

3

STATE OF SOUTH CAROLINA 2015 MAY 29 AM 10 12 JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

CLERK OF COURT CASE NO: 2014CP3900259
PICKENS COUNTY
SOUTH CAROLINA

Mark D Ostendorff vs. School District of Pickens County

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; Statement of Judgment by the Court:

RECEIVED
JUN 22 2015
SC Court of Appeals

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Mark D Ostendorff 135 Cedar Creek Circle Central, SC 29630

Thomas Kennedy Barlow PO Box 11367 Columbia, SC 29211
Mary Allison Caudell P.O. 11367 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Handwritten signature of Harold P. Welborn, Jr.
Harold P. Welborn, Jr. - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

Mark D. Ostendorff,)
)
Plaintiff,)
)
vs.)
)
School District of Pickens County,)
)
Defendant.)

C.A. No. 2014-CP-39-00259

**PROPOSED ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 MAY 29 AM 10 12

I. INTRODUCTION

This matter comes before the Court on the motion of Defendant Pickens County School District ("District") for an order granting summary judgment in this action filed by a former District employee, *pro se* Plaintiff, Mark Ostendorff. Specifically, Plaintiff asserts the following causes of action: fraud, "intentional fraud," civil conspiracy, "false testimony under sworn oath," "subordination [*sic*] of false testimony under sworn oath," negligence, gross negligence, "reckless (willful) negligence," "retaliatory discharge," "unequal treatment," and wrongful discharge against the Defendant.

The District has moved for summary judgment on the grounds that (1) Plaintiff's claims are time-barred, and (2) Plaintiff cannot create a genuine issue of material fact on any of his claims. The Court has carefully considered the pleadings and materials submitted, the oral arguments presented at the hearing held on April 1, 2015, and the relevant authorities governing this action. For the reasons set forth below, the Court grants the District's motion for summary judgment.

II. STATEMENT OF UNDISPUTED FACTS

Plaintiff was employed by the District from June 2008 until March 2011 as a Building

#1
200

Project Manager. Plaintiff was an at-will employee with the District. Plaintiff's employment was terminated on March 1, 2011. Plaintiff filed the Complaint in this case on February 28, 2014.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Under Rule 56, SCRCP, summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000). On a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party. *Id.* at 311, 534 S.E.2d at 277. Nonetheless, a party cannot defeat a motion for summary judgment by creating an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). Moreover, where a plaintiff fails to establish an element essential to his case, there can be no genuine issue as to any material fact, since a failure to establish even one essential element of a party's case renders the cause of action insufficient as a matter of law. *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986).

IV. LEGAL ANALYSIS

A. Plaintiff's Claims Are Time-Barred.

Under S.C. Code Ann. § 15-78-110, the applicable statute of limitations for any tort claim against a governmental entity, like the District, is two years. The South Carolina Tort Claims Act requires liberal construction in favor of limiting governmental liability. *See* S.C. Code Ann. § 15-78-20(f). Any of Plaintiff's claims would have arisen out of Defendant's actions on or around his termination on March 1, 2011. Therefore, the alleged acts forming the basis for Plaintiff's claims all occurred more than two years prior to Plaintiff's filing of the instant action on February 28, 2014, almost three years after the termination of his employment.

Plaintiff's argument that the statute of limitations does not begin to run until the

2-28-14

ultimate amount of damages is determined is incorrect. A statute of limitations begins to run from the time when the injured party knew or should have known that he had a cause of action. *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997). The injured party must exercise reasonable diligence when determining if he has a claim for his injury, meaning that a person of common knowledge and experience would know if he might have a cause of action. *Id.* For most causes of action, “[t]he courts of South Carolina have adopted the ‘discovery rule’ in determining when a cause of action accrues.” *Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (1985) (citations omitted). “Under the discovery rule, the statute does not begin to run from the date the negligent act or breach of contract occurred; rather, the statute runs from the date the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.” *Id.* The statute of limitations will begin to run regardless of whether or not the injured party knows the extent of his injury. *Republic Contracting Corp. v. South Carolina Dept. of Highways and Public Transportation*, 332 S.C. 197, 207, 503 S.E.2d 761, 767 (Ct.App. 1998). South Carolina courts “interpret[] the ‘exercise of reasonable diligence’ to mean that the injured party must act with some reasonable promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist.” *Graham v. Welch, Roberts and Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 862 (2013) (emphasis in original; quoting *Dean v. Ruscon Corp.*, 321 S.C. 320, 363-64, 468 S.E.2d 645, 647 (1996)).

As stated previously, Plaintiff’s claims against the District arose from his termination on March 1, 2011. In fact, Plaintiff concedes that all of Defendant’s actions occurred before March 2011, or at the latest May 2011, in his “demand letter,” that he sent to the Defendant on February 11, 2014:

If I have to file the lawsuit, I will file it on February 25, 2014. I will not let any statute of limitations become an

#3
BTD

issue. Even though I made claims for settlement and also SDPC appeal after March 1, 2011, and the last loss of unemployment insurance was in May 2011, it is only prudent to file by February 25th.

2015 MAY 29 AM 10 12

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Accordingly, any claims against the District are untimely. Consequently, the District is entitled to summary judgment.

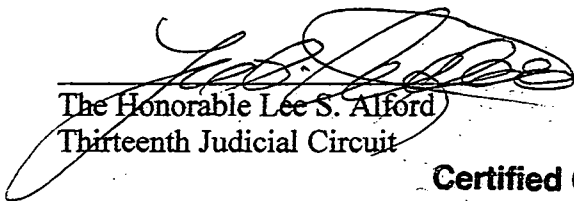
B. Plaintiff Failed To State A Cause Of Action For Breach Of Contract

Plaintiff attempted to assert a breach of a five (5) year oral contract argument during the April 1, 2015 hearing. Based on the Court's review of the Complaint, Plaintiff did not allege a breach of contract claim and has alleged only tort claims. As such, he cannot now pursue such an action before this Court.

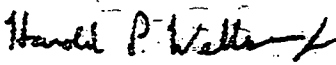
V. CONCLUSION

THEREFORE, for the reasons stated above, Defendant Pickens County School District's motion for summary judgment is granted in its entirety and Plaintiff's claims dismissed with prejudice.

AND IT IS SO ORDERED.


The Honorable Lee S. Alford
Thirteenth Judicial Circuit

May 26, 2015
Pickens, South Carolina

Certified Copy

Clerk of Court
Pickens County, SC
Dated May 2015
MB

#4
MB