

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )  
 )  
 Charles Taylor, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 (1) Stop 'N' Save, Inc., d/b/a El Cheapo )  
 Plus #7; and )  
 )  
 (2) Roy Rahal )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT

Civil Action No. 2013-CP-40-1808

ORDER

RECEIVED

DEC 03 2015

SC Court of Appeals

JAMES C. CAMPBELL  
 CLERK OF COURT  
 SUMTER COUNTY, S.C.

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RECORDED

This matter is between Plaintiff Charles Taylor ("Plaintiff") and Defendants Stop 'N' Save, Inc. d/b/a El Cheapo Plus #7 ("El Cheapo") and Roy Rahal ("Mr. Rahal") (collectively "Defendants") and is before the Court on the following motions:

1. Plaintiff's Motion to Amend;
2. Defendants' Motion for Summary Judgment;
3. Plaintiff's Motion for Summary Judgment;
4. Plaintiff's Motion for Sanctions; and
5. Defendants' Motion to Dismiss for Vexatious Litigation and Sanctions.

A hearing on these motions was held at the Sumter County Courthouse on October 14, 2015. Present for the hearing were Plaintiff, appearing *pro se*, and Gray T. Culbreath and Randy J. Soriano on behalf of Defendants. After considering the pleadings filed by the parties, as well as the arguments presented at the hearing, the Court rules as follows:

1. Plaintiff's Motion to Amend is DENIED;
2. Defendants' Motion for Summary Judgment is GRANTED;
3. Plaintiff's Motion for Summary Judgment is DENIED;
4. Plaintiff's Motion for Sanctions is DENIED;
5. Defendants' Motion to Dismiss for Vexatious Litigation and Sanctions is HELD IN ABEYANCE.

The Court's factual and legal basis for these rulings is set forth below.

## FACTUAL BACKGROUND

On October 9, 2013, Plaintiff filed a complaint against Defendants and certain other parties, captioning the case "Damages to Real Property (House)". [See Original Complaint, dated October 9, 2013]. On December 4, 2013, Plaintiff filed an Amended Complaint naming El Cheapo as the previously unnamed "U-Haul local dealer" and adding allegations related to El Cheapo. [See Amendment to Complaint]. On March 20, 2014, Plaintiff filed a "Notice Joining Roy Rahal," in an attempt to add Mr. Rahal, the former manager of El Cheapo, as a defendant in this lawsuit. [See Notice Joining Roy Rahal].

On June 9, 2014, Plaintiff filed an Amended Complaint against El Cheapo and Mr. Rahal, alleging various causes of action for gross negligence and intentional infliction of emotion distress and claiming various personal injuries associated with Defendants' failure to compensate Plaintiff for the property damage allegedly caused by Reginald Morton, the driver of the subject rental truck. [See Amended Complaint, dated June 9, 2014].

Throughout the various iterations of the Complaint, Plaintiff alleges that, on June 1, 2013, Mr. Rahal, the manager of EL Cheapo, rented a U-Haul truck to Reginald Morton and Odell Morton, Reginald's father, who were renting a house from Plaintiff. Plaintiff claims that the truck was improperly rented to the Mortons, as Reginald did not have a valid drivers' license. Plaintiff claims that, after renting the truck, Reginald Morton struck his rental house with the truck causing property damage. Plaintiff bases all of his claims on allegations that El Cheapo and Mr. Rahal rented a U-Haul truck to Reginald Morton, the gravamen of the claim being that Reginald Morton did not possess a valid driver's license at the time of the subject rental. [See Amended Complaint at Para. 8 and 9]. Plaintiff further alleges that neither Reginald Morton nor Odell Morton possessed a driver's license at the time of the rental. [See id., at 9].

However, the evidence presented to the record reflects that Odell Morton, not Reginald Morton, was the renter of the subject truck and that Odell Morton possessed a valid Maryland drivers' license at the time of the rental. [See Rental Agreement (hereinafter Rental Agreement) and official records of the Maryland Department of Motor Vehicles (hereinafter "Maryland DMV", attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. B; see also Rahal Deposition and Morton Deposition, attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Exs. A and C, respectively]. Reginald Morton, who did not have a drivers' license at the time, was not the renter of the truck but instead only paid for the rental. [See id.]. It is undisputed that Mr. Taylor was not present at El Cheapo at the time of the rental, and Mr. Rahal and Reginald Morton both testified that Odell Morton was present and had a valid drivers' license. [See id.]. There is no evidence creating any genuine issue of disputed fact that Defendants' actions in renting the subject U-Haul truck to Odell Morton were in any way negligent or wrongful. Facts further supporting the Court's rulings will be set forth in the discussion below.

#### **PLAINTIFF'S MOTION TO AMEND**

On August 21, 2015, Plaintiff filed a Motion to Amend pursuant to South Carolina Rules of Civil Procedure 15, seeking to add U-Haul International ("UHI") as an "agency defendant". Defendants opposed this amendment on the grounds that it was futile and, in support of that argument, submitted the Affidavit of Stephen Winkelman, an employee of UHI.

Rule 15(a) of the South Carolina Rules of Civil Procedure sets forth the standard for granting motions to amend a pleading and provides in pertinent part:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time

within 30 days after it is served. Otherwise, a party may amend his pleadings only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

In interpreting Rule 15(a), South Carolina courts have noted that, “[a]lthough leave to amend should generally be freely given, leave may be denied ‘where the proposed amendment would be futile.’” See Jennings v. Jennings, 389 S.C. 190, 209, 697 SE2d 671, 681 (Ct. App. 2010). rev’d on other grounds, 401 S.C. 1, 376 SE2d 242 (2012) (holding that circuit court did not err in refusing to grant leave to amend complaint to add party defendant where amendment would be futile); Higgins v. Medical University of South Carolina, 326 S.C. 592, 604, 486 SE2d 269, 275 (Ct. App. 1997) (“any amendment of the Higginses’ complaint which alleges the doctors were paid by UMA ultimately would be futile...”)

Plaintiff’s claims are based solely upon allegations that El Cheapo rented a truck to Reginald Morton who did not possess a valid driver’s license at the time of the rental. (See Amended Complaint). Even assuming this allegation is true, there is no basis for UHI to be added to this lawsuit as a party defendant. Plaintiff’s claims relate solely to the rental of the U-Haul truck, and UHI does not rent trucks or any other U-Haul equipment as a part of its business. In support of this position, Defendants submitted the undisputed affidavit of Stephen Winkelman into the record, which stated that UHI provides accounting services, technical advisory services, and purchasing services to U-Haul rental companies and does not engage in the rental of vehicles. [See the Affidavit of Stephen Winkelman, attached to Defs.’ Memorandum of Law in Opposition to Pltf.’s Motion for Leave to Amend Pleadings at Ex. B]. Based on this undisputed evidence, I find that any amendment adding UHI as a party defendant would be futile, and therefore the Court denies Plaintiff’s Motion for Leave to Amend.

## DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants moved for summary judgment as to Plaintiff's claims on several occasions, on April 27, 2015, May 13, 2015, and August 4, 2015, in response to various reiterations of Plaintiff's complaints.

After considering the filings and arguments of the parties, I conclude that, taking the evidence in the light most favorable to Plaintiff, there is no genuine issue of material fact as to any perceived theory of vicarious liability or direct negligence/gross negligence. Further, I find that Plaintiff's intentional infliction of emotional distress claim fails as a matter of law. Accordingly, Defendants' motions should be granted for the reasons set forth as follows:

### **A. Standard of Review.**

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." See Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 493, 443 SE2d 392, 394 (1994). However, "[i]t is not sufficient [to defeat a motion for summary judgment] that one create an inference which is not reasonable or a fact that is not genuine." See Schuler v. Tuomey Regional Medical Center, 313 S.C. 225, 227, 437 SE2d 128, 129 (Ct. App. 1993). "In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial." See Nations Bank v. Scott Farm, 320 S.C. 299, 303, 565 SE2d 98, 100 (Ct. App. 1995).

**B. The Graves Amendment, 49 U.S.C. §30106, Bars Plaintiff's Claims for Vicarious Liability.**

Plaintiff's claims against Defendants fail as a matter of law because the claims are essentially claims of vicarious liability based upon the rental of the subject rental truck. These claims are barred by federal legislation known as the Graves Amendment. On August 10, 2005, the Federal Public Transportation Act of 2005 was enacted. Included in this bill was 49 U.S.C. § 30106, otherwise known as the Graves Amendment, which provides in relevant part:

(a) In General – An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if--

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner). . . .

(c) Applicability and Effective Date – Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

Congress enacted the Graves Amendment for the explicit purpose of abolishing vicarious liability for those engaged in the business of renting and leasing motor vehicles based on mere ownership or leasing of a vehicle. The Congressional mandate of 49 U.S.C. § 30106 is clear and unambiguous. The affiliate of the owner of a leased vehicle "shall not be liable under the law of any state . . . by reason of being the owner of the vehicle for harm to persons or property that arises out of the use, operation or possession of the vehicle during the period of the rental or the lease..." 49 U.S.C. § 30106(c). By its express terms, 49 U.S.C. § 30106 "shall apply with

respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment." 49 U.S.C. § 30106(c).

Although South Carolina has not addressed the issue, state courts across the country have affirmed that the Graves Amendment abolishes vicarious liability for vehicle rental companies. See Vargas v. Enter. Leasing Co., 60 So. 3d 1037, 1041 (Fla. 2011) cert. denied, 132 S. Ct. 769, 181 L. Ed. 2d 486 (U.S. 2011) (“[W]e conclude that the present case falls into the third category [where a state law conflicts with a federal law] and agree with the district court that section 324.021(9)(b) 2, Florida Statutes (2007) conflicts with and thus is preempted by the Graves Amendment”); Lazaridis v. Progressive N. Ins. Co., FSTCV116011100S, 2012 WL 5936218 (Conn. Super. Ct. Nov. 7, 2012) (holding that Graves Amendment precluded Hertz Corporation from being vicariously liable for the alleged negligence of driver); Fuller v. Enter. Rent-a-Car Co. of Kentucky, LLC, 2011-CA-001301-MR, 2012 WL 4839550 (Ky. Ct. App. Oct. 12, 2012), review denied (Aug. 21, 2013) (acknowledging that “Congress in 2005 enacted a law (the Graves Amendment) which exempts car rental companies from tort liability”); Esposito v. Kiessling Transit, Inc., 060883A, 2007 WL 3014703 (Mass. Super. Sept. 6, 2007) (“The clear language of this Federal statute indicates that, when applicable, it expressly preempts State law that imposes liability on owners of motor vehicles engaged in business of leasing or renting such vehicles simply due to ownership.”); Meyer v. Nwokedi, 777 N.W.2d 218, 223 (Minn. 2010) (“It is undisputed that Meyer's vicarious liability claim fits within the scope of the express preemption clause of the Graves Amendment. Specifically, Enterprise is engaged in the business of renting motor vehicles, and did not engage in negligence or criminal wrongdoing”).

Although South Carolina courts have yet to address the Graves Amendment, I find that the Graves Amendment preempts Plaintiff's vicarious liability claims in this case. Accordingly, Plaintiff's claims against El Cheapo and Mr. Rahal are dismissed because Plaintiff's claims are barred by federal law. Plaintiff's claims are, at their core, claims of vicarious liability founded upon the alleged negligence of Reginald Morton. El Cheapo was merely the renter of the subject U-Haul rental truck, and Mr. Rahal was an employee of El Cheapo, working in the scope of his employment at the time that the rental transaction was completed. [See Rahal Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. A]. Because claims for vicarious liability are barred by the Graves Amendment, Plaintiff's claims against Defendants must be dismissed.<sup>1</sup>

**C. Plaintiff's Claims of Gross Negligence Fail as a Matter of Law.**

Summary judgment is appropriate as to Plaintiff's gross negligence claim, as Plaintiff has failed to set forth any evidence that would allow a reasonable jury to conclude that Defendants breached their duty of care. "To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 368-69, 635 S.E.2d 97, 101 (2006) (citations omitted). Gross negligence has been defined as "the failure to exercise a slight degree of care" and "when a person is so indifferent to the consequences of

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<sup>1</sup> Even if the Graves Amendment did not preclude any claim or liability against Defendants for the negligence of the driver of the truck in causing the property damage alleged by Plaintiff, Plaintiff's claims amount to nothing more than bald allegations, unsupported by any evidence or facts. Reginald Morton testified at his sworn deposition that (1) the subject truck was rented by his father, Odell Morton (who had a valid driver's license at the time of rental), (2) the truck was driven only by Odell Morton, and (3) the truck never even hit Plaintiff's house. [See Morton Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. C].

his conduct as not to give slight care as to what he is doing.” Clark v. South Carolina Dept. of Public Safety, 362 S.C. 377, 382, 608 S.E.2d 573, 576 (2005) (citations omitted).

1. *Plaintiff's gross negligence claim fails because Plaintiff has failed to produce any evidence that Defendants owed Plaintiff a duty.*

Defendants are entitled to summary judgment as to Plaintiff's gross negligence claim, as Plaintiff has failed to produce any evidence that Defendants owed a duty to Plaintiff. “In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff.” Huggins v. Citibank, N.A., 355 S.C. 329, 332 585 S.E.2d 275, 277 (2003) (citing Faile v. South Carolina Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002)). “If there is no duty, the defendant is entitled to judgment as a matter of law.” Id. (citing Simmons v. Tuomey Regional Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000)).

South Carolina courts hold that there are four factors to consider in determining whether a “legal duty” exists: (1) applicable statutory duties; (2) deviation from industry standards; (3) serious risks of physical harm; and (4) whether a special relationship, imposing duties independent of contract, exists between the alleged tortfeasor and the injured party. See Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 346, 384 S.E.2d 730, 737-38 (1989); Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goudling, Inc., 320 S.C. 49, 463 S.E.2d 85 (1995). With regards to the fourth factor, “[w]here this relationship is ‘too attenuated,’ a duty will not arise.” Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (1993) (quoting South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325-26 (1986)).

Plaintiff's entire case has been and continues to be based upon his bald assertions, unsupported by any evidence, that Defendants rented a U-Haul truck to Reginald Morton, an individual without a driver's license. [See Amended Complaint, at ¶¶ 10-11]. However, taking

all of the evidence as a whole, and in the light most favorable to Plaintiff, the only reasonable inference to be derived from the evidence in the record is that Defendants rented the subject truck to Odell Morton, not Reginald Morton. All of the evidence establishes as a matter of law that Reginald Morton simply paid for the rental and that Odell was the listed driver.

2. *Even should the Court find that a duty existed, Plaintiff's gross negligence claim should be dismissed because Plaintiff failed to produce any evidence that Defendants breached any duty owed to Plaintiff.*

To date, Plaintiff has produced no evidence that Defendants rented a U-Haul truck to an individual without a driver's license. In fact, the Rental Agreement and the records of the Maryland DMV, along with the deposition testimony of Mr. Rahal and Reginald Morton, prove just the opposite.

The Rental Agreement and Mr. Rahal's testimony concretely prove that Defendants rented the subject U-Haul truck to Odell Morton, who possessed a facially valid Maryland driver's license at the time of the rental on June 3, 2013. [See Rental Agreement and Maryland DMV Records, attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. B; Rahal Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. A]. Moreover, Mr. Rahal's testimony is corroborated by the sworn testimony given by Reginald Morton, in which Reginald confirms that it was Odell Morton, his father, that rented the subject truck by presenting his valid Maryland driver's license [See Morton Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. C]. Plaintiff repeatedly points to the fact that the Rental Agreement lists Reginald Morton as a party to the Rental Agreement. However, as the Rental Agreement shows and as Mr. Rahal and Reginald Morton have confirmed in their depositions, Odell Morton signed the Rental Agreement and presented a facially valid Maryland driver's license to Mr. Rahal at

the time of the rental, and Reginald Morton paid for the rental. [See Rahal Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. A; Rental Agreement and Maryland DMV Records, at attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at B; Morton Depo., at attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at C]. There is no evidence that the procedure followed by Defendants violated any law, and more importantly, no evidence that Defendants breached any duty owed to Plaintiff, to the extent he showed one existed. Without any evidence to legitimately call into question the Rental Agreement or the deposition testimony provided by Mr. Rahal and Reginald Morton, the only reasonable inference to be derived from all the evidence is that the truck was rented to Odell Morton, who possessed a facially valid Maryland drivers' license.

3. *Defendants are entitled to summary judgment as to Plaintiff's gross negligence claim even if it is determined to be a negligent entrustment claim.*

To the extent the Court determines Plaintiff's claim for "gross negligence" is an attempt to bring a negligent entrustment claim against Defendants, it should be dismissed on summary judgment, as there is no genuine issue of any material fact to be decided by this Court. In order to prove a negligent entrustment claim in South Carolina, a party must prove: "(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking, (2) that the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver." Jones ex rel. Jones v. Enterprise Leasing Company-Southeast, 383 S.C. 259, 264, 678 S.E.2d 819, 822 (Ct. App. 2009) (citing McAllister v. Graham, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986)).

While the Court is not prepared to conclude that South Carolina law allows negligent entrustment claims only in alcohol-related incidents, the record evidence demonstrates that El Cheapo actually rented the subject U-Haul truck to Odell Morton, not Reginald Morton. [See Rahal Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. A; Rental Agreement and Maryland DMV Records, at attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. B; Morton Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. C]. The evidence also shows that Odell Morton possessed a valid driver's license at the time of the rental. [See id.] Based upon this record evidence and the fact that Plaintiff has produced no evidence of his own to create a disputed material fact, Defendants should be awarded summary judgment in their favor on Plaintiff's negligence claims.

**D. Defendants Are Entitled to Summary Judgment As to Plaintiff's Intentional Infliction of Emotional Distress Claim.**

Plaintiff's intentional infliction of emotional distress ("IIED") claims fail as a matter of law. Although it is anything but clear from Plaintiff's pleadings and filings, it appears Plaintiff bases his IIED claim on unsupported allegations that (1) Mr. Rahal, an employee of El Cheapo, rented a U-Haul truck to Reginald Morton, an unlicensed driver who then backed the truck into Plaintiff's rental home causing property damage; and (2) Defendants intentionally refused to accept Plaintiff's unreasonable settlement offers after suit was filed. For the reasons discussed below, Plaintiff has failed to provide any evidence that supports the elements of an IIED claim and thus Defendants are entitled to summary judgment as a matter of law.

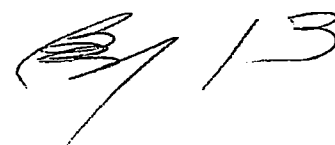
In order to recover for IIED under South Carolina law, a plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;

- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Hansson v. Scalise Builders of South Carolina, 374 S.C. 352, 650 S.E.2d 68 (2007) (quoting Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (citations omitted). In order to survive a motion for summary judgment, a plaintiff must establish a prima facie case as to each element of a cause of action for IIED. Hansson, 374 S.C. at 358, 650 S.E.2d at 71. Importantly, the Ford court emphasized the heightened burden of proof included in the second and fourth elements of the tort. Ford, 276 S.C. at 166, 276 S.E.2d at 780 (citations omitted). “It is for the court to determine in the first instance whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons may differ is the question one for the jury.” Todd v. S.C. Farm Bur. Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

As to the resulting emotional distress, “a party cannot establish a prima facie claim for damages resulting from a defendant’s tortious conduct with mere bald assertions.” Hansson, 374 S.C. at 358, 650 S.E.2d at 72. “To permit a plaintiff to legitimately state a cause of action by simply alleging ‘I suffered emotional distress’ would be irreconcilable with [the] Court’s development of the law in this area.” Id. In addition, the Ford court noted, “where physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claim is not fictitious.” Ford, 276 S.C. at 166, 276 S.E.2d at 780 (citations omitted).



1. *Plaintiff failed to introduce evidence supporting outrageous, extreme or severe conduct on the part of Defendants.*

Even assuming Plaintiff is able to prove his allegations that Defendants rented a U-Haul truck to an individual without a license, that benign act does not come close to rising to the level of outrageous, extreme or severe conduct that is necessary to support an IIED claim. This shortcoming is only made clearer when compared with other South Carolina cases where, despite more egregious conduct, the courts refused to find that the conduct at issue gave rise to an IIED cause of action. See, e.g., Todd v. S.C. Farm Bur. Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984); State v. Horton, 271 S.C. 413, 248 S.E.2d 263 (1978).

In Todd, the Court of Appeals reversed a jury verdict in favor of the plaintiff on his outrage claim against defendants, despite evidence that could have been interpreted to show the defendants violated the State's Polygraph Examiner's Act by requiring the plaintiff to submit to numerous polygraph tests in the course of his employment as an insurance agent. Todd, 283 S.C. at 173, 321 S.E.2d at 612 (Ct. App. 1984). The plaintiff also presented evidence that the court conceded could have led to the inference that one defendant lied about the plaintiff's performance on the polygraph examinations. Id. The court held that violation of a statute does not import moral turpitude or outrageousness so to give rise to an outrage or IIED cause of action. Id. The court also held that lying, in and of itself, is not outrageous conduct. Id. (citing Jones v. Nissenbaum, Rudolph & Seidner, 244 Pa.Super. 377, 368 A.2d 770 (1976); Public Finance Corp. v. Davis, 66 Ill.2d 85, 4 Ill.Dec. 652, 360 N.E.2d 765 (1976)).

There is no evidence Defendants intentionally or recklessly inflicted emotional distress. Instead, Plaintiff attempts to base his IIED claim on Defendants' conduct that pales in comparison to the conduct examined and found insufficient by the Court in Todd. Instead, all Defendants did here was rent a truck to, the Plaintiff claims, an unlicensed driver. Under South

Carolina case law and a modicum of common sense, Defendants' conduct was not so extreme and outrageous that it exceeded all possible bounds of decency so as to be regarded as atrocious or utterly intolerable in a civilized society. This is true even if Plaintiff had established the first element of the cause of action. There is no evidence that Defendants' actions caused any emotional distress to the Plaintiff, but even if there were, there is absolutely no evidence that the distress suffered was so severe that no reasonable man would be expected to endure it. Accordingly, Plaintiff's claim for IIED is dismissed.

For these reasons, Defendants' Motion for Summary Judgment is granted and likewise Plaintiff's Motion for Summary Judgment is denied.

#### **PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT**

By motion dated June 15, 2015, Plaintiff moved for summary judgment on his claims and in opposition to the Motion for Summary Judgment discussed above, which has been granted. For the reasons set forth in the proceeding discussion in this order granting Defendants' Motion for Summary Judgment, Plaintiff's Motion for Summary Judgment is denied.

#### **PLAINTIFF'S MOTION FOR SANCTIONS**

On August 3, 2015, Plaintiff filed a Motion for Sanctions under Rule 11 and subsequently filed amendments to that motion on September 14, 2015, and September 18, 2015. Plaintiff has no valid grounds for seeking sanctions under Rule 11 or the South Carolina Frivolous Civil Proceedings Sanctions Act, and as a result, Plaintiff's Motion for Sanctions should be denied.

Rule 11 of the South Carolina Rules of Civil Procedure provides:

Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated....the written or electronic signature of an attorney or other party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his



knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

Under Rule 11, a party and or the party's attorney may be sanctioned for filing a frivolous pleading, motion or other paper for making frivolous arguments. Runyon v. Wright, 322 S.C 15, 19, 471 SE2d 160, 162 (1996). Similarly, the South Carolina Frivolous Civil Proceedings Sanctions Act provides that an attorney may be sanctioned for "filing a frivolous pleading, motion, or document" or a pleading "interposed for merely delay, or merely brought for any other purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings." S.C. Code Ann. §15-36-10.

Plaintiff fails to show any grounds to show any imposition of sanctions against Defendants either under Rule 11 or S.C. Code Ann. §15-36-10. While Plaintiff has continually taken the position that Defendants improperly and illegally rented a U-Haul truck to Reginald Morton, the evidence in the case proves otherwise. Either through convenience or oversight, Plaintiff failed to direct the court to Mr. Rahal's testimony that it was Reginald's father, Odell Morton, who presented his drivers' license for rental, signed the rental agreement, and drove the U-Haul truck from the premises following the completion of the rental. (See Rahal Depo., attached to Defs.' Memorandum of Law in Support of Motion for Summary Judgment at Ex. A). Additionally, Plaintiff neglected to mention El Cheapo's supplemental discovery responses, which clarified its prior responses and stated that Odell Morton presented his drivers' license and signed for the rental of the truck. (See El Cheapo's Supplemental Responses to Requests for Admissions dated March 11, 2014, Nos. 1 and 3).

Plaintiff's Motion for Sanctions, in which he fails to accurately recount the facts, discovery, and testimony that has been given to date in this case, simply cannot pass muster and



does not entitle him to sanctions against Defendants. Accordingly, the Motion is denied as wholly without merit.

**DEFENDANTS' MOTION TO DISMISS FOR VEXATIOUS LITIGATION AND SANCTIONS**

Pending before the Court is Defendants' Motion to Dismiss for Vexatious Litigation and Sanctions, arising from Plaintiff's conduct during the course of litigation. While the parties argued the Motion at the hearing, the Court at this time holds a ruling on this Motion in abeyance. However, the Court reserves its right to rule on this Motion while it still has jurisdiction over the case.

**CONCLUSION**

Based on the foregoing, the court:

1. DENIES Plaintiff's Motion to Amend;
2. GRANTS Defendants' Motion for Summary Judgment;
3. DENIES Plaintiff's Motion for Summary Judgment;
4. DENIES Plaintiff's Motion for Sanctions; and
5. HOLDS IN ABEYANCE the ruling on the Defendants' Motion to Dismiss for Vexatious Litigation and Sanctions.

Based on the Court's ruling granting Defendants' Motion for Summary Judgment, this action is dismissed with prejudice.

November 20, 2015  
Sumter, South Carolina

  
\_\_\_\_\_  
George C. James, Jr., Circuit Judge

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

RECORDED

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP4301808

2015 NOV 20 PM 1:19

Charles Taylor

Roy Rahal  
El Cheapo Plus #7

Stop N Save Inc

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

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.  See Page 2 for additional information.
- 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; (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:

*Court holding defendants' motion for sanctions under advisement.*

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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 *George G. James, Sr.*

2143

Judge Code

11/20/2015

Date

For Clerk of Court Office Use Only

\*This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Taylor 332 Myrtle Beach Hwy Sumter, SC 29153

Gray Thomas Culbreath PO Box 7368 Columbia, SC 29202  
James Edward Brogdon III PO Box 7368 1201 Main St., Ste 1200 Columbia, SC 29201

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

*James C. Campbell*

Court Reporter

James C. Campbell - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

*See attached order*