

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Jo Pradubsri,)
Plaintiff,)

v.)

The Lexington County Sheriff's)
Department,)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-2-1

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SC Court of Appeals

ORDER

This matter came before this Court by way of a motion filed by the Plaintiff to alter or amend the Court's prior order granting summary judgment in favor of the Defendant Lexington County Sheriff's Department. The Defendant has filed a response in opposition to the Plaintiff's motion. The Court has reviewed the parties' submissions and has determined, pursuant to Rule 59(f), SCRCP, that oral argument would not assist the Court in ruling on the Plaintiff's motion. After carefully considering the arguments made and the entirety of the matters on file in this case, the Court finds that summary judgment in favor of the Defendant was appropriate and that the Plaintiff's motion to alter or amend should be denied.

DISCUSSION

The Plaintiff makes three arguments in challenging the Court's order granting the Defendants' motion for summary judgment and denying the Plaintiff's motion. First, the Plaintiff contends that summary judgment is inappropriate in this case pursuant to Rule 38(a), SCRCP. Rule 38(a) provides:

The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of

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money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

Id. While it is true that both the Plaintiff and the Defendant have requested a trial by jury in this case, this fact does not preclude the Court from considering the Defendant's motion for summary judgment. The Plaintiff contends that the Court has violated his constitutional right to have a trial by jury by granting summary judgment in favor of the Defendant. Although Rule 38(a), SCRPC, does provide for a trial by jury in certain cases, Rule 56, SCRPC, provides for summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In essence, Rule 56 allows for an efficient disposition of a case when there is no need for it to go to a jury. In this case, the Plaintiff's right to a jury trial has not been violated by the granting of summary judgment. To hold otherwise would mean that whenever a jury demand is made, summary judgment is no longer an option.¹

Next, the Plaintiff contends that the Defendant failed to adequately oppose the Plaintiff's motion for summary judgment, thus entitling the Plaintiff to summary judgment. Rule 56(e), SCRPC, requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 320, 548 S.E.2d 854, 856 (2001) (citing Rule 56(e), SCRPC). In this case, the Defendant did properly oppose the Plaintiff's motion for summary judgment by coming forward with material to show that the Plaintiff was not entitled to judgment as a matter of law. Specifically, the Defendant relied upon the investigative file generated at the time of the

¹ The South Carolina Court of Appeals has considered the relationship between Rule 38(a), SCRPC, and Rule 56, SCRPC. In *Waterford Place Homeowners Ass'n of Lexington, Inc. v. Barnes*, No. 2006-UP-289, 2006 WL 7286101, at *2 (S.C. Ct. App. June 21, 2006), the Court of Appeals rejected a Plaintiff's argument that the trial court's grant of summary judgment against him violated his constitutional right to have a trial by jury. While the Court recognizes that unpublished opinions of the appellate courts have no precedential value, the concept discussed by the Court of Appeals can be looked to as persuasive authority.



Plaintiff's arrest and a certified copy of the Plaintiff's criminal file showing that he was convicted of the crimes for which he was arrested at the time the money was confiscated. Included in this material was the affidavits completed by the investigating officer and submitted to a magistrate judge when arrest warrants were obtained against the Plaintiff. The Defendant did not rely upon the mere allegations or denials of its pleading to oppose the Plaintiff's summary judgment motion, but rather brought forth admissible evidence to refute the Plaintiff's motion. This evidence more than satisfied the Defendant's obligations in opposing the Plaintiff's motion and clearly demonstrated that the Plaintiff is not entitled to judgment as a matter of law in this case.

Finally, the Plaintiff contends that the Court erred in finding that a genuine issue of material fact exists regarding the Plaintiff's claims, thus precluding summary judgment being granted in the Plaintiff's favor. Contrary to the Plaintiff's contention, the Court has found based upon the record before it that "there is no dispute of facts and the inferences to be drawn from the evidence are susceptible to only one reasonable interpretation." As the Court has previously held, the record demonstrates that the confiscation of the funds by the Defendant Lexington County Sheriff's Department at the time of the Plaintiffs arrest was not unlawful, and that the Defendant had no ability—much less a responsibility—to initiate forfeiture proceedings regarding those funds in light of the South Carolina Supreme Court's holding in *Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013). The Plaintiff has presented no evidence to demonstrate that the Defendant breached a duty owed to him in this case. Accordingly, as the Court has previously held, summary judgment in favor of the Defendant is appropriate.

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CONCLUSION

After careful consideration of the record in this case and the submissions of the parties, the Court finds that no legally sufficient basis exists to alter or amend its Order filed on August 3, 2015, in this case.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion to Alter or Amend is DENIED.



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

SEPTEMBER 8, 2015

COLUMBIA, South Carolina

