

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Clarence B. Jenkins, Jr.,)
)
Plaintiff,)

C/A No.: 2015-CP-40-03112

v.)

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

South Carolina Department of)
Employment & Workforce, South)
Carolina Budget & Control Board, and)
Office of the Governor of South Carolina,)
)
Defendants.)

2015 OCT 12 AM 11:36
JANETTE W. McARDLE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came before this Court on September 15, 2015, on the Motion to Dismiss filed by Defendants South Carolina Department of Employment & Workforce ("SCDEW"), South Carolina Budget & Control Board ("SCBC&B" or the "Board") and the Office of the Governor of South Carolina (hereinafter collectively the "Defendants") under Rule 12(b)(6), SCRCP. The Court also heard several motions filed by *pro se* Plaintiff, which were alternatively denied or dismissed as moot.

Having considered the memoranda provided by each side and the arguments of the parties, I hereby GRANT the Defendants' Motion to Dismiss and DISMISS this case with prejudice as the three named Defendants.¹

STANDARD OF REVIEW

In considering a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for

¹ Although the Complaint references certain individuals, none have been served as individual parties to this case.

relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In this case, the Complaint does not state a claim for which relief can be granted. For that reason, the lawsuit must be dismissed.

PLAINTIFF'S ALLEGATIONS

Plaintiff is a former employee of SCDEW. (Plaintiff's Complaint, ¶ 7). He alleges that the Defendants "secretly blackballed [his] job application seeking employment with [the] State of South Carolina." (Plaintiff's Complaint, ¶ 6). He specifically claims that his applications for employment were rejected because a SCDEW employee named Adrienne Sorensen entered a "Barred from Applying" code to his applications. (Plaintiff's Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Plaintiff's Complaint, ¶¶ 37-38).

Plaintiff purports to bring three (3) causes of action against the Defendants:

- Plaintiff attempts to allege a "**Defamation**" claim against the Defendants related to the "Barred for Applying" code allegedly entered into the State's computer system. Plaintiff variously described this as a "well formed plan" and that the Defendants' individual employees committed "intentional acts by manipulating computer functions performed with malice towards Plaintiff." (Plaintiff's Complaint, ¶¶ 37-38, 55). More specifically, Plaintiff argues that "it is reasonable to believe" that a single SCDEW employee, Adrienne Sorensen, "performed such an egregious act on her own without permission," and that such an act was "criminal." (Plaintiff's Complaint, ¶ 39). Plaintiff also alleges that she did so "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59).
- Plaintiff also attempts to allege an "**Abuse of Process**" claim² based on the same allegations. (Plaintiff's Complaint, ¶55).
- Plaintiff's final cause of action is stated under S.C. Code Ann. § 15-3-550 with the statute referencing a two-year statute of limitations for defamation claims. Because the statute does not describe an independent cause of action, Plaintiff's "Third Cause of Action" does not state a claim. (Plaintiff's Complaint, ¶¶ 56-59).

² Plaintiff's Second Cause of Action also includes a reference to a "Violation of S.C. Code Computer." This is not a legally cognizable claim.

OPINION

I. PLAINTIFF'S DEFAMATION CLAIM FAILS UNDER THE PROVISIONS OF THE SOUTH CAROLINA TORT CLAIMS ACT.

Under South Carolina law, each of the Defendants is an entity covered by the South Carolina Tort Claims Act ("SCTCA"). S.C. Code Ann. § 15-78-10 *et seq.* The SCTCA explicitly provides that these entities are immune from suit where an employee acts outside the scope of his or her duty, or with an intent to harm, or with malice. S.C. Code Ann. §§ 15-78-60(17), 15-78-70.

According to Plaintiff's own pleadings, the act for which he seeks redress – being "blackballed" because Adrienne Sorensen tagged Plaintiff's applications for employment with a "Barred for Applying" code – was done "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59). For that reason, the Plaintiff's own allegations bar recovery from these three specific Defendants under these provisions of the SCTCA. *See Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 586-587, 486 S.E.2d 9, 11 (S.C. App. 1997) (governmental entity immune from suit for employee's intentional torts, or acts outside the scope of his duty, under S.C. Code Ann. § 15-78-60(17)); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (governmental entity not proper party for intentional torts under Tort Claims Act).

II. PLAINTIFF HAS FAILED TO STATE A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST THE DEFENDANTS, AND FOR THAT REASON, IT MUST BE DISMISSED.

The South Carolina Supreme Court has defined abuse of process as "employment of legal process for some purpose other than which it was intended by law to effect – the improper use of a regularly scheduled process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 695 (1967). It is distinguished from malicious prosecution by saying it "involves the malicious misuse of perversion of the process, after its issuance, for an end not lawfully

warranted by it.” *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (1983). The elements, as articulated in *Huggins*, are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.

The second element, a “willful act,” has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]” *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc. v. United Food & Commercial Worker’s Int’l Union*, 351 S.C. 65, 715 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

Here, the Complaint contains no allegation that any of the Defendants used or authorized civil or criminal “process” with regard to Plaintiff. Lacking this element, Plaintiff’s abuse of process claim fails and must be dismissed with prejudice.

CONCLUSION

For the reasons detailed above, Plaintiff has failed to state any justiciable claim against South Carolina Department of Employment & Workforce, the South Carolina Budget & Control Board, or the Office of the Governor of South Carolina.

This lawsuit is therefore DISMISSED with prejudice, with each side bearing its own costs and fees.

AND IT IS SO ORDERED.



Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

10 - 8 ., 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015CR4003112

Clarence B Jenkins Jr

SC Department of Employment Workforce

South Carolina Governor

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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

SC Court of Appeals

DISPOSITION TYPE (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 Nonparty); 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 (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Clarence B Jenkins Jr

Eugene Hamilton Matthews

Clarence B Jenkins Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

