no. 14C-2012-0890 is provided as Attachment D.
6. Ms. Keitt received notices of right to sue on both charges filed against the City. The notice of right to sue on charge no. 14C-212-037 is provided as Attachment E. The notice of right to sue on charge no. 14C-212-0890 is provided as Attachment F.
7. Ms. Keitt has not filed any suit against the City of Columbia on either of the charges of discrimination filed with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission.

8. Ms. Keitt has not filed suit against the City of Columbia alleging any claim under the South Carolina Whistleblower's Act for making reports of alleged misconduct, unethical acts or unlawful acts.
9. The only suit brought by Ms. Keitt against the City of Columbia is the present case that seeks relief only on the basis of alleged wrongful termination.
10. The City affords all employees the opportunity to challenge termination from employment through a grievance procedure in compliance with The County and Municipal Employee's Grievance Procedure Act. S.C. Code Ann. §§ 8-17-110 through 160.
11. Ms. Keitt appealed her termination from employment to the City's Grievance Committee. Following a hearing, the Committee recommended that the termination be upheld. The City Manager concurred in this recommendation as is required by S.C. Code Ann. § 8-17-160.

Affiant further sayeth not.


Pamela Benjamin

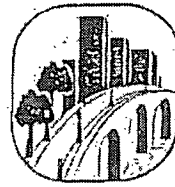
Sworn to and subscribed before me
this 17th day of July, 2013.


Notary Public for South Carolina

My commission expires: 1/12/2014

COLUMBIA

A Capital Place To Be



This employee handbook serves as a guideline containing various rules, policies and procedures relating to employment. Any questions you may have regarding the material in this booklet should be discussed with supervisor or the Personnel Director. Please sign and return this form to the Personnel Department.

Received by:

Betty J. Keitt

Please Print Name

Betty J. Keitt

Signature

8/07/2006

Date

The City of Columbia Handbook is *not* a contract.

ATTACHMENT A

ATTACHMENT B



PERSONNEL REPORT **SEPARATION FROM EMPLOYMENT and/or DISCIPLINARY ACTION**

Date Prepared: _____

Employee Number 2 1 0 4 0Date of Hire 0 8 / 0 7 / 2 0 0 6Employee Name Keitt

Betty

J

LAST Name

FIRST Name

MI

Job Code 1 2 3 9 5 4 H M 0 5 Position Title COURT CLERK (VIOLATIONS)(MC)Location Number 3 0 1 5 Location (Division) Name Municipal Court

Department Name _____

A. ☐ SEPARATION FROM EMPLOYMENT

TYPE ACTION (Check one of the following):	LAST DAY/DATE WORKED		LAST DAY/DATE EMPLOYED		Eligible for PAY-OUT OF LEAVES?		COMMENTS (if any):
	(Day)	(Date)	(Day)	(Date)	YES	NO	
Resigned WITH Notice							
Resigned WITHOUT Notice							
Rejection of Probation							
Retirement							
Dismissed (non-disciplinary)							
Leave of Absence							
Discharged (See Below)	<u>Tues</u>	<u>7-3-12</u>	<u>Tues</u>	<u>7-3-12</u>			
Other (identify):							

B. ☒ DISCIPLINARY ACTION

Separation Comments and/or Summary of Incident (With Time & Date of Incident): SEE ATTACHED

See attached.

(If more space is needed, please continue on the back of this sheet)

Continued on back (Check One):

Yes

No

ACTION TAKEN (Check One)

☐ Suspension (Disciplinary) (Complete the following)

	Number of Days	DAY	DATE
☐ Oral Reprimand @			
☐ Written Warning	Suspended at: ☐ AM ☐ PM	Check AM or PM	
	Return to Work at: ☐ AM ☐ PM		
☒ Discharge (Also complete Separation Section "A" Above) (Time) =		<u>Tuesday</u>	<u>07-03-2012</u>

® = ORAL REPRIMAND ONLY: Original maintained in Department. However, in event of subsequent disciplinary action, submit original(s) to HR with disciplinary action.

Dana D. Turner

Signature of person initiating action

Chief Administrative Judge

Title of Person Initiating Action

7/3/2012

Date Signed

Approval Signature(s)	Position Title	Date Signed
<u>Dana D. Turner</u>	<u>Chief Administrative Judge</u>	<u>7/3/2012</u>

NOTE: EMPLOYEE'S SIGNATURE REQUESTED BELOW. SIGNATURE DOES NOT INDICATE AGREEMENT WITH CONTENTS.

I have read and understand the action outlined

EMPLOYEE SIGNATURE:

Refused to sign

DATE SIGNED

7/3/2012

NOTICE TO EMPLOYEE: PLEASE CONSULT THE GRIEVANCE POLICY OR HUMAN RESOURCES SHOULD YOU WISH TO RESPOND TO ANY DISCIPLINARY ACTION

ORIGINAL OF THIS FORM MUST BE SENT TO HUMAN RESOURCES. (Exception: Oral Reprimand (see note ® above).

Reviewed by HR Director (Signature): _____

Date: _____

ATTACHMENT C

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☒ FEPA☒ EEOC**14C-2012-00037****South Carolina Human Affairs Commission**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Betty J. Keitt

Home Phone (Incl. Area Code)

(803) 586-5506

Date of Birth

05-28-1963

Street Address

City, State and ZIP Code

2117 Mary Hill Drive, Columbia, SC 29210

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CITY OF COLUMBIA MUNICIPAL COURT

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(803) 545-3153

Street Address

City, State and ZIP Code

811 Washington Street, Columbia, SC 29201

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE☐ COLOR☐ SEX☐ RELIGION☐ NATIONAL ORIGIN☒ RETALIATION☒ AGE☐ DISABILITY☐ GENETIC INFORMATION☐ OTHER (Specify)DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest**10-12-2011****10-12-2011**☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was subjected to disparate terms and conditions through on or about October 12, 2011. I am aware of a similarly-situated younger employee (w/m) that was hired without taking the typing test. I was required to take the typing test according to procedure. This employee is allowed days off without question. Another similarly-situated younger employee (w/f) is allowed to adjust her work hours without being harassed. I have been harassed about my work hours and days off along with other Black employees.

I reported the discriminatory treatment to management and human resources, no corrective actions were taken. Management and HR personnel told my manager that I reported the discriminatory treatment, and she treats me worse than before.

I therefore believe I was discriminated against based my age (48; DOB: 5/28/1963), my race (black), and in retaliation for my opposition to employment practices declared unlawful by the South Carolina Human Affairs Law, as amended, the United States Age Discrimination in Employment Act of 1967, as amended, and Title VII of the United States Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

11/4/2011

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

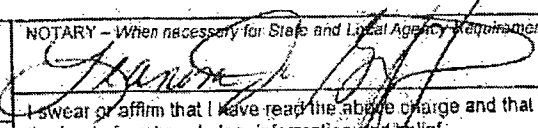
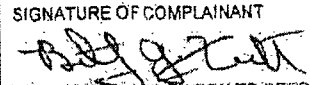
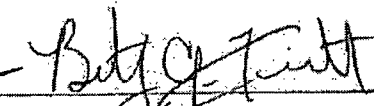
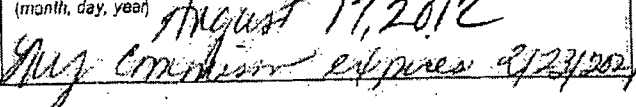
11/4/11

My Commission Expires December 9, 2016

U.S. Equal Employment Opportunity Commission

Kenneth E. Gaines, Esq. City Attorney CITY OF COLUMBIA P. O. Box 667 Columbia, SC 29202	PERSON FILING CHARGE Betty J. Keitt THIS PERSON (check one or both) ☒ Claims To Be Aggrieved ☐ Is Filing on Behalf of Other(s) EEOC CHARGE NO. 14C-2012-00037 FEPA CHARGE NO. 4-11-77A/R/RET	
NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTION WHERE A FEP AGENCY WILL INITIALLY PROCESS <i>(See the enclosed for additional information)</i> THIS IS NOTICE THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER ☒ Title VII of the Civil Rights Act (Title VII) ☐ The Equal Pay Act (EPA) ☐ The Americans with Disabilities Act (ADA) ☒ The Age Discrimination in Employment Act (ADEA) ☐ The Genetic Information Nondiscrimination Act (GINA) HAS BEEN RECEIVED BY ☐ The EEOC and sent for initial processing to _____ <i>(FEP Agency)</i> ☒ The <u>South Carolina Human Affairs Commission</u> and sent to EEOC for dual filing purposes. <i>(FEP Agency)</i> While EEOC has jurisdiction (upon expiration of any deferral requirement if this is a Title VII, ADA or GINA charge) to investigate this charge, EEOC may suspend its investigation and await the issuance of the Agency's final findings and orders. These findings and orders will be given weight by EEOC in making its own determination as to whether reasonable cause exists to believe that discrimination has occurred. You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency will be considered by EEOC when it reviews the Agency's final findings and orders. In many cases EEOC will take no further action, thereby avoiding the necessity of an investigation by both the Agency and EEOC. This likelihood is increased by your active cooperation with the Agency. As a party to the charge, you may request that EEOC review the final findings and orders of the above-named Agency. For such a request to be honored, you must notify EEOC in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by EEOC. Regardless of whether the Agency or EEOC processes the charge, the Recordkeeping and Non-Retaliation provisions of the statutes as explained in the enclosed information sheet apply. For further correspondence on this matter, please use the charge number(s) shown above.		
Enclosure(s): Copy of Charge		
CIRCUMSTANCES OF ALLEGED DISCRIMINATION ☒ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☒ Age ☐ Disability ☒ Retaliation ☐ Genetic Information ☐ Other		
See enclosed copy of charge of discrimination. This charge is filed under the SC Human Affairs Law, as amended.		
Date November 9, 2011	Name / Title of Authorized Official Reuben Daniels, JR, District Director	Signature

ATTACHMENT D

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): ☒ FEPA ☒ EEOC 14C-2012-00890	
South Carolina Human Affairs Commission and EEOC State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (incl. Area Code)	Date of Birth
Ms. Betty J. Keitt		(803) 256-0041	05-28-1963
Street Address		City, State and ZIP Code	
1325 Melrose Height Street, Columbia, SC 29205			
Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
CITY OF COLUMBIA MUNICIPAL COURT		15 - 100	(803) 545-3009
Street Address		City, State and ZIP Code	
811 Washington Street, Columbia, SC 29201			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) ☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 07-03-2012 07-03-2012 ☐ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I was discharged from my employment on July 3, 2012 with reasons given as insubordination and failure to follow directives of supervisor. I contend the reason given are pretextual in that I deny the allegations and believe I was discharged in retaliation for a November 2011 harassment and terms & conditions charge I filed against Respondent with the SC Human Affairs Commission based on age, retaliation and race (SHAC charge # 14C-2012-0037). I therefore believe that I have been discriminated against on the basis of retaliation for my opposition to employment practices made unlawful by the state and federal laws in violation of the SC Human Affairs Law, as amended and Title VII of the US Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements 	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT 	
Date <u>8/17/2012</u>  Charging Party Signature		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <u>August 17, 2012</u> 	

U.S. Equal Employment Opportunity Commission

Mr. Kenneth E. Gaines, Esq. City Attorney CITY OF COLUMBIA MUNICIPAL COURT P.O. Box 667 Columbia, SC 29202	PERSON FILING CHARGE
	Betty J. Keitt
	THIS PERSON (check one or both) ☒ Claims To Be Aggrieved ☐ Is Filing on Behalf of Other(s)
	EEOC CHARGE NO. 14C-2012-00890
	FEPA CHARGE NO. 3-12-103RET

NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTION WHERE A FEP AGENCY WILL INITIALLY PROCESS.
 (See the enclosed for additional information)

THIS IS NOTICE THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- ☒ Title VII of the Civil Rights Act (Title VII)
 ☐ The Equal Pay Act (EPA)
 ☐ The Americans with Disabilities Act (ADA)
☐ The Age Discrimination in Employment Act (ADEA)
 ☐ The Genetic Information Nondiscrimination Act (GINA)

HAS BEEN RECEIVED BY

- ☐ The EEOC and sent for initial processing to _____
 (FEP Agency)
☒ The South Carolina Human Affairs Commission
 (FEP Agency) and sent to EEOC for dual filing purposes.

While EEOC has jurisdiction (upon expiration of any deferral requirement if this is a Title VII, ADA or GINA charge) to investigate this charge, EEOC may suspend its investigation and await the issuance of the Agency's final findings and orders. These findings and orders will be given weight by EEOC in making its own determination as to whether reasonable cause exists to believe that discrimination has occurred.

You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency will be considered by EEOC when it reviews the Agency's final findings and orders. In many cases EEOC will take no further action, thereby avoiding the necessity of an investigation by both the Agency and EEOC. This likelihood is increased by your active cooperation with the Agency.

As a party to the charge, you may request that EEOC review the final findings and orders of the above-named Agency. For such a request to be honored, you must notify EEOC in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by EEOC. Regardless of whether the Agency or EEOC processes the charge, the Recordkeeping and Non-Retaliation provisions of the statutes as explained in the enclosed information sheet apply.

For further correspondence on this matter, please use the charge number(s) shown above.

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- ☐ Race
 ☐ Color
 ☐ Sex
 ☐ Religion
 ☐ National Origin
 ☐ Age
 ☐ Disability
☒ Retaliation
☐ Genetic Information
☐ Other

See enclosed copy of charge of discrimination. This charge is also filed under the SC Human Affairs Law, as amended.

Date	Name / Title of Authorized Official	Signature
September 7, 2012	Reuben Daniels, JR, District Director	

ATTACHMENT E

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
P. O. Box 4490
Columbia, South Carolina 29240
DISMISSAL AND NOTICE OF RIGHT TO SUE

Ms. Betty J. Keitt
1325 Melrose Height St.
Columbia, SC 29205

SHAC Complaint Number
4-11-77A/R/RET

Complainant,

EEOC Deferral As
14C-2012-00037

Vs.

City of Columbia Municipal Court
811 Washington St
Columbia, SC 29201

SHAC REPRESENTATIVE:

Raymond Buxton II, Commissioner

TELEPHONE NUMBER: (803) 737-7800

Respondent

The Commission has dismissed your charge for the following reason(s):

- ☐ The Commission does not have jurisdiction to process your charge for the following reason:
- | | |
|--|--|
| ☐ Untimely | ☐ Complainant failed to state claim |
| ☐ Prior court proceeding | ☐ Less than 15 employees |
| ☐ No employee/employer relationship | ☐ Private membership/nonprofit club |
- ☒ No cause: The Commission is unable to conclude, based upon the information obtained during its investigation, that there has been a violation of the Human Affairs Law, Section 1-13-10, et seq, of the SC Code of Laws of 1976, as amended.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had at least 15 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to our last known address.
- ☐ The Respondent has made a written settlement offer which affords full relief for the harm you alleged. You have refused to accept the final relief offered and/or at least 30 days have expired since you received actual notice of this settlement offer.

This Notice of Right to Sue concludes the Commission's investigation of your charge. If the Complainant wants to pursue the charge further, the Complainant MUST DO SO WITHIN ONE YEAR FROM THE ALLEGED VIOLATION OR WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF ISSUANCE OF THIS NOTICE OF RIGHT TO SUE, WHICHEVER OCCURS EARLIER; OTHERWISE, YOUR RIGHT TO SUE UNDER THE HUMAN AFFAIRS LAW IS LOST.

THE COMPLAINANT AND THE RESPONDENT ARE HEREBY NOTIFIED THAT IF THEY REQUIRE COPIES OF THE INVESTIGATIVE FILE OR OF ANY DOCUMENTS CONTAINED THEREIN FOR PURPOSES OF LITIGATION, THEY MUST SUBMIT A REQUEST FOR SUCH COPIES, TO INCLUDE THE COURT DOCKET NUMBER, WITHIN THREE (3) YEARS OF THE DATE OF ISSUANCE OF THIS DETERMINATION. IN ACCORDANCE WITH THE RECORDS RETENTION SCHEDULE ESTABLISHED BY STATE ARCHIVES, THE FILE WILL BE DESTROYED THREE (3) YEARS AFTER THIS DATE.

The parties are reminded that state and federal laws prohibit retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the complaint.

You may contact the SHAC representative named above if you have any questions about your legal rights, including advice on which Circuit Court has jurisdiction to hear your case. A copy of this NOTICE OF RIGHT TO SUE has been sent to the respondent.

8/6/2012
Date of Issuance

On Behalf of the Commission:

Approving Authority

ATTACHMENT F

DISMISSAL AND NOTICE OF RIGHTS

To: **Betty J. Keitt**
2117 Mary Hill Drive
Columbia, SC 29210

From: **Charlotte District Office**
129 W. Trade Street
Suite 400
Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

14C-2012-00037

Cassandra P. Atcherson,
State & Local Coordinator

(704) 954-6438**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


October 24, 2012

(Date Mailed)

Enclosures(s)

Reuben Daniels, Jr.,
District Director

cc:

W. Allen Nickles, III
Nickles Law Firm, LLC
1519 Richland Street
Columbia, SC 29201

ATTACHMENT B

2010 WL 4791932

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Columbia Division.

Millicent **NEWMAN**, Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE,¹ Defendant.

C/A No. 3:10-942-CMC-PJG. | Sept. 22, 2010.

Attorneys and Law Firms

Bonnie Travaglio Hunt, Hunt Law, N. Charleston, SC, for Plaintiff.

Vance J. Bettis, Gignilliat Savitz and Bettis LLP, Columbia, SC, for Defendant.

Opinion

REPORT AND RECOMMENDATION

PAIGE J. GOSSETT, United States Magistrate Judge.

*1 The plaintiff, Millicent **Newman** ("**Newman**"), an African American female, filed this action against her former employer, the South Carolina Employment Security Commission, a state agency that has since been legislatively reconstituted as the South Carolina Department of Employment and Workforce ("Department"). **Newman's** Complaint asserts claims of race discrimination and hostile work environment in violation of 42 U.S.C. § 1981 (Counts I and II); retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and South Carolina law (Count III); intentional infliction of emotional distress (Count IV); and wrongful discharge (Count V). (See generally Compl., ECF No. 1-1 at 4-14.) The Department removed this action to federal court, and this matter is now before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for a Report and Recommendation on the Department's motion to dismiss the complaint or, alternatively, for judgment on the pleadings as to all claims. (ECF No. 6.) Having carefully considered the parties' submissions, the court concludes that the Department's motion should be granted.

DISCUSSION

A. Standard for Rule 12(b)(6) and Rule 12(c)

A motion under Federal Rule of Civil Procedure 12(b)(6) or 12(c) examines the legal sufficiency of the facts alleged on the face of the plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir.1999); see also *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148, 154 (4th Cir.2009) (applying the same standard for Rule 12(c) as for Rule 12(b)(6)). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007).

B. **Newman's** Claims

All of **Newman's** claims fail as a matter of law. First, her claims purportedly brought pursuant to 42 U.S.C. § 1981 cannot lie against the Department. See *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989) (holding that alleged violations of § 1981 against state actors and governmental entities must be pursued exclusively under 42 U.S.C. § 1983).² Even recharacterizing **Newman's** claims as arising under § 1983, however, such claims fail as a matter of law against the Department because, as an arm of the State of South Carolina, it is not a "person" within the meaning of that statute. See *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Finally, any claims **Newman** might have against the Department pursuant to Title VII are insufficiently pled. See Fed.R.Civ.P. 9(c) (requiring that with regard to claims that have necessary conditions precedent, the complaint must allege that all such conditions precedent have been performed); *United Black Firefighters of Norfolk v. Hirst*, 604 F.2d 844, 847 (4th Cir.1979) (holding that a complaint asserting Title VII claims that does not allege that procedural prerequisites have been met is properly dismissed). Amending the Complaint to cure this deficiency would not avail **Newman**, as any Title VII claims are time barred in any event. **Newman** filed this action well after the expiration of her ninety-day statutory time frame in which to file a lawsuit on such claims. See 42 U.S.C. § 2000e-5(f) (1); (see generally Def.'s Mem. Supp. Mot. Dismiss, ECF No. 6-1 at 6-7 (discussing untimeliness of Title VII claims);

Pl.'s Resp. Opp'n Def.'s Mot. Dismiss, ECF No. 15 (failing to address the Department's argument that Title VII claims are time barred)).

*2 **Newman's** state law claims against the Department fail as well. Her claim of intentional infliction of emotional distress, like her Title VII claim, is insufficiently pled. See *Hansson v. Sealise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68, 70 (S.C.2007) (listing elements of intentional infliction of emotional distress). Again, amendment of the Complaint would not save this cause of action, since the Department, as a state agency, has sovereign immunity with regard to this tort claim.³ See S.C.Code Ann. §§ 15-78-10 *et seq.* (containing a limited waiver of the state's sovereign immunity for certain torts but otherwise restoring the state's common law immunity from suit). Specifically, the South Carolina Tort Claims Act defines "loss" to exclude "the intentional infliction of emotional harm," see S.C.Code Ann. § 15-78-30(D); provides for governmental entities an exemption from liability for loss resulting from employee conduct that constitutes intent to harm, § 15-78-60(17); and protects state agencies from liability for losses resulting from any claim covered by the South Carolina Workers' Compensation Act, see § 15-78-60(14). See also *Ward v. City of N. Myrtle Beach*, 457 F.Supp.2d 625, 646-47 (D.S.C.2006) (holding that a plaintiff's state claims for outrage and negligence against the city were barred due to the exclusivity provision in the South Carolina Workers' Compensation Act and the exclusion contained in the South Carolina Tort Claims Act); *Dickert v. Metropolitan Life Ins. Co.*, 311 S.C. 218, 428 S.E.2d 700 (S.C.1993) (holding that a plaintiff who asserts a claim of intentional infliction of emotional distress arising out of her employment is asserting a "work-related injury" within the scope of the Workers' Compensation Act).⁴

Finally, **Newman's** wrongful discharge cause of action is precluded under South Carolina law providing that the public policy exception to at-will employment does not apply where the employee has a statutory remedy. See *Stiles v. Am. Gen.*

Life Ins. Co., 335 S.C. 222, 516 S.E.2d 449, 452 (S.C.1999) (Toal, J., concurring). Here, as an employee of the state who was not subject to at-will termination, **Newman** had statutory remedies available to her to redress this claim, which is based on her allegation that she was terminated because she refused to participate in fraud. See S.C.Code Ann. § 8-17-310 *et seq.* (State Employee Grievance Procedure Act); S.C.Code Ann. § 8-27-10 *et seq.* (Whistleblower Act). As such, she cannot maintain a claim for the tort of wrongful discharge. See *Dockins v. Ingles Markets, Inc.*, 306 S.C. 496, 413 S.E.2d 18 (S.C.1992) (Fair Labor Standards Act); *Gleaton v. Monumental Life Ins. Co.*, C/A No. 2:09-1667-MBS, 2010 WL 419921, *9 (D.S.C. Jan.28, 2010) (Title VII and 42 ~~U.S.C.~~ § 1981); *Lawson v. South Carolina Dep't of Corrections*, 340 S.C. 346, 532 S.E.2d 259 (S.C.2000) (holding that the plaintiff could not maintain a claim for wrongful discharge because the Whistleblower Act afforded a statutory remedy, even if the plaintiff failed to invoke it).

*3 In response to the Department's motion,⁵ **Newman** requests that the court dismiss her claims under 42 ~~U.S.C.~~ § 1981 without prejudice so that she may re-file "with the proper parties named."⁶ (Pl.'s Mem. Opp'n Def.'s Mot. Dismiss, ECF No. 15 at 4.) Such relief is unnecessary, as the dismissal of her claims against the Department with prejudice does not impact any claim she may have against other potential defendants. Similarly, although **Newman** requests that her wrongful discharge claim be remanded to state court, remand is not appropriate since the claim fails as a matter of law.

RECOMMENDATION

All of the claims asserted in **Newman's** Complaint fail as a matter of law. Accordingly, the court recommends that the Department's motion for judgment on the pleadings (ECF No. 6) be granted.

Footnotes

- 1 Pursuant to Rule 25 of the Federal Rules of Civil Procedure, the South Carolina Department of Employment and Workforce is substituted for Defendant South Carolina Employment Security Commission. See Act No. 146, 2010 S.C. Acts 1168.
- 2 The United States Court of Appeals for the Fourth Circuit has opined that this aspect of Jett was not affected by the Civil Rights Act of 1991. See *Dennis v. County of Fairfax*, 55 F.3d 151, 156 n.1 (4th Cir.1995).

- 3 Although the Department concedes that by removing this case it waived its immunity under the Eleventh Amendment to the United States Constitution from suit in federal court, it did not waive its state law sovereign immunity from suit on intentional torts. See *Stewart v. State of North Carolina*, 393 F.3d 484 (4th Cir.2005).
- 4 **Newman** does not appear to dispute that her intentional infliction of emotional distress claim against the Department is barred by sovereign immunity, as her response contains no discussion of the issue.
- 5 **Newman** also includes an extensive discussion of qualified immunity in her response. The court fails to see the relevance of this argument, as no state officials are named as defendants in this action.
- 6 **Newman** includes as an attachment to her response a motion to amend her complaint. Although the motion states that a proposed amended complaint is attached, no such attachment appears in the record. Accordingly, the court cannot determine which "proper parties" **Newman** seeks to include.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

ATTACHMENT C

2010 WL 4666360

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Columbia Division.

Millicent NEWMAN, Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE, Defendant.

C/A No. 3:10-942-CMC-PJG. | Nov. 18, 2010.

Attorneys and Law Firms

Bonnie Travaglio Hunt, Hunt Law, Charleston, SC, for
Plaintiff.

Vance J. Bettis, Gignilliat Savitz and Bettis LLP, Columbia,
SC, for Defendant.

Opinion

OPINION AND ORDER

CAMERON MCGOWAN CURRIE, District Judge.

*1 Through this action, Plaintiff, Millicent Newman ("Newman" or "Plaintiff"), seeks recovery under various state and federal statutes for alleged discrimination, hostile treatment, and retaliation in employment as well as for wrongful termination in violation of public policy. All of Newman's causes of action relate to her employment with and termination from Defendant, the South Carolina Department of Employment and Workforce ("the Department").¹

For the reasons set forth below and in the Report and Recommendation of the Magistrate Judge, the undersigned concludes that the Department is entitled to dismissal or judgment on the pleadings as to all claims.

PROCEDURAL BACKGROUND

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e), (g), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On September 22, 2010, the Magistrate Judge issued a Report

recommending that the Department's motion to dismiss or for judgment on the pleadings be granted in full and that Newman's claims be dismissed with prejudice. Dkt. No. 17.

The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if they failed to do so. Newman timely filed an Objection on October 12, 2010, raising one general and two specific arguments. Dkt. No. 18. The Department responded to Newman's Objection on October 16, 2010, addressing Newman's specific objections and arguing that the court should adopt the Report and dismiss all of Newman's claims with prejudice. Dkt. No. 23.

STANDARD

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the court. See *Mathews v. Weber*, 423 U.S. 261, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). In the absence of an objection, the court reviews the Report and Recommendation only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation") (citation omitted).

REPORT, OBJECTION AND RESPONSE

Report and Recommendation. The Report recommends that Newman's claims under 42 U.S.C. § 1981 be dismissed as legally deficient, because claims against state actors and governmental entities based on such allegations may be maintained only under 42 U.S.C. § 1983. Report at 17. The Report also notes that the claims would fail if recast as Section 1983 claims because the Department, an arm of the State, is not a "person" within the meaning of the statute. *Id.* The Report recommends that Newman's claims under 42 U.S.C.

§ 2000e *et seq.* ("Title VII") be dismissed with prejudice because they are insufficiently pled and time-barred in any event. Report at 2-3 (noting action was filed well after the statutory time frame for filing the lawsuit).

*2 The recommendations as to Newman's state law claims are essentially the same. As to her state law claim for intentional infliction of emotional distress, the Report recommends dismissal for insufficient pleading and also notes that amendment would be futile in light of the state's sovereign immunity and other defenses to this claim. Report at 3-4 (distinguishing sovereign immunity from Eleventh Amendment immunity and discussing exclusivity of remedies under the Worker's Compensation Act). The Report recommends dismissal of Newman's claim for wrongful discharge in violation of public policy ("*Ludwick* claim") because such claims are barred where, as here, other statutory remedies are available. Report at 4.²

Finally, the Report recommends denial of two requests Newman makes in her response to the Department's motion. First, the Report recommends denial of Newman's request that dismissal of her Section 1981 claim be without prejudice to refiling the same or similar claims against different defendants. The Report notes that such a limitation on the dismissal is unnecessary to preserve Newman's right to bring suit against persons not named as parties in this action. Second, Newman requests that her wrongful discharge claim be remanded rather than resolved by this court. The Report recommends against remand given that this claim clearly fails as a matter of law.

Objection. In her Objection, Newman first offers a generic argument that the Report erred in recommending dismissal of her "causes of action in their entirety." Dkt. No. 18 at 1. In support of this argument, she notes that the standard for dismissal "is still a very liberal standard." *Id.* at 1-2 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). Newman does not, however, point to any aspect of the Report which even arguably misapplied the relevant legal standards. Thus, this argument does not raise any specific objection.

Newman next addresses the specific recommendation that her *Ludwick* claim be dismissed based on availability of statutory remedies. She maintains that this recommendation is in error because "there is no other remedy available." In support of this contention, she points to various reasons she believes the available remedies would not be effective.

For example, she argues that the State Employee Grievance Procedure Act ("Grievance Act"), S.C.Code Ann. § 8-17-310 *et seq.*, does not offer a remedy regarding the fraud "due to the involvement of the state in the fraud and the failure of the State to allow the Plaintiff to address these complaints." Dkt. No. 18 at 2. She also argues that the Whistleblower Act, S.C.Code Ann. § 8-27-10 *et seq.*, does not provide "a remedy that is reasonable for the loss of her position" because "the statute is excessively limited and does not cover the Plaintiff's cause of action." Dkt. No. 18 at 3. In addition, Newman argues that the *Ludwick* claim should be remanded to state court rather than resolved by this court because the state court is better suited to address this state-law claim.

*3 Finally, Newman argues that the Report errs in suggesting that dismissal with prejudice will not preclude her from pursuing related claims against other defendants in some other action. Her only support for this argument is the bald statement that because the potential defendants "are employed with the State the fact is that the case will be dismissed because the Causes of action are dismissed in this action."

Response. The Department responded to the above Objection noting, first, that a *Ludwick* claim is only available to an at-will employee who is without a statutory remedy to redress the challenged limitation. Dkt. No. 23 at 2. The Department asserts that Newman not only had a right to challenge her termination under the Grievance Act but, in fact, pursued a grievance in which she challenged her termination on multiple grounds. While her current claim of retaliation for refusal to commit fraud was apparently not raised, Newman clearly had and exercised a statutory right to challenge her termination through the grievance procedure.³

The Department argues that termination for refusal to commit fraud (the basis of Newman's *Ludwick* claim) would have been an abuse of discretion, remediable under the Grievance Act. It also notes that no employee of Newman's Department could have been included on the Grievance Committee panel which heard Newman's grievance. Dkt. No. 23 at 3. Thus, the allegations underlying Newman's *Ludwick* claim could have been considered by the Grievance panel which would not have been biased by inclusion of employees of Newman's Department. In any event, the Department notes that an employee may not bypass or ignore an available remedy in order to pursue a *Ludwick* claim. *See id.* (citing *Law v. South Carolina Dept. of Corrections*, 368 S.C. 424, 629 S.E.2d 642, 650-51 (S.C.2009) (rejecting argument that employee may

bypass the remedy provided by the Grievance Act in favor of a wrongful discharge claim under *Ludwick* based on a generalized fear that the grievance process will be biased)). Moreover, if Newman was dissatisfied with the decision of the panel, she had the right to pursue an appeal to an administrative law court and then to the state court of appeals. *Id.* at 4-5. 337 S.E.2d 213. She could not, however, pursue a wrongful discharge claim either in an attempt to relitigate her grievance or as an alternative to it. *Id.* (citing, e.g., *Earle v. Aycock*, 276 S.C. 471, 279 S.E.2d 614 (S.C.1981) (holding that failure to appeal decision of Grievance Committee to the state court system "precluded [plaintiff] from raising the validity of the discharge in a collateral action as the decision of the committee became the law of the case, and the doctrine of res judicata bars the relitigation of this issue.")).

The Department also notes that the present allegations would have supported a claim under the Whistleblower Act. Dkt. No. 23 at 4. As the Department notes, Newman's objection to consideration of this Act is based not on its applicability to her allegations, but on her view that the remedies are inadequate or the prerequisites to suit unwarranted. The Department argues that these limitations are irrelevant and that the Whistleblower Act remains an available statutory remedy which bars Newman from pursuing a *Ludwick* claim. Dkt. No. 23 at 4 (citing *Frazier v. Target Corp.*, 2009 WL 3459221 (D.S.C.2009) (finding *Ludwick* claim barred by available statutory remedy despite limitations on the relief available under the applicable statute)).

*4 Finally, the Department argues that Newman's objection to dismissal with prejudice is without merit. The Department notes that, while a number of Newman's potential claims against third-parties may be foreclosed for other reasons, a with-prejudice dismissal of the suit against the Department would not, alone, preclude pursuit of a claim against any other defendant.

recommendation that the federal claims and any state law claims other than the *Ludwick* claim be dismissed. The recommendation that the *Ludwick* claim should be dismissed and that all dismissal rulings should be with prejudice are addressed below.

Specific Objection as to *Ludwick* Claim. In light of Newman's specific objection, the court has conducted a *de novo* review of the recommended dismissal of her *Ludwick* claim (for wrongful discharge in violation of public policy). For reasons argued by the Department and summarized above, the court finds the Report correctly recommends dismissal of this claim. First, Newman cannot now argue that she had no available remedies when she failed to offer this argument in response to the motion to dismiss (which raised this defense). Even if she were allowed to introduce this argument at this time, it would fail because both the Grievance Act and the Whistleblower Act provide statutory remedies which preclude pursuit of a *Ludwick* claim. That the available remedies under these Acts may be limited and that the Acts may impose procedural hurdles to recovery do not modify this conclusion. To the contrary, such restrictions reflect an exercise of legislative judgment which this court should not allow to be circumvented through pursuit of a common law *Ludwick* claim.

Specific Objection as to Dismissal with Prejudice. The court, likewise, finds the second aspect of Newman's Objection unsupported. The dismissal of claims against the Department does not preclude Newman from pursuing any claim against any other defendant. Most critically, a claim dismissed because the Department is not a proper defendant as to that claim does not preclude assertion of the same claim against a person who may properly be named as a defendant. That this or another court may conclude that a particular claim against some other defendant is barred for the same reasons that it is barred as to the Department does not mean that this decision has any preclusive effect.

DISCUSSION

General Objection. To the extent Newman's reference to the standard of review is intended as an objection, it is too general to warrant treatment as a specific objection. Consequently, it does not support *de novo* review of any portion of the Report.

The court has, therefore, reviewed the Report for clear error except as noted below. Finding none, the court adopts the reasoning and recommendation of the Report as to the

CONCLUSION

For the reasons set forth above, the court adopts the reasoning and recommendation of the Report, grants the Department's motion, and dismisses all of Newman's claims with prejudice.

*5 IT IS SO ORDERED.

Footnotes

- 1 Prior to legislative reconstitution in its present form, the Department was known as the South Carolina Employment Security Commission.
- 2 South Carolina first recognized a claim for wrongful discharge in violation of public policy in *Ludwick v. The Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213, 216 (S.C.1985). As explained in a number of subsequent cases, such claims may not be pursued where there are statutory remedies available for redress of the challenged termination. See, e.g., *Stiles v. Am. G. Life Ins. Co.*, 335 S.C. 222, 516 S.E.2d 449, 452 (S.C.1999) (Toal, J., concurring); Report at 4 (listing other cases so holding).
- 3 In addition, the Department argues that Newman should be precluded from now arguing that she did not have an available statutory remedy because she failed to raise this argument before entry of the Report, despite the Department's earlier reliance on the available statutory remedies as a defense to the *Ludwick* claim.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

Memorandum in Support of Defendant's Motion to Dismiss

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action File No.: 2012-CP-40-7273

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS

Plaintiff Betty Keitt filed a Complaint on October 29, 2012, alleging one cause of action against Defendant City of Columbia ("City") - wrongful termination in violation of public policy. On November 19, 2012, the City filed an Answer and accompanying Motion to Dismiss based upon the following grounds: (1) Plaintiff's cause of action is precluded by the exclusive remedy provided in the Whistleblower statute, S.C. Code Ann. § 8-27-10 et seq. (Supp. 1999), and (2) Plaintiff has failed to assert a cognizable claim for punitive damages against a public entity.

STANDARD OF REVIEW

Dismissal of a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory," dismissal is improper. Id. The question to be considered is whether in the light most favorable to the plaintiff, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

LEGAL ARGUMENT

1. **Plaintiff cannot maintain a claim for wrongful termination in violation of public policy because such claim is precluded by the exclusive statutory remedy provided in the Whistleblower statute.**

Under South Carolina law, employment at-will is presumed in the absence of a specific contract of employment. Mathis v. Brown of S.C., Inc., 389 S.C. 299, 310, 698 S.E.2d 773, 778 (2010). By statute, municipal employees such as Plaintiff are employed at-will. S.C. Code Ann. 5-13-90(1) (Supp. 2012) At-will employees can be terminated from employment at any time and for any reason, with or without cause. Id. Our Supreme Court has recognized a limited public policy exception to the at-will doctrine that applies if the at-will employee is terminated in violation of a clear mandate of public policy. Ludwig v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) This exception has been found to apply if the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of criminal law. Ludwig, supra and Culler v. Blue Ridge Elec. Co-op, Inc. 309 S.C. 243, 422 S.E.2d 91 (1992) Although the public policy exception may apply in other circumstances, Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011), it is established that the exception is **not available** if there is other reasonable means of redress or if there is an existing statutory remedy. Id. at 615, citing Dockins v. Ingles Markets, Inc., 306 S.C. 496, 413 S.E.2d 18 (1992)(employee allegedly terminated in retaliation for filing complaint under the Fair Labor Standards Act had existing statutory remedy for wrongful termination) and also Epps v. Clarendon County, 304 S.C. 424, 405 S.E.2d 386 (1991)(employee had an existing remedy for wrongful termination under Title 42 U.S.C. § 1983)

In Lawson v. S.C. Dep't of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000) our Supreme Court held that an employee could not maintain a claim for wrongful termination under

the public policy exception because the employee, who alleged that he was terminated for reporting hiring policy violations, was limited to the existing statutory remedy under the Whistleblower statute. *Id.* at 350. In the case at bar, Plaintiff alleges that she was suspended and terminated for filing complaints about her supervisor with the Office of Disciplinary Counsel (ODC) and internally with the City's Human Resources Department. Specifically, Plaintiff alleges that the City violated "a clear mandate of public policy, law and conduct when the Plaintiff was retaliated against for making reports and complaints against the Judge [Dana Turner] for potential violations of judicial ethics, due process rights of accused persons, and criminal procedures...The Plaintiff's refusal to participate in the City's and Judge Turner's unethical acts and her reports of such behavior led to her wrongful termination in violation of public policy in this state." (Complaint, ¶ 24) Because Plaintiff alleges that she was terminated for making reports¹ to ODC and to Human Resources, she has an existing, exclusive remedy through the Whistleblower Act. S.C. Ann. § 8-27-20(A) (Supp. 1999) Accordingly, Plaintiff cannot seek relief under the common law "public policy" cause of action contained in her complaint.

2. Plaintiff cannot assert a claim for punitive damages against a public entity under the Tort Claims Act.

Plaintiff seeks an award of actual and punitive damages against the City. Pursuant to the South Carolina Tort Claims Act, a public entity cannot be held liable for punitive damages. S.C. Code Ann. § 15-78-120(b) (2012) Therefore, Plaintiff's demand for punitive damages must be dismissed.

¹ A "report" is defined in the Whistleblower statute as a written document alleging wrongdoing. S.C. Code Ann. § 8-27-10 (4). The definition of "wrongdoing" includes an allegation that a public employee "intentionally violated federal or state statutory law or regulations or other political subdivision ordinances or regulations or a code of ethics..." S.C. Code Ann. § 8-27-10 (5).

CONCLUSION

For the reasons stated above, Plaintiff cannot prevail against the City under any of the facts alleged and cannot obtain the remedies sought in her complaint. Accordingly, Plaintiff's complaint should be dismissed pursuant to Rule 12(b)(6).

Respectfully submitted,

NICKLES LAW FIRM, LLC

By: _____


W. Allen Nickles, III
Susan M. Fittipaldi
1519 Richland Street
Columbia, South Carolina 29201
(803) 779-8080

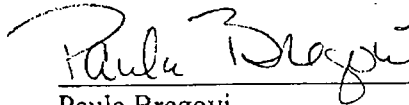
January 21, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for the Defendant, hereby certify that I have served the foregoing Memorandum in Support of Motion to Dismiss by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

J. Lewis Cromer, Esquire
Tandi R. Card, Esquire
J. Lewis Cromer & Associates
Post Office Box 11675
Columbia, SC 29211

This 21st day of January 2013.



Paula Bregovi

Columbia, South Carolina

Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-7273

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

The Plaintiff, Betty J. Keitt, by and through her undersigned counsel, requests that this Honorable Court deny the Defendant, City of Columbia's, Motion to Dismiss filed pursuant to South Carolina Rule of Civil Procedure 12(b)(6). The Defendant's motion should be denied for the following reasons:

STATEMENT OF THE PLEADINGS

The Plaintiff asserted a single cause of action against the Defendant for Wrongful Termination in Violation of Public Policy stemming from her termination from her position with the Defendant. The Plaintiff was employed as a Violations Clerk in Municipal Court. (Compl. ¶ 1). The Plaintiff's supervisor was the Chief Administrative Judge, Judge Turner, who instructed the Plaintiff to change the "documented disposition of cases" and impose higher penalties on defendants than those previously ordered in court. (Compl. ¶¶ 3-4). After numerous instances of Judge Turner altering the sentence and/or fine of defendants, the Plaintiff filed a complaint with the Commission of Judicial Conduct in or about August 2011. (Compl. ¶ 6). The Plaintiff cooperated with the Office of Disciplinary Counsel's (hereinafter "ODC") investigation and it became known to Judge Turner that the Plaintiff was participating in the investigation because Judge Turner questioned the Plaintiff as to where the Plaintiff got the documentation that was sent to ODC. (Compl. ¶ 8).

The Plaintiff was then retaliated against by Judge Turner and held to different and higher standards than her counter-parts. (Compl. ¶¶ 9-11, 14-18). On July 3, 2012, the Plaintiff was terminated for pretextual reasons. (Compl. ¶ 21). The Plaintiff filed a grievance in accordance with the Defendant's employee grievance policy. (Compl. ¶ 22). The Plaintiff was notified on or about August 13, 2012, that the Defendant's Grievance Committee voted to uphold her termination. (Compl. ¶ 22).

STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"), a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Spence v. Spence, 368 S.C. 106, 116 (2006); Baird v. Charleston County, 333 S.C. 519, 527 (1999). A court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Baird, 333 S.C. at 527 (citing Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)). "[A] ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff." Williams, 347 S.C. at 233. If, in viewing the facts and inferences reasonably drawn therefrom in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory of the case, then the Rule 12(b)(6) motion to dismiss should be denied. Baird, 333 S.C. at 511; Gentry v. Yonce, 337 S.C. 1, 5 (1999); and Stiles, 318 S.C. at 300. Looking at facts in the light most favorable to plaintiff, and with all doubts resolved in her behalf, the court must consider whether the pleadings articulate any valid claim for relief. Id.

The complaint should not be dismissed merely because the court doubts the plaintiff will

prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The court may grant a motion to dismiss only if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

LEGAL ARGUMENT

The Defendant's Motion to Dismiss should be denied because the facts alleged in the Complaint support the Plaintiff's cause of action for wrongful termination in violation of public policy. Although South Carolina follows the doctrine of employment at will, wherein an employee can be terminated for any reason or no reason, an exception exists when the employer violates a clear mandate of public policy. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). As the Court clearly has identified, the public policy exception to at-will employment applies when "(1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law." Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011) (citing Ludwick, 287 S.C. at 219; Culler v. Blue Ridge Elec. Co-op., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992) (employee was terminated after he refused to contribute to political action fund, and his termination violated S.C. Code Ann. §16-17-560)). Barron, however, refused to limit the public policy exception to those two limited circumstances. Instead, the Court held that the public policy exception applies to circumstances beyond an employer asking an employee to violate the law or where the reason for the termination itself violates the law. Id.

As the Defendant correctly states, the Court is clear that the public policy exception only applies when the employee does not have an existing statutory remedy. See Dockins v. Ingles Market, Inc., 306 S.C. 496, 413, S.E.2d 18 (1992). The Defendant argues that the Plaintiff has an

existing remedy of violation of the South Carolina Whistleblower statute (hereinafter “Whistleblower statute”), S.C. Code Ann. § 8-27-10 et seq. (Supp. 1999). Def. Mem. Supp. 1.

The Plaintiff does not meet the statutory requirements for remedy under the Whistleblower statute. The Whistleblower statute requires an employee to make a *written report within 60 days* of learning of the alleged wrongdoing. S.C. Code Ann. § 8-27-10(4). The report must be made to an “appropriate authority.” An “appropriate authority” includes the public body that employs the reporting employee or the governmental body having jurisdiction over, among other things, “professional conducts or ethics” Id. at subsection (3). The statute requires that if the report is not made to the employing public body, “the employing public body must be notified as soon as practicable by the entity that received the report.” Id.

The Complaint does not state that the Plaintiff’s complaint to the Commission on Judicial Conduct was made within the statutorily required 60 days of her learning of the alleged violation. (Compl. ¶¶ 6-7). Further, the Complaint states that while she signed her name to the complaint to the Commission on Judicial Conduct, thus indicating the report was in writing, the Plaintiff “previously reported to Human Resources.” Id. at ¶ 6. The Complaint does not state whether the reports to Human Resources were in person or in writing, nor whether Human Resources for the City of Columbia is an “appropriate authority” within the terms of the statute for reporting alleged misconduct of a judge. Id.

The Whistleblower statute further requires an employee to exhaust all administrative remedies and such exhaustion result in a finding that “the employee would not have been disciplined but for the reporting of an alleged wrongdoing.” S.C. Code Ann. § 8-27-30(A). The Plaintiff grieved her termination through the Defendant’s employee grievance policy thus exhausting her administrative remedies. However, her grievance resulted in a finding upholding

her termination. (Compl. ¶ 22).

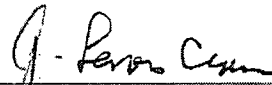
A grant of the Defendant's Motion to Dismiss is improper at this stage because on the face of the Complaint, by which the parties and Court are limited to, it is not certain that there is no theory of law under which the Plaintiff can prevail. Tatum, 346 S.C. at 194. Discovery is necessarily to determine the facts of this case, including, but not limited to, the circumstances surrounding the alleged violation(s) by Judge Turner, when the Plaintiff learned of such violations, and whether the Human Resources department of a city is an "appropriate authority" within the Whistleblower statute for reporting alleged violations by a sitting judge. Defendant's Motion to Dismiss must be denied.¹

CONCLUSION

For the foregoing reasons, the Defendant's Motion to Dismiss should be denied and this case proceed with discovery.

Respectfully submitted,

J. LEWIS CROMER & ASSOCIATES, LLC



J. Lewis Cromer (#1470)

Tandi R. Card (#76623)

1522 Lady Street

Columbia, South Carolina 29201

Phone 803-799-9530

Fax 803-799-9533

January 22, 2013
Columbia, South Carolina

¹ The Plaintiff concedes that she is unable to recover punitive damages against the City of Columbia pursuant to the S.C. Tort Claims Act. As such, her request for punitive damages should be dismissed.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

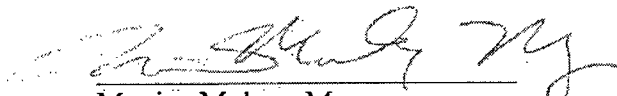
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-7273

CERTIFICATE OF SERVICE

This is to certify that the undersigned employee of J. Lewis Cromer & Associates, LLC, did cause to have served on January 22, 2013, copies of the *Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and the proposed Order Denying Defendant City of Columbia's Motion to Dismiss*, via email and First Class Mail, postage prepaid, to the following counsel of record:

W. Allen Nickels, III
Nickels Law Firm, LLC
1519 Richland Street
Columbia, South Carolina 29201
Email: wanickles@nickleslaw.com



Monica Mulvey McGee
Paralegal

U.S. Equal Employment Opportunity Commission Dismissal and Notice of Rights

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Betty J. Keitt**
1325 Melrose Height Street
Columbia, SC 29205

From: **Charlotte District Office**
129 W. Trade Street
Suite 400
Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

14C-2012-00890

Carlos Villescas,
Deputy Director

(704) 954-6423

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Reuben Daniels, Jr.,
District Director

February 6, 2013

(Date Mailed)

Enclosures(s)

cc:

CITY OF COLUMBIA MUNICIPAL COURT
811 Washington Street
Columbia, SC 29201

W. Allen Nickles, Esq
NICKLES LAW FIRM
1519 Richland Street
Columbia, SC 29201

DISMISSAL AND NOTICE OF RIGHTS

To: **Betty J. Keitt**
 2117 Mary Hill Drive
 Columbia, SC 29210

From: **Charlotte District Office**
 129 W. Trade Street
 Suite 400
 Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

14C-2012-00037

Cassandra P. Atcherson,
 State & Local Coordinator

(704) 954-6438

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

On behalf of the Commission

October 24, 2012

(Date Mailed)

Enclosures(s)

Reuben Daniels, Jr.,
 District Director

cc.

W. Allen Nickles, III
 Nickles Law Firm, LLC
 1519 Richland Street
 Columbia, SC 29201

South Carolina Human Affairs Commission Dismissal and Notice of Right to Sue

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
P. O. Box 4490
Columbia, South Carolina 29240
DISMISSAL AND NOTICE OF RIGHT TO SUE

Betty J. Keitt
1325 Melrose Height Street
Columbia, South Carolina 29205
Complainant,

SHAC Complaint Number
3-12-103 RET

EEOC Deferral As
14C-2012-00890

vs.

City of Columbia Municipal Court
811 Washington Street
Columbia, South Carolina 29201
Respondent.

SHAC REPRESENTATIVE:
Octavia Wright, Staff Counsel

TELEPHONE NUMBER: (803) 737-7800

The Commission has dismissed your charge for the following reason(s):

- ☐ Untimely
- ☐ Prior court proceeding
- ☐ No employee/employer relationship
- ☐ Complainant failed to state claim
- ☐ Less than 15 employees
- ☐ Private membership/nonprofit club
- ☒ No cause: The Commission is unable to conclude, based upon the information obtained during its investigation, that there has been a violation of the Human Affairs Law, Section 1-13-10, *et seq.*, of the SC Code of Laws of 1976, as amended.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had at least 15 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
- ☐ The Respondent has made a written settlement offer which affords full relief for the harm you alleged. You have refused to accept the final relief offered and/or at least 30 days have expired since you received actual notice of this settlement offer.

This Notice of Right to Sue concludes the Commission's investigation of your charge. If the Complainant wants to pursue the charge further, the Complainant MUST DO SO WITHIN ONE YEAR FROM THE ALLEGED VIOLATION OR WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF ISSUANCE OF THIS NOTICE OF RIGHT TO SUE, WHICHEVER OCCURS EARLIER; OTHERWISE, YOUR RIGHT TO SUE UNDER THE HUMAN AFFAIRS LAW IS LOST.

THE COMPLAINANT AND THE RESPONDENT ARE HEREBY NOTIFIED THAT IF THEY REQUIRE COPIES OF THE INVESTIGATIVE FILE OR OF ANY DOCUMENTS CONTAINED THEREIN FOR PURPOSES OF LITIGATION, THEY MUST SUBMIT A REQUEST FOR SUCH COPIES, TO INCLUDE THE COURT DOCKET NUMBER, WITHIN THREE (3) YEARS OF THE DATE OF ISSUANCE OF THIS DETERMINATION. IN ACCORDANCE WITH THE RECORDS RETENTION SCHEDULE ESTABLISHED BY STATE ARCHIVES, THE FILE WILL BE DESTROYED THREE (3) YEARS AFTER THIS DATE.

The parties are reminded that state and federal laws prohibit retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the complaint.

You may contact the SHAC representative named above if you have any questions about your legal rights, including advice on which Circuit Court has jurisdiction to hear your case. A copy of this NOTICE OF RIGHT TO SUE has been sent to the Respondent.

On Behalf of the Commission:

1/24/2013
Date of Issuance


Approving Authority

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
P. O. Box 4490
Columbia, South Carolina 29240
DISMISSAL AND NOTICE OF RIGHT TO SUE

Ms. Betty J. Keitt
1325 Melrose Height St.
Columbia, SC 29205

SHAC Complaint Number
4-11-77A/R/RET

Complainant,

EEOC Deferral As
14C-2012-00037

Vs.

City of Columbia Municipal Court
811 Washington St
Columbia, SC 29201

SHAC REPRESENTATIVE:

Raymond Buxton II, Commissioner

TELEPHONE NUMBER: (803) 737-7800

Respondent

The Commission has dismissed your charge for the following reason(s):

- ☐ The Commission does not have jurisdiction to process your charge for the following reason:
- ☐ Untimely
 - ☐ Prior court proceeding
 - ☐ No employee/employer relationship
 - ☐ Complainant failed to state claim
 - ☐ Less than 15 employees
 - ☐ Private membership/nonprofit club
- ☒ No cause: The Commission is unable to conclude, based upon the information obtained during its investigation, that there has been a violation of the Human Affairs Law, Section 1-13-10, et seq, of the SC Code of Laws of 1976, as amended.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had at least 15 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to our last known address.
- ☐ The Respondent has made a written settlement offer which affords full relief for the harm you alleged. You have refused to accept the final relief offered and/or at least 30 days have expired since you received actual notice of this settlement offer.

This Notice of Right to Sue concludes the Commission's investigation of your charge. If the Complainant wants to pursue the charge further, the Complainant MUST DO SO WITHIN ONE YEAR FROM THE ALLEGED VIOLATION OR WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF ISSUANCE OF THIS NOTICE OF RIGHT TO SUE, WHICHEVER OCCURS EARLIER; OTHERWISE, YOUR RIGHT TO SUE UNDER THE HUMAN AFFAIRS LAW IS LOST.

THE COMPLAINANT AND THE RESPONDENT ARE HEREBY NOTIFIED THAT IF THEY REQUIRE COPIES OF THE INVESTIGATIVE FILE OR OF ANY DOCUMENTS CONTAINED THEREIN FOR PURPOSES OF LITIGATION, THEY MUST SUBMIT A REQUEST FOR SUCH COPIES, TO INCLUDE THE COURT DOCKET NUMBER, WITHIN THREE (3) YEARS OF THE DATE OF ISSUANCE OF THIS DETERMINATION. IN ACCORDANCE WITH THE RECORDS RETENTION SCHEDULE ESTABLISHED BY STATE ARCHIVES, THE FILE WILL BE DESTROYED THREE (3) YEARS AFTER THIS DATE.

The parties are reminded that state and federal laws prohibit retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the complaint.

You may contact the SHAC representative named above if you have any questions about your legal rights, including advice on which Circuit Court has jurisdiction to hear your case. A copy of this NOTICE OF RIGHT TO SUE has been sent to the respondent.

8/6/2012
Date of Issuance

On Behalf of the Commission

Raymond Buxton II
Approving Authority

Plaintiff's Response to Request for Admissions dated July 29, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Betty J. Keitt,

Plaintiff,

-versus-

City of Columbia,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. : 2012-CP-40-7273

**RESPONSES TO THE DEFENDANTS
FIRST SET OF REQUESTS FOR
ADMISSION TO THE PLAINTIFF**

**TO: W. ALLEN NICKLES, III, ESQ. OF NICKLES LAW FIRM, ATTORNEY FOR
DEFENDANT CITY OF COLUMBIA:**

The Plaintiff, Betty J. Keitt, responses to Defendant's First Set of Requests for Admission, as follows:

REQUESTS TO ADMIT

1. Admit that you filed charge of discrimination number 14C-2012-0037 (attached as Exhibit A) alleging race, age and retaliation dated November 4, 2011 with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission.

RESPONSE: ADMIT

2. Admit that you received the dismissal and notice of right to sue on charge number 14C-2012-0037 (attached as Exhibit B) from the South Carolina Human Affairs Commission dated August 6, 2012.

RESPONSE: ADMIT

3. Admit that you received the dismissal and notice of rights on charge number 14C-2012-0037 (attached as Exhibit C) from the Equal Employment Opportunity Commission dated October 24, 2012.

RESPONSE: ADMIT

4. Admit that you filed charge of discrimination number 14C-2012-0890 (attached as Exhibit D) alleging retaliation dated August 17, 2012 with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission.

RESPONSE: ADMIT

5. Admit that you received the dismissal and notice of right to sue on charge number 14C-2012-0890 (attached as Exhibit E) from the South Carolina Human Affairs Commission dated January 24, 2013.

RESPONSE: ADMIT

6. Admit that you received the dismissal and notice of rights on charge number 14C-2012-0890 (attached as Exhibit F) from the Equal Employment Opportunity Commission dated February 6, 2013.

RESPONSE: ADMIT

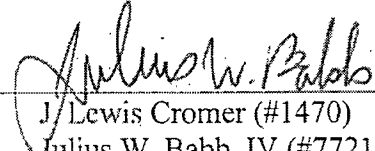
7. Admit that you have not filed suit alleging race, age and retaliation under the South Carolina Human Affairs Law or Title VII in the Court of Common Pleas for Richland County or the United States District Court for the District of South Carolina on charge number 14C-2012-0037.

RESPONSE: ADMIT

8. Admit that you have not filed suit alleging retaliation under the South Carolina Human Affairs Law or Title VII in the Court of Common Pleas for Richland County or the United States District Court for the District of South Carolina on charge number 14C-2012-0890.

RESPONSE: ADMIT

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: 
J. Lewis Cromer (#1470)
Julius W. Babb, IV (#77216)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

July 29, 2013
Columbia, SC

Certificate of Service

I hereby certify that on the date indicated above, I served on counsel of record a true and correct copy of this document by mail.

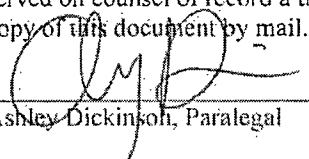

Ashley Dickinson, Paralegal

EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☒ FEPA☒ EEOC

14C-2012-00037

South Carolina Human Affairs Commission

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Ms. Betty J. Keitt

Home Phone (Incl. Area Code)

(803) 586-5506

Date of Birth

05-28-1963

Street Address

City, State and ZIP Code

2117 Mary Hill Drive, Columbia, SC 29210

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CITY OF COLUMBIA MUNICIPAL COURT

No. Employees, Members

15 - 100

Phone No. (Include Area Code)

(803) 545-3153

Street Address

City, State and ZIP Code

811 Washington Street, Columbia, SC 29201

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest

10-12-2011

10-12-2011

☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was subjected to disparate terms and conditions through on or about October 12, 2011. I am aware of a similarly-situated younger employee (w/m) that was hired without taking the typing test. I was required to take the typing test according to procedure. This employee is allowed days off without question. Another similarly-situated younger employee (w/f) is allowed to adjust her work hours without being harassed. I have been harassed about my work hours and days off along with other Black employees.

I reported the discriminatory treatment to management and human resources, no corrective actions were taken. Management and HR personnel told my manager that I reported the discriminatory treatment, and she treats me worse than before.

I therefore believe I was discriminated against based my age (48; DOB: 5/28/1963), my race (black), and in retaliation for my opposition to employment practices declared unlawful by the South Carolina Human Affairs Law, as amended, the United States Age Discrimination in Employment Act of 1967, as amended, and Title VII of the United States Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

11/4/11

Date

Charging Party Signature

EXHIBIT B

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
P. O. Box 4490
Columbia, South Carolina 29240
DISMISSAL AND NOTICE OF RIGHT TO SUE

Ms. Betty J. Keitt
1325 Melrose Height St.
Columbia, SC 29205

SHAC Complaint Number
4-11-77A/R/RET

Complainant,

EEOC Deferral As
14C-2012-00037

Vs.

City of Columbia Municipal Court
811 Washington St
Columbia, SC 29201

SHAC REPRESENTATIVE:

Raymond Buxton II, Commissioner

TELEPHONE NUMBER: (803) 737-7800

Respondent

The Commission has dismissed your charge for the following reason(s):

- ☐ The Commission does not have jurisdiction to process your charge for the following reason:
- | | |
|--|--|
| ☐ Untimely | ☐ Complainant failed to state claim |
| ☐ Prior court proceeding | ☐ Less than 15 employees |
| ☐ No employee/employer relationship | ☐ Private membership/nonprofit club |
- ☒ No cause: The Commission is unable to conclude, based upon the information obtained during its investigation, that there has been a violation of the Human Affairs Law, Section 1-13-10, et seq, of the SC Code of Laws of 1976, as amended.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had at least 15 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to our last known address.
- ☐ The Respondent has made a written settlement offer which affords full relief for the harm you alleged. You have refused to accept the final relief offered and/or at least 30 days have expired since you received actual notice of this settlement offer.

This Notice of Right to Sue concludes the Commission's investigation of your charge. If the Complainant wants to pursue the charge further, the Complainant MUST DO SO WITHIN ONE YEAR FROM THE ALLEGED VIOLATION OR WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF ISSUANCE OF THIS NOTICE OF RIGHT TO SUE, WHICHEVER OCCURS EARLIER; OTHERWISE, YOUR RIGHT TO SUE UNDER THE HUMAN AFFAIRS LAW IS LOST.

THE COMPLAINANT AND THE RESPONDENT ARE HEREBY NOTIFIED THAT IF THEY REQUIRE COPIES OF THE INVESTIGATIVE FILE OR OF ANY DOCUMENTS CONTAINED THEREIN FOR PURPOSES OF LITIGATION, THEY MUST SUBMIT A REQUEST FOR SUCH COPIES, TO INCLUDE THE COURT DOCKET NUMBER, WITHIN THREE (3) YEARS OF THE DATE OF ISSUANCE OF THIS DETERMINATION. IN ACCORDANCE WITH THE RECORDS RETENTION SCHEDULE ESTABLISHED BY STATE ARCHIVES, THE FILE WILL BE DESTROYED THREE (3) YEARS AFTER THIS DATE.

The parties are reminded that state and federal laws prohibit retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the complaint.

You may contact the SHAC representative named above if you have any questions about your legal rights, including advice on which Circuit Court has jurisdiction to hear your case. A copy of this NOTICE OF RIGHT TO SUE has been sent to the respondent.

8/6/2012
Date of Issuance

On Behalf of the Commission

Raymond Buxton II
Approving Authority

EXHIBIT C

DISMISSAL AND NOTICE OF RIGHTS

To: **Betty J. Keitt**
2117 Mary Hill Drive
Columbia, SC 29210

From: **Charlotte District Office**
129 W. Trade Street
Suite 400
Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

14C-2012-00037

Cassandra P. Atcherson,
State & Local Coordinator

(704) 954-6438

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Reuben Daniels, Jr.

October 24, 2012

Enclosures(s)

Reuben Daniels, Jr.,
District Director

(Date Mailed)

cc:

W. Allen Nickles, III
Nickles Law Firm, LLC
1519 Richland Street
Columbia, SC 29201

EXHIBIT D

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): ☒ FEPA ☒ EEOC 14C-2012-00890	
South Carolina Human Affairs Commission and EEOC			
State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.) Ms. Betty J. Keitt		Home Phone (Incl. Area Code) (803) 256-0041	Date of Birth 05-28-1963
Street Address City, State and ZIP Code 1325 Melrose Height Street, Columbia, SC 29205			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name CITY OF COLUMBIA MUNICIPAL COURT		No. Employees, Members 15 - 100	Phone No. (Include Area Code) (803) 545-3009
Street Address City, State and ZIP Code 811 Washington Street, Columbia, SC 29201			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) ☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 07-03-2012 07-03-2012 ☐ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
I was discharged from my employment on July 3, 2012 with reasons given as insubordination and failure to follow directives of supervisor. I contend the reason given are pretextual in that I deny the allegations and believe I was discharged in retaliation for a November 2011 harassment and terms & conditions charge I filed against Respondent with the SC Human Affairs Commission based on age, retaliation and race (SHAC charge # 14C-2012-0037). I therefore believe that I have been discriminated against on the basis of retaliation for my opposition to employment practices made unlawful by the state and federal laws in violation of the SC Human Affairs Law, as amended and Title VII of the US Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the above is true and correct.		SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) August 17, 2012 My Commission Expires 9/29/2012	
Date 8/17/2012 Charging Party Signature			

EXHIBIT E

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION
P. O. Box 4490
Columbia, South Carolina 29240
DISMISSAL AND NOTICE OF RIGHT TO SUE

Betty J. Keitt
1325 Melrose Height Street
Columbia, South Carolina 29205
Complainant,

SHAC Complaint Number
3-12-103 RET

EEOC Deferral As
14C-2012-00890

vs.

City of Columbia Municipal Court
811 Washington Street
Columbia, South Carolina 29201
Respondent.

SHAC REPRESENTATIVE:
Octavia Wright, Staff Counsel

TELEPHONE NUMBER: (803) 737-7800

The Commission has dismissed your charge for the following reason(s):

- ☐ Untimely
- ☐ Prior court proceeding
- ☐ No employee/employer relationship
- ☐ Complainant failed to state claim
- ☐ Less than 15 employees
- ☐ Private membership/nonprofit club
- ☒ No cause: The Commission is unable to conclude, based upon the information obtained during its investigation, that there has been a violation of the Human Affairs Law, Section 1-13-10, *et seq.*, of the SC Code of Laws of 1976, as amended.
- ☐ You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had at least 15 days in which to respond to our final written request.
- ☐ The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.
- ☐ The Respondent has made a written settlement offer which affords full relief for the harm you alleged. You have refused to accept the final relief offered and/or at least 30 days have expired since you received actual notice of this settlement offer.

This Notice of Right to Sue concludes the Commission's investigation of your charge. If the Complainant wants to pursue the charge further, the Complainant MUST DO SO WITHIN ONE YEAR FROM THE ALLEGED VIOLATION OR WITHIN ONE HUNDRED TWENTY (120) DAYS FROM THE DATE OF ISSUANCE OF THIS NOTICE OF RIGHT TO SUE, WHICHEVER OCCURS EARLIER; OTHERWISE, YOUR RIGHT TO SUE UNDER THE HUMAN AFFAIRS LAW IS LOST.

THE COMPLAINANT AND THE RESPONDENT ARE HEREBY NOTIFIED THAT IF THEY REQUIRE COPIES OF THE INVESTIGATIVE FILE OR OF ANY DOCUMENTS CONTAINED THEREIN FOR PURPOSES OF LITIGATION, THEY MUST SUBMIT A REQUEST FOR SUCH COPIES, TO INCLUDE THE COURT DOCKET NUMBER, WITHIN THREE (3) YEARS OF THE DATE OF ISSUANCE OF THIS DETERMINATION. IN ACCORDANCE WITH THE RECORDS RETENTION SCHEDULE ESTABLISHED BY STATE ARCHIVES, THE FILE WILL BE DESTROYED THREE (3) YEARS AFTER THIS DATE.

The parties are reminded that state and federal laws prohibit retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the complaint.

You may contact the SHAC representative named above if you have any questions about your legal rights, including advice on which Circuit Court has jurisdiction to hear your case. A copy of this NOTICE OF RIGHT TO SUE has been sent to the Respondent.

1/24/2013
Date of Issuance

On Behalf of the Commission:

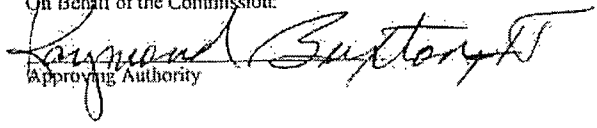

Approving Authority

EXHIBIT F

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Betty J. Keitt**
1325 Melrose Height Street
Columbia, SC 29205

From: **Charlotte District Office**
129 W. Trade Street
Suite 400
Charlotte, NC 28202



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

14C-2012-00890

Carlos Villescás,
Deputy Director

(704) 954-6423

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Reuben Daniels, Jr.,
District Director

February 6, 2013

(Date Mailed)

Enclosures(s)

cc:

CITY OF COLUMBIA MUNICIPAL COURT
811 Washington Street
Columbia, SC 29201

W. Allen Nickles, Esq
NICKLES LAW FIRM
1519 Richland Street
Columbia, SC 29201

Affidavit of Pam Benjamin dated July 11, 2013 with attachment

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action File No.: 2012-CP-40-7273

Betty J. Keitt,

Plaintiff,

vs.

City of Columbia,

Defendant.

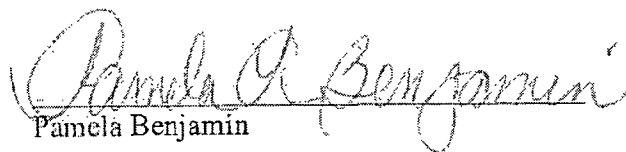
AFFIDAVIT OF PAMELA BENJAMIN

Pamela Benjamin, being first duly sworn, deposes and says:

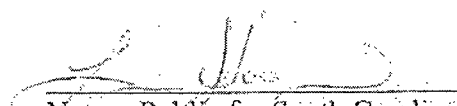
1. I am the Director of Human Resources for the City of Columbia. In that capacity, I am the custodian of records for City employees.
2. According to her personnel file, Ms. Keitt was hired on August 7, 2006 as a Court Clerk in the Violations Division of the Municipal Court.
3. By statute and agreement, Ms. Keitt served in an at-will capacity. A copy of the acknowledgment of at-will employment is provided as Attachment A.
4. On July 3, 2012, Ms. Keitt was terminated from employment for failure to follow supervisory directives and insubordination. A copy of the notice of termination is provided as Attachment B.
5. During her employment and following her discharge, Ms. Keitt filed charges of discrimination with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission alleging race discrimination, age discrimination and retaliation. A copy Ms. Keitt's initial charge no. 14C-2012-037 filed November 4, 2011 is provided as Attachment C. A copy of Ms. Keitt's post-termination charge no. 14C-2012-0890 is provided as Attachment D.
6. Ms. Keitt received notices of right to sue on both charges filed against the City. The notice of right to sue on charge no. 14C-212-037 is provided as Attachment E. The notice of right to sue on charge no. 14C-212-0890 is provided as Attachment F.
7. Ms. Keitt has not filed any suit against the City of Columbia on either of the charges of discrimination filed with the South Carolina Human Affairs Commission/Equal Employment Opportunity Commission.

8. Ms. Keitt has not filed suit against the City of Columbia alleging any claim under the South Carolina Whistleblower's Act for making reports of alleged misconduct, unethical acts or unlawful acts.
9. The only suit brought by Ms. Keitt against the City of Columbia is the present case that seeks relief only on the basis of alleged wrongful termination.
10. The City affords all employees the opportunity to challenge termination from employment through a grievance procedure in compliance with The County and Municipal Employee's Grievance Procedure Act. S.C. Code Ann. §§ 8-17-110 through 160.
11. Ms. Keitt appealed her termination from employment to the City's Grievance Committee. Following a hearing, the Committee recommended that the termination be upheld. The City Manager concurred in this recommendation as is required by S.C. Code Ann. § 8-17-160.

Affiant further sayeth not.


Pamela Benjamin

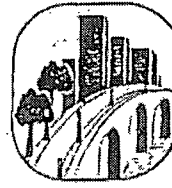
Sworn to and subscribed before me
this 11th day of July, 2013.


Notary Public for South Carolina

My commission expires: 1/12/2014

COLUMBIA

A Capital Place To Be



This employee handbook serves as a guideline containing various rules, policies and procedures relating to employment. Any questions you may have regarding the material in this booklet should be discussed with supervisor or the Personnel Director. Please sign and return this form to the Personnel Department.

Received by:

Betty J. Keitt

Please Print Name

Betty J. Keitt

Signature

8/07/2006

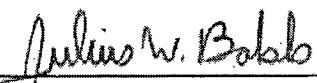
Date

The City of Columbia Handbook is *not* a contract.

Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY:



Julius W. Babb, IV, SC Bar #77216

J. LEWIS CROMER & ASSOCIATES, L.L.C.

1418 Laurel Street, Suite A

Post Office Box 11675

Columbia, South Carolina 29211

803-799-9530

jayb@jlewiscromerlaw.com

Attorney for Appellant

RECEIVED

DEC 23 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-07273
Appellate Case No. 2014-000961

Betty J. Keitt.....Appellant,

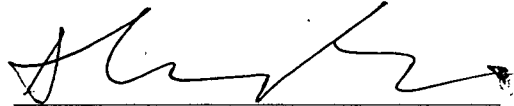
v.

City of Columbia.....Respondent.

CERTIFICATE OF SERVICE

I, Shannon M. Polvi, an attorney of J. Lewis Cromer & Associates, L.L.C., hereby certify that I have served the Record on Appeal on the City of Columbia by depositing a copy of it in the United States Mail, postage pre-paid, on December 18, 2014, addressed to the City of Columbia's attorney of record, W. Allen Nickles, III, at the following address:

W. Allen Nickles, III
Nickles Law Firm, LLC
1122 Lady Street, Suite 610
Columbia, South Carolina 29201



Shannon Polvi
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530

December 18, 2014

RECEIVED

DEC 18 2014

SC Court of Appeals