STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	
)	C.A. NO.: 2012-CP-32- 1657
In Re: Lexington County Detention Center) Litigation,	2012-CP-32- 1698
	2012-CP-32- 1699
	2012-CP-32- 1700
Plaintiffs,)	2012-CP-32- 1701
	2012-CP-32- 1702
	2012-CP-32- 1704
	2012-CP-32- 1705
	2012-CP-32- 1706
	2012-CP-32- 1707
	2012-CP-32- 1708
	2012-CP-32- 1709
	2012-CP-32- 1710
	2012-CP-32- 1711
	2012-CP-32- 1713
	2012-CP-32- 1714
	2012-CP-32- 1715
	2012-CP-32- 1716
	2012-CP-32- 1718
	2012-CP-32- 1720
vs.)	
)	
)	ORDER GRANTING SUMMARY
Lexington County; The Lexington Sheriff's) Department; and The Lexington County) Detention Center,)	**JUDGMENT TO TRINITY SERVICES GROUP, INC.**
)	
Defendants.)	
)	

This matter is before the court on Trinity Services Group, Inc.'s (hereinafter "Trinity") motion for summary judgment. A hearing was held in Lexington, South Carolina on September 8, 2014. Having considered the record, the memoranda submitted and the arguments of counsel, the Court hereby grants Trinity's motion for summary judgment on the grounds that the plaintiffs are unable to establish that Trinity was negligent, that they sustained any bodily injury or damages as a result of any alleged negligence of Trinity, that any food product prepared or

delivered by Trinity to the defendants was unwholesome or unfit or that any bodily injury allegedly sustained by them was proximately caused by any unfit food product.

PROCEDURAL HISTORY

These lawsuits all arise from alleged food poisoning suffered by various inmates detained at the Lexington County Detention Center on or about April 28, 2010. Originally, between 25 and 30 inmates filed *pro se* lawsuits in the United States District Court against Trinity, the Lexington County Detention Center (hereinafter "LCDC") and Sheriff James Metts. The lawsuits were filed in or about May, 2010. Trinity is a private company which contracted with the LCDC to provide food service to inmates confined to the prison.

On or about October 20, 2010, Trinity filed motions for summary judgment in each of the federal court cases on the grounds that: 1) the plaintiffs failed to exhaust their administrative remedies prior to initiating litigation as required by 42 U.S.C. §1997e(a); 2) the plaintiffs requests for monetary damages were barred by 42 U.S.C. §1997(e); 3) Trinity is an agent of the LCDC, not a "person" subject to liability under §1983; 4) the claims against Trinity were improperly based on the theory of *respondeat superior*, which is not a valid basis for liability under §1983; 5) the plaintiffs could not satisfy either the objective or subjective tests for their claims; 6) punitive damages were not warranted under the facts of the case; and 7) Trinity was entitled to qualified immunity.

As each motion came up for consideration the federal magistrate recommended that they

be granted. In each case Judge Gergel granted Trinity's motion. In all, 11 out of 11 motions which were considered were dismissed with prejudice. In late January 2011, the remaining plaintiffs retained their current counsel and filed motions to dismiss without prejudice. Trinity and the remaining defendants opposed those motions on various grounds. However, Judge Gergel granted the motions and the remaining cases were dismissed without prejudice.

These lawsuits were filed in or about April, 2012. On June 28, 2012, Trinity again filed motions to dismiss and, in the alternative, motions for summary judgment in each case. The only differences in the motions were that three of the cases, including those filed by Reginald Mack, David Lee Cradle, Jr. and Marlos Stevenson, previously had been dismissed with prejudice by Judge Gergel. On August 20, 2012, the hearing of the motions was continued by Judge

argued. The motions were eventually re-scheduled to be argued on October 20, 2012. In advance of the hearing, Trinity filed and served a statement of undisputed facts and memorandum in support of its motions, along with the affidavit of Ricky Bynum, the District Manager for Trinity. The motions were argued in Lexington before Judge William Keesley on October 20, 2012, who took the matters under advisement.

Judge Keesley ruled on the motions on March 14, 2013. The rulings in each case were identical. In his orders, Judge Keesley held that he was denying the motions to dismiss on the

pleadings and declining to consider matters outside the pleadings and to convert the motions to ones for summary judgment. He held that it was "too early in this lawsuit to grant dismissal in a summary fashion", and that the plaintiffs should be given a "reasonable opportunity to conduct discovery". He did, however, grant the motions to dismiss as to Mack, Cradle and Stevenson on the basis that each of those cases had previously been dismissed with prejudice by Judge Gergel. On July 15, 2014, Trinity re-filed its motions for summary judgment. Thereafter, it filed its memorandum in support, and incorporated the previously filed statement of undisputed facts, memorandum of law and the affidavit of Ricky Bynum.

LAW

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Cafe Assoc. Ltd. [illegible] In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party. Id. However, "[t]he plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof." Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact-finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). It is "akin to a motion for directed verdict because '[i]n each instance, one party must lose as *a matter of law*'".

Id. (citing Main v. Corley, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984) (emphasis in original)). The court should grant summary judgment if the non-moving party fails to demonstrate through the affirmative production of probative evidence that a genuine issue of material fact remains in dispute.

The mere fact that an accident occurred does not prove negligence. Hammond v. Scott, 268, S.C. 137, 232 S.E.2d 336 (1977). Rather, to establish a claim of negligence, a plaintiff must demonstrate: (1) the existence of a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach. McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009).

S. C. Code Ann. §15-73-10 et seq imposes liability upon the sellers of defective products for harm caused to a consumer under certain circumstances. According to that statute:

> (1) one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his
>
> (a) The seller is engaged in the business of selling such a product, and
>
> (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
>
> (2) the rule stated in subsection (1) shall apply although
>
> (a) the seller has exercised all possible care in the preparation and sale of his product, and
>
> (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Id. To establish his entitlement to recovery pursuant to the statute, the plaintiff must show (1) he was injured by the product, (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user, and (3) the product, at the time of the accident,

was in essentially the same condition as when it left the hands of the defendant. Disher v. Synthes (U.S.A.), 371 F. Supp. 2d 764 (D.S.C. 2005).

APPLICATION OF LAW TO FACTS

Based upon the evidence presented for consideration, the plaintiffs are unable to establish that Trinity was negligent or that any acts or omissions of Trinity proximately caused any injury to them. Accordingly, the plaintiffs' cause of action for negligence fails as a matter of law.

The unrebutted affidavit of Ricky Bynum establishes both the industry standard for food service in a prison setting such as this, and that Trinity complied with and even exceeded those standards in preparing meals for the prisoners at the Lexington County Detention Center. There is no evidence whatsoever in this case of any breach of any common law duty that might have been owed by Trinity to the prisoner plaintiffs. To the contrary, the evidence demonstrates that Trinity undertook reasonable efforts to ensure that the meals were palatable and prepared in a manner that complied with all pertinent food safety and sanitation regulations. Upon learning of [illegible] confirmed that the meals in question were prepared and served within the proper temperature ranges. The South Carolina Department of Health and Environmental Control also investigated the alleged food poisoning incident and concluded that Trinity complied with all pertinent food service safety and sanitation regulations and that the food temperatures and service time for the meals in question were within the appropriate ranges.

Significantly, the plaintiffs have produced no evidence to rebut the affidavit of Mr. Bynum. While at the hearing plaintiffs' counsel argued that it could be inferred from the DHEC file that one of the defendants attempted to cover-up the matter, even if that was true that necessarily could not have occurred until after the alleged incident and therefore could not serve

as a basis for a finding of negligence on behalf of any of the defendants, much less Trinity.

Here, the plaintiffs seem to argue that because they allegedly became ill during the course of the night after eating the meal, then Trinity must have been negligent. However, they have produced no evidence to establish why they got sick, much less how that was due to the alleged negligence of Trinity. As is well known, South Carolina does not recognize the doctrine of *res ipsa loquitor,* and the mere allegation that the plaintiffs purportedly became ill after consuming a meal received at the LCDC does not establish that Trinity failed to exercise due care. See, Griffin v. Wilcohess, LLC, No. 0:10-489, 2010 WL 3803695 (D.S.C Sept. 23, 2010) (granting summary judgment against plaintiff on negligence-based food poisoning claim because plaintiff "presented no evidence that the cheeseburger was negligently prepared" and cannot prove negligence through *res ipsa loquitor)*; Lloyd v. U.S, No. 2:02-399227, 2005 WL 3953859 (D.S.C. Jan. 7, 2005) (granting summary judgment on inmate's negligence-based food poisoning claim against prison food service director, stating that, although food service director owed a duty of care to [illegible] that duty."); Fletcher v. Med. Univ. of S.C., 390 S.C. 458, 702 S.E.2d 372 (Ct. App. 2010) ("[plaintiff] asks us to conclude that the occurrence of a complication is itself evidence of negligence. However, South Carolina does not recognize the doctrine of *res ipsa loquitur."*); King v. J.C. Penney Co., 238 S.C. 336, 120 S.E.2d 229 (1961) ("the fact of injury does not of itself establish negligence on the part of the defendant; and there is no evidence that defendant had any knowledge that the escalator was defective if, in fact, it was."). Accordingly, the plaintiffs' cause of action for negligence must fail.

The plaintiffs' second cause of action for imposition of strict liability for violation of *S.C. Code Ann. §15-73-10 et seq* also fails as a matter of law. Although Trinity argues that it only

provides a service to the LCDC, and is therefore not a "seller" within the meaning of the statute, it is not necessary for the Court to resolve that issue. Instead, there is no evidence in this case that the meal served to the plaintiffs was unwholesome or unfit. While the plaintiffs may have become ill during the course of the evening, that is insufficient, in and of itself, to establish the cause of their alleged illnesses, much less that it was due to a meal prepared by Trinity. There are any number of reasons the plaintiffs could have become ill and they have failed to provide any evidence at all that the meal prepared and provided by Trinity was a source of that illness. As noted above, it is insufficient to show merely that the plaintiffs became ill, but instead they must provide some evidence from which the Court, and therefore a jury, could conclude that their illnesses were most probably the result of an unwholesome or unfit meal prepared and served by Trinity. No such evidence has been presented to the Court by the plaintiffs and, therefore, this cause of action must fail.

For the foregoing reasons the Court grants Trinity's motion for summary judgment. The [illegible] the claims of the plaintiffs against Trinity, with prejudice.

AND IT IS SO ORDERED!

Judge Derham Cole
Circuit Court Judge

Dated: December 17, 2014