

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-32-3371

Jo Pradubsri,

Plaintiff,

v.

The Lexington County Sheriff's
Department,

Defendant.

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SC Court of Appeals

ORDER

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FILED

This matter is before the Court on cross motions for summary judgment filed by the Plaintiff Jo Pradubsri and the Defendant Lexington County Sheriff's Department. Additionally, the Plaintiff filed a motion to compel and a motion for appointment of counsel. A hearing on was held on these matters before the undersigned on June 16, 2015, at the Lexington County Judicial Center in Lexington, South Carolina. The Plaintiff was present at the hearing *pro se*, and Justin T. Bagwell, Esquire, was present and presented arguments on behalf of the Defendant. After carefully considering the arguments made and the entirety of the matters on file in this case, the Court finds that summary judgment should be granted in favor of the Defendant and this matter should be dismissed with prejudice.

BACKGROUND

The record before the Court shows that on November 9, 2008, the Plaintiff was arrested and charged with trafficking crack cocaine, possession with intent to distribute crack cocaine within proximity to a school, and unlawful carrying of a firearm following a traffic stop. At the time of the Plaintiff's arrest, a sum of money totaling \$728.00 was located on the Plaintiff's person and was seized as evidence. These funds have been held by the Lexington County Sheriff's Department in an account maintained for holding such seized funds. After initially being tried and convicted on all

counts, the Plaintiff's convictions were eventually reversed and remanded. *See State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013), *reh'g denied* (June 20, 2013), *cert. denied* (June 25, 2014). Since that time, the Plaintiff has been retried and convicted of the offenses for which he was charged stemming from his November 9, 2008, arrest.

The Plaintiff filed this action on or about September 19, 2013. In his Complaint, he has asserted several causes of action against the Lexington County Sheriff's Department regarding the seizure of funds following his arrest. Specifically, the Plaintiff seems to allege that money was seized from him without the initiation of the required forfeiture proceedings. The Defendant admits that it has been in possession of the funds that were seized from the Plaintiff's person at the time of his arrest but denies that the seizure of those funds was unlawful.¹ Furthermore, the Defendant has asserted that it has fulfilled its statutory duty of taking reasonable steps to maintain the seized property and that it lacked any authority to institute forfeiture proceedings relative to the seized funds. For the reasons set forth herein, the Court finds that the Defendant's motion for summary judgment should be granted, and the Plaintiff's claims dismissed with prejudice.

DISCUSSION

Motions for Summary Judgment

As an initial matter, it is clear as a matter of law that the money seized from the Plaintiff at the time of his arrest on November 9, 2008, was subject to forfeiture, and thus not unlawful. South Carolina law provides that "all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time

¹ On September 8, 2014, an Order was issued by this Court allowing the Lexington County Sheriff's Department to return the seized money to the Plaintiff. However, the Plaintiff has refused to accept the money. As a result, the Defendant requested an Order allowing it to deposit the seized funds, plus accrued interest, with the Clerk of Court pending a resolution of this matter. An Order to this effect was recently entered in this matter on May 18, 2015.

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of arrest or search involving violation of [South Carolina's Narcotics and Controlled Substances law]" are subject to forfeiture. S.C. Code Ann. § 44-53-520(a)(8). Certified copies of the arrest warrants and true billed indictments issued following the Plaintiff's arrest were presented to the Court at the time of the hearing in this case and demonstrate that the Plaintiff was arrested and charged with two offenses pursuant to South Carolina's Narcotics and Controlled Substances law, namely Possession with Intent to Distribute Crack Cocaine within Proximity of a School and Trafficking Crack Cocaine. As such, it is clear that the \$728.00 found in the Plaintiff's possession at the time of his arrest was subject to forfeiture. Thus, the confiscation of the funds by the Defendant Lexington County Sheriff's Department at the time of the Plaintiff's arrest was not unlawful.

The question of the Defendant's responsibilities following the Plaintiff's arrest presents a different issue. The forfeiture provisions of South Carolina's Narcotics and Controlled Substances law found in S.C. Code Ann. § 44-53-520 provides that "[l]aw enforcement agencies seizing property under this section shall take reasonable steps to maintain the property" and that "[a]ny monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner." S.C. Code Ann. § 44-53-520(i). It further provides that "[w]hen property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency." There has been no allegation by the Plaintiff that the Defendant failed to maintain the seized funds or report to the appropriate prosecution agency that the seizure had taken place.² Instead, the Plaintiff seems to assert only that

² Even if the Plaintiff had alleged that the Defendant had failed to report to the appropriate prosecution agency, the incident reports and certified copies of the Plaintiff's arrest warrants presented to the Court at the time of the hearing conclusively demonstrate that the Lexington County Sheriff's Department fulfilled its responsibility to report the seizure to the appropriate prosecution agency.

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the Lexington County Sheriff's Department breached a duty owed to the Plaintiff by failing to initiate forfeiture proceedings regarding the seized money.

The forfeiture provisions allow for seizure to be made without process if the seizure is incident to an arrest, as it was in this case. *See* S.C. Code Ann. § 44-53-520(b)(1). However, in those situations, proceedings under S.C. Code Ann. § 44-53-530 regarding forfeiture and disposition are to be instituted within a reasonable time. *See* S.C. Code Ann. § 44-53-520(c). Section 44-53-530(a) provides in relevant part that “[f]orfeiture of property must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized.” While § 44-53-520 does not explicitly identify the party who is to bring the forfeiture proceedings, § 44-53-530 is quite clear in its language requiring that the Attorney General or his designee or the circuit solicitor or his designee initiate the forfeiture proceedings.

In the case of *Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013), the South Carolina Supreme Court considered the responsibility of a law enforcement agency with respect to seized property subject to forfeiture. There, the owner of counterfeit goods that were seized from the owner's store filed suit against the Florence County Sheriff's Office, asserting claims of negligence, conversion, civil conspiracy, and damages arising from the seizure of the goods. As seems to be the case here, the Plaintiff in *Farmer* asserted that the Florence County Sheriff's Office breached a statutory duty in failing to initiate forfeiture proceedings regarding the goods within a reasonable time. Interpreting § 44-53-530, the Supreme Court held that the Florence County Sheriff's Office had no statutory authority, much less “mandated responsibility,” to commence forfeiture proceedings regarding the seized goods. *See Farmer*, 401 S.C. 606, 612, 738 S.E.2d 473, 477. As such, the Court found that the obligation to initiate a forfeiture action in a reasonable time rests with “the Attorney General or his designee or the circuit solicitor or his designee,” rather than with the law enforcement agency. *Id.* at 612, 738 S.E.2d at 476.

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In light of the Supreme Court's decision in *Farmer*, it is clear that the Defendant Lexington County Sheriff's Department had no ability, much less responsibility, to initiate forfeiture proceedings regarding the \$728.00 that was seized from the Plaintiff at the time of his arrest. If a duty to initiate forfeiture proceedings was breached in this case, it was not a duty that was owed by the Defendant. As such, the motion for summary judgment filed on behalf of the Defendant Lexington County Sheriff's Department should be granted and the Plaintiff's claims dismissed.³

Plaintiff's Motions for Appointment of Counsel and to Compel Discovery

In light of the Court's finding that the Defendant's motion for summary judgment should be granted, the Plaintiff's motion for appointment of counsel and motion to compel have been rendered moot. However, even if the Plaintiff's motions were not moot, the Court would note that this Court has previously denied a request made by the Plaintiff for appointment of counsel as there exists no provision to appoint counsel for the Plaintiff in a civil action seeking money damages. See Order of the Honorable William P. Keesley dated October 20, 2014. Moreover, regarding the Plaintiff's motion to compel discovery, documents presented to the Court at the time of the hearing demonstrate that the Defendant did timely and appropriately respond to the Plaintiff's discovery requests at issue.

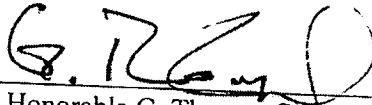
CONCLUSION

The Court has considered the parties' written submissions as well as oral arguments in this matter. Based upon the evidence and all inferences that can be reasonably drawn from the evidence viewed in the light most favorable to the Plaintiff, this Court finds that there is no dispute of facts and the inferences to be drawn from the evidence are susceptible to only one reasonable interpretation. Consequently, this Court finds that based upon the forgoing reasons and the laws of the State of

³ The Defendant's motion for summary judgment also included several other grounds in support of its argument that the Plaintiff's claims should be dismissed, including an argument that the Plaintiff's claims are barred by the applicable statute of limitations and the equitable doctrine of unclean hands. However, because the Court finds that the Plaintiff's claims should be dismissed for the reasons set forth above, the Court does not need to address the additional grounds asserted by the Defendant in support of its summary judgment motion.

South Carolina, the Defendant is entitled to summary judgment as a matter of law as to the Plaintiff's claims as set forth in his Complaint in this matter. This Court further finds for the reasons set forth above that the Plaintiff's motion for appointment of counsel and motion to compel have been rendered moot.

IT IS, THEREFORE, ORDERED that the Defendants' Motion for Summary Judgment be **GRANTED** and the above-entitled action is dismissed with prejudice. As the Defendant has petitioned this Court for an Order allowing it to return to the Plaintiff the \$728.00 that was seized, plus accrued interest, and received leave of Court to deposit those funds with the Lexington County Clerk of Court, the Clerk of Court is directed to release the funds to the Plaintiff, care of his Cooper Trust Fund account maintained by the South Carolina Department of Corrections.



The Honorable G. Thomas Cooper, Jr.
Circuit Court Judge, Fifth Judicial Circuit

July 7, 2015
Charleston, South Carolina