

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Melvin Waring,

Plaintiff,

vs.

Town of Moncks Corner Police  
Department, a Department of the entity of  
Moncks Corner, a municipality of the State  
of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-08-2796

ORDER

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MAY 26 2015

SC Court of Appeals

CLERK OF COURT  
BERKELEY COUNTY, SC

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On April 21, 2015, the Court heard the defendant's pending motion for summary judgment prior to selecting a jury. Based on the materials submitted including the affidavits of Officer Michael Roach, Melvin Waring and the statement of Art Nichols, together with the memorandum and argument of counsel, the Court grants summary judgment in favor of the defendant.

On or about April, 9, 2012, Mr. Nichols contacted the Moncks Corner Police Department. He told the police he had purchased a John Deere tractor and related equipment from Mr. Waring in a transaction that happened at the Farmers and Merchants Bank in Moncks Corner back in November 2010. Nichols told police he paid Mr. Waring \$27,000 to purchase the equipment with the agreement Mr. Waring would pay off the liens on the equipment which were held by John Deere Credit. Nichols claimed Mr. Waring went to the bank teller and gave the appearance of paying off the liens on the equipment. Nichols told police that over a year after the transaction at the bank, John Deere Credit sought to repossess the equipment due to Mr. Waring not

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paying off the liens. Officers of Moncks Corner contacted John Deere Credit who confirmed there were liens against the equipment which had not been paid off. Moncks Corner Police Department contacted Mr. Waring and attempted to secure his side of the story, but Mr. Waring would not come in for a statement and only said he had done nothing wrong. Mr. Nichols paid \$8,813.14 to John Deere Credit for to release the liens on the equipment. Based upon this information, officers of the Moncks Corner Police Department went to the presiding municipal judge, the Honorable George Bishop, Jr., and obtained two warrants. One warrant was for filing violation of S.C. Code § 36-9-410 which prohibits sale of personal property subject to a security interest. The second was for grand larceny. Mr. Waring was arrested in cooperation with a Berkeley County officer at his residence which is outside the municipal limits. Mr. Waring had a preliminary hearing and the charges were bound over for trial. Mr. Waring alleges at the conclusion of the preliminary hearing he was jailed again for failure to attend roll call earlier that day. Per the affidavit of Officer Roach, Moncks Corner has nothing to do with roll call the service of a bench warrant in connection with Mr. Waring's failure to appear at a roll call. Mr. Waring has alleged three causes of action: false arrest, false imprisonment and intentional infliction of emotional distress.

There is authority that there is no cause of action for false arrest or false imprisonment when the arrest is accomplished pursuant to a valid warrant. See Dorn v. Town of Prosperity, 375 Fed. Appx. 284 (4th Cir. 2010) (citing: Bushhardt v. United Inv. Co., 121 S.C. 324, 113 S. E. 324 (1922); Barfield v. Coker, 73 S.C. 181, 53 S.E 170 (1906), McConnell v. Kennedy, 29 S.C. 180, 7 S.E. 76 (1888)). In the present case, the warrant appears facially valid. It is signed by a municipal judge with jurisdiction and is

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filled out properly. It directs any law enforcement officer with to arrest Mr. Waring. The arresting officers had no choice or discretion. Their actions cannot be the cause of a charge of false arrest or false imprisonment.

Further, the warrants appear to be supported by probable cause when they were obtained. In determining probable cause, the facts must be regarded "from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be". Law v. South Carolina Dep't of Corrections, 386 S.C. 424, 629 S.E.2d 642 (2006). Probable cause turns not on the individual's actual guilt or innocence, but whether the facts within the officer's knowledge would lend a reasonable person to believe the individual arrested was guilty of a crime, Jackson v. City of Abbeville, 366 S. C. 662, 623 S. E. 2nd 656 (Ct. App. 2005).

In the present case, the police were entitled to reasonably rely upon the statements of Mr. Nichols and those of John Deere Credit. The affidavit of Officer Michael Roach states he attempted to contact Mr. Waring to get his side of the story and Mr. Waring would only say that he "had done nothing wrong." Mr. Waring's affidavit confirms this conversation. As to the suggestion by Mr. Waring there was no security interest on the equipment, a request for admission in this case answered by Mr. Waring affirmatively admits there was a lien on the tractor at the time it was sold which he did not pay off. Mr. Waring is not able to contradict this request for admission with an affidavit.

The suggestion that the word "lien" is not referenced in S.C. Code § 36-9-410 is without merit. The words "lien" and "security interest" are often used interchangeably and using the word lien is certainly sufficient for the purposes of the police obtaining a

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warrant or a summary judge signing a warrant. In fact, the South Carolina Summary Court Benchbook provides "A security interest, which is sometimes referred to as a lien, is an encumbrance special created by Article 9 of the Uniform Commercial Code." Section O (1), "Liens and Incumbrances"

The South Carolina Tort Claims Act (SCTCA) provides that a governmental entity "is not liable for a loss resulting from ...judicial or qausi-judicial action or inaction," "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." S.C. Code Ann. § 15-78-60(1) and(3). Further, the SCTCA states that a governmental entity "is not liable for a loss resulting from ... adoption, enforcement, or compliance with any law...." Id. at § 15-78-60(4).

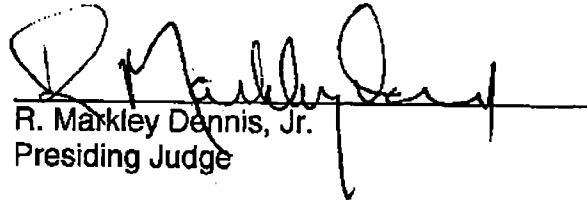
As to any cause of action for intentional infliction of emotional distress, the allegations of this case are not sufficient to rise the level of outrage. See Lynch v. Toys "R" Us-Delaware, Inc., 375 S.C. 604, 654 S.E.2d 541 (Ct. App. 2007)(no outrage for warrantless arrest for shoplifting even after customers had paid for merchandise), vacated after settlement, 384 S.C. 511, 682 S.E.2d 824 (2009).

Further, intentional inflection of emotional distress is clearly an intentional tort. The SCTCA provides that a governmental entity "is not liable for loss resulting from ... which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-60(17). The SCTCA specifically excludes the intentional infliction of emotional harm from the definition of "loss" for which a government may be liable under the Act. See S.C. Code Ann. § 15-78-30(f) ("Loss" is defined as bodily injury, disease, death, or damage to tangible property, including lost

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wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, *but does not include the intentional infliction of emotional harm.*)

For the reasons stated, the Defendant's motion for summary judgment is GRANTED.

  
R. Markley Dennis, Jr.  
Presiding Judge

April 24, 2015  
Charleston, South Carolina

RMOT/s