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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-7392
Appellate Case No. 2014-001728

Frank "Doc" Haynie.....Appellant,

v.

The City of Forest Acres, Mark W. Williams, Shaun Greenwood, and Clark Frady, in their
individual capacities.....Respondents.

RECORD ON APPEAL

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II. THE COURT'S ORDER REGARDING THE INDIVIDUAL DEFENDANTS DOES NOT OVERLOOK ANY ISSUES OF FACT.

Plaintiff asserts that "the Court's orders make little reference" to the evidence submitted by him in opposition to Defendants' motions for summary judgment. *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 6. Respectfully, this Court did adequately consider the alleged factual support produced by Plaintiff with regard to his cause of action against the individual Defendants for civil conspiracy.

As a part of its review of the collective Defendants' Motions for Summary Judgment, the Court properly disregarded all evidence pertaining to events that occurred prior to November 2, 2009 based on the applicable statute of limitations. *See* Order Granting Individual Defendants' Motion for Summary Judgment at p. 2 n. 2. Plaintiff's counsel agreed that the statute of limitations had run with regard to any alleged wrongdoing that occurred prior to November 2, 2009. The Court's ruling had the effect of excluding all testimony of Barry Epps, including his affidavits (Exhibits 3 to Plaintiff's Motion to Alter or Amend. The Court's ruling also made evidence related to Defendants' inspection of Plaintiff's Brentwood Drive Property in August and October 2007 and throughout 2008 wholly irrelevant.

In response to Defendants' Motions for Summary Judgment, Plaintiff submitted testimony adduced from Margo Pierce that, in his words, "show[s] that Defendant Frady improperly interfered with Plaintiff's code board appellate rights." *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 6. Although not addressing specific testimony adduced by Plaintiff in support of his claims, the Court's Order did find that Plaintiff's code issue was "referred to and resolved by the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of

the building code,” and did not evidence any civil conspiracy.³ See Order Granting Individual Defendants’ Motion for Summary Judgment at p. 3; see also Order Granting Defendant City of Forest Acres’ Motion for Summary Judgment at p. 3. This ruling adequately addresses any purported factual issue created by Ms. Pierce’s testimony that Plaintiff claims was “unaddressed” by this Court. Additionally, evidence was submitted to the Court showing that Plaintiff failed to appeal the Board’s decision. Therefore, even if Defendant Frady inappropriately communicated with the Board prior to the hearing, Plaintiff failed to take any action to have the Board’s decision reviewed by the appropriate administrative agency or court.

~~The remaining evidence and testimony adduced from Margo Pierce (Exhibits 5 and 8 to Plaintiff’s Consolidated Motion to Alter or Amend) does not substantiate Plaintiff’s allegations of civil conspiracy against the individual Defendants. Ms. Pierce’s testimony merely reflects Plaintiff’s contention that the individual Defendants simply did not like him, which the Court ruled was insufficient to establish the presence of a civil conspiracy. See Exhibit 5 at ¶ 4.~~

Furthermore, the deposition testimony of Paul Cowles, Plaintiff’s electrical subcontractor, (see Exhibit 10 to Plaintiff’s Consolidated Motion to Alter or Amend) does not support Plaintiff’s civil conspiracy claim against the individual Defendants. Mr. Cowles testified, in relevant part:

both the main inspector, Mr. Frady, and this other fellow, whom I don’t know, were just talking amongst each other while I was sitting there trying to get a permit with Nasser. It was just negative comments they were making about Doc, I mean, but again I can’t say what they were. I just can’t remember. I wish I could, but I just can’t remember. . . . I can’t say who initiated it because they were all involved in it. So, you know, I can’t -- I can’t point a finger at any certain person. Again, like I told you, I can’t give specifics on what words were used.”

³ It is worth noting that although Plaintiff characterizes Frady’s alleged contact with the members of the Code Board of Appeals prior to the hearing as improper, the International Building Code (2006) provides that Frady, as City’s building official, was an *ex officio* member of the Code Board of Appeals, even though he was not permitted to vote on any matter before the board. See IBC (2006) § B101.2 (Membership of Board). Plaintiff has produced no evidence that the alleged contact had any bearing at all on the decision made by the three member panel.

See Cowles Depo. at 42:2-18. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." See *State v. Frazier*, 357 S.C. 161, 167, 592 S.E.2d 621, 624 (2004) (citing Rule 602, *SCRE*; *State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996)). Mr. Cowles' testimony does not evidence that he has any personal knowledge of the substance of the conversation between Defendant and Mr. Alquza. His testimony is speculative and is insufficient to overcome a motion for summary judgment.

The deposition testimony of David Cook, Plaintiff's plumbing subcontractor, (see Exhibit 11 to Plaintiff's Consolidated Motion to Alter or Amend) likewise provides no support for Plaintiff's civil conspiracy claim. Mr. Cook admitted "there was never a time when we were all in the same room where -- where -- from what I remember, I don't think that Doc, Clark and myself were ever in the same -- same vicinity at the same time or same room." *Id.* at 64:8-16. Mr. Cook testified as follows:

Q: ... And you mentioned you, Doc and Alquza were never in the same room, but I asked you about Clark Frady and Alquza. You never heard any conversation between them?

A: No. Huh-uh.

Q: Okay. All right. Did -- have you ever heard Clark Frady say anything derogatory or not nice about Doc?

A: In terms of "not nice," I guess it all depends on what you ask about "not nice." Was there the -- the issue -- I think -- I can't remember how that went about. It might have been in general a conversation with him like something of the fact of, "You better be careful if you're still doing work with Doc," in terms of getting stuck with payment or something of that nature."

Id. at 64:17-65:7. Even assuming Defendant Frady made such a statement to Mr. Cook, it does not evidence a civil conspiracy against Plaintiff.

Moreover, the Court did not inappropriately construe inferences in the moving parties' favor as Plaintiff asserts. On summary judgment, the evidence and all reasonable inferences must be

viewed in the light most favorable to the non-moving party. See *Knight v. Austin*, 396 S.C. 518, 722 S.E.2d 802 (2012) (emphasis added). In this case, Plaintiff argues that this Court should construe all inferences in his favor, even though most of his allegations are based on pure speculation and/or hearsay. “Although all reasonable inferences must be drawn in favor of the nonmoving party, such inferences must ‘fall within the range of reasonable probability and not be so tenuous as to amount to speculation or conjecture.’” *Johnson v. Toys ‘R’ Us-Delaware, Inc.*, 95 Fed. Appx. 1, 5 (4th Cir. 2004) (citation omitted).

In *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984), the South Carolina Court of Appeals addressed the applicable standard for summary judgment when considering alleged “inferences of fact.” The Court held: “It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine.” *Id.* at 527, 316 S.E.2d at 407. The Court explained:

It would hardly be argued that the testimony of a witness who said he saw a wreck in South Carolina would raise a factual issue if he simultaneously admitted that he was in a hospital in Boston, Massachusetts, at the time. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.

Id. Here, Plaintiff asks the Court to reach a decision in his favor by singling out morsels of speculative evidence, none of which gives rise to a genuine issue of material fact.

Moreover, “a court cannot ignore facts unfavorable to [the nonmovant], and it must determine whether a verdict for that party would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000). Here, Defendants presented evidence to the Court that Plaintiff accepted the Code Board of Appeals’ determination that he had failed to meet required standards under the International Building Code (2006) by not appealing the Board’s decision. See *Frady Aff.* at ¶ 17; *Williams Aff.* at ¶ 23; see also *Haynie Depo.* at 103:13-24. Moreover, Plaintiff

informed Defendant Williams by email dated May 12, 2011 that he was going to scale back the storage shed to less than 120 square feet, so that he would not need a permit as required by the Code. *Id.* Additionally, Defendant submitted evidence to the Court that Plaintiff pled guilty to a rubbish and garbage-rodents violation and paid a fine of \$750 in exchange for the City's agreement to *nolle prosequi* several other citations, with which Plaintiff now takes issue in this suit. *See* Haynie Depo. at 112:9-15; *see also* Holloway Aff. at ¶ 7. The Court cannot disregard unfavorable evidence to Plaintiff, the non-moving party, and Plaintiff should not be able to continue to assert that Defendants conspired against him by pointing to the Code Board of Appeals decision that he did not appeal and alleged "unwarranted" citations to which he pled guilty.

The Court did not overlook or misapprehend any issues of fact. Plaintiff's Consolidated Rule 59(e), SCRCF, Motion to Alter or Amend should be denied with respect to the Court's Order Granting the Individual Defendants' Motion for Summary Judgment.

III. THE COURT'S ORDER REGARDING THE INDIVIDUAL DEFENDANTS DOES NOT OVERLOOK OR MISAPPREHEND THE GOVERNING LAW.

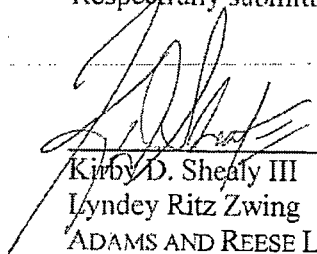
Plaintiff asserts that the Court "misappl[ied] the . . . civil conspiracy law to the case at bar." *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 8. Plaintiff's entire argument with regard to the Court's analysis on Plaintiff's civil conspiracy claim against the individual Defendants is that the Court inappropriately applied *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003), instead of applying *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010). Plaintiff attempts to reargue legal issues that have already been considered and decided by this Court. This tactic is inappropriate at this procedural stage. A motion for reconsideration is not to be used as a means to reargue matters already considered and disposed of by the Court. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

The Court did not overlook or misapprehend the applicable law with regard to Plaintiff's sole cause of action against the individual Defendants for civil conspiracy. No legal theory was left unaddressed and there has been no subsequent or intervening change in the law. In the absence of such conditions, there are no grounds upon which this Court should alter or amend its Order Granting Individual Defendants' Motion for Summary Judgment.

CONCLUSION

For the reasons stated above, Defendants respectfully request that this Court deny Plaintiff's Consolidated Rule 59(e), SCRPC, Motion to Alter or Amend Judgment with regard to the individual Defendants.

Respectfully submitted,



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June 16, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Frank "Doc" Haynie,

Plaintiff,

v.

The City of Forest Acres, Mark M.
Williams, Shaun Greenwood and Clark
Frady in their individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2012-CP-40-7392

**DEFENDANT CITY OF FOREST
ACRES' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
CONSOLIDATED RULE 59(E)
MOTION TO ALTER OR AMEND
JUDGMENT**

**TO: KIRBY SHEALY, III, ESQ., ATTORNEY FOR INDIVIDUAL DEFENDANTS, AND
J. LEWIS CROMER, ESQ. AND J. PAUL PORTER, ESQ., ATTORNEYS FOR
PLAINTIFF.**

Defendant City of Forest Acres (hereinafter "Defendant" or "the City"), respectfully files this memorandum in opposition to the Consolidated Rule 59(c) Motion to Alter or Amend Judgment filed on April 28, 2014 by Plaintiff Frank "Doc" Haynie ("Plaintiff"). Additionally, pursuant to Rule 10(c) of the South Carolina Rules of Civil Procedure, the City adopts and incorporates by referenced as if fully stated herein, any and all grounds for denial asserted by the individual Defendants in their Memorandum in Opposition to Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment. Defendant submits that the Court appropriately granted Summary Judgment in its favor for the following reasons.

I. STANDARD OF REVIEW

Rule 59(e) of the *South Carolina Rules of Civil Procedure* allows a party to move for an order altering or amending a judgment. The decision to grant or deny a Rule 59(e), SCRPC, motion is within the sound discretion of the trial court. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C.

143, 723 S.E.2d 835 (App. 2012), *reh'g denied, cert dismissed*. “An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007) (quoting *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006)). A party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsources, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

A motion to alter or amend is typically only granted where the moving party shows that there is a clear factual error to be corrected. *See Doe v. Doe*, 324 S.C. 492, 478 S.E.2d 854 (Ct. App. 1996); *see also Rusavage v. Zuratt*, 831 F.Supp. 417 (E.D. Pa. 1993) (stating that the purpose of a motion to alter or amend is to correct “manifest errors of law or fact or to present newly discovered evidence”). As the federal courts have recognized, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, 148 F.3d 396 (4th Cir. 1998).¹

¹ To the extent Plaintiff asserts that the federal standard for considering a Rule 59(e) motion should be applied, Defendant submits that no South Carolina state court has adopted the federal standard. However, even if the standard were to apply, it does not alter the disposition of the matter at hand. Under applicable federal law, “there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *See* Plaintiff’s Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 2 (citations omitted). Here, the first two grounds are wholly inapplicable. As to the third ground, Plaintiff’s assertion that the Court’s ruling constitutes “a clear error of law” or a “manifest injustice,” is improper. A finding of “manifest injustice” is typically reserved for instances in which a judgment injures innocent third parties or contains an obvious clerical error. For example, in *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170 (4th Cir. 2007), the United States Court of Appeals for the Fourth Circuit upheld a district court’s granting of a motion to alter or amend a judgment that unintentionally permitted the plaintiff to voluntarily dismiss all the claims, where the district court meant to allow the voluntary dismissal of only one claim. This third ground is not meant to permit a party’s disagreement with the trial court’s ruling to be an avenue for the granting of a motion to alter or amend. *See Hutchinson v. Staton*, 994 F.2d 1076, 1083 (4th Cir. 1993) (noting that where a judgment is factually supported and legally justified, there is no “clear error of law” or “manifest injustice”).

II. ARGUMENT

The Court's Order granting Defendant's motion for summary judgment is factually supported and legally justified, and Plaintiff's Motion should be denied for the following reasons.

A. The Court's Orders are not Inconsistent

Plaintiff asserts that this Court's orders granting summary judgment to the City and the individual defendants are inconsistent and that such inconsistency amounts to a "readily observable manifest injustice warranting alteration and amendment" See Plaintiff's Consolidated Rule 59(e) Motion at p. 5. Plaintiff would have this Court believe that the two orders are irreconcilable because the Court ruled that the City was immune from suit because the individual defendants' actions were intentional torts, outside of the course and scope of their employment with the City, while also finding that the individual defendants were immune from suit because their actions fell within the course and scope of their duties. Plaintiff misapprehends the bases for the Court's orders.

The Court's Order Granting Defendant City's Motion for Summary Judgment found three main grounds warranting dismissal of the City.² First, the applicable statute of limitations barred Plaintiff's cause of action for negligent hiring.³ Second, Plaintiff's negligent supervision claim failed because the individual defendants' conduct occurred away from the City's premises. Third, the City could not be held liable for alleged intentional torts by the individual defendants.

² Plaintiff contends that he has never alleged a violation of the Equal Protection Clause, but merely asserts that evidence of unequal and heightened enforcement of codes and ordinances support his actual claims raised. However, claims of selective enforcement and/or selective prosecution are rooted in the Equal Protection clause. See *192-Coin-Operate Video Game Machines*, 338 S.C. 176, 200, 525 S.E.2d 872, 885 (2000). If Plaintiff is not alleging a violation of the Equal Protection Clause, then he has failed to plead a cognizable cause of action against the City as it relates to this alleged unequal treatment.

³ Plaintiff concedes that the applicable statute of limitations bars any consideration of alleged wrongdoing prior to November 2, 2010 and his negligent hiring claim. (See Plaintiff's Consolidated Rule 59(e) Motion, p. 3). Therefore, these rulings will not be addressed in this memorandum.

See South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60 (17). Indeed, the Court correctly recognized that, based on Plaintiff's allegations alone, the City could not be held liable as a matter of law.

On the other hand, the Court dismissed Plaintiff's civil conspiracy cause of action against the individual defendants based on a lack of evidence amounting to a civil conspiracy. For example, Plaintiff submitted testimony adduced from Margo Pierce that, in his words, "show[s] that Defendant Frady improperly interfered with Plaintiff's code board appellate rights." *See* Plaintiff's Consolidated Rule 59(e) Motion to Alter or Amend Judgment at p. 6. Although not addressing specific testimony adduced by Plaintiff in support of his claims, the Court's Order did find that Plaintiff's code issue was "referred to and resolved by the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of the building code," and did not evidence any civil conspiracy. The Court specifically held that Plaintiff has failed to come forward with any factual evidence to substantiate his allegations of civil conspiracy, including that the individual defendants' actions were motivated by personal reasons. *See* Order Granting Individual Defendants' Motion for Summary Judgment at p. 6. *See also* Order Granting Defendant City of Forest Acres' Motion for Summary Judgment at p. 9 ("In fact, Plaintiff cannot articulate any reason for the alleged disparate treatment, other than asserting that the individual Defendants 'were just looking to get [him].'").

Contrary to Plaintiff's assertion, the Court's order dismissing the City was based on Plaintiff's own contradictory allegations that the individual defendants' conduct was intentional but that the City was still responsible for their conduct. Plaintiff is bound by his allegations set forth in his Complaint and has failed to substantiate them in order to withstand a motion for summary judgment. The Court's Order granting the City's Motion for Summary Judgment is

therefore consistent with the Court's Order granting the individual defendants' Motion for Summary Judgment. Accordingly, the orders present no "clear error of law or fact" or "manifest injustice" to Plaintiff and his Consolidated Rule 59(e) Motion to Alter or Amend should be denied.

B. The Court's Order Granting Summary Judgment to the City Does Not Misapply the Summary Judgment Standard and Applicable Law

Plaintiff asserts that he has submitted a vast expanse of evidence supporting his claim against the City, such that he has withstood the summary judgment standard. However, South Carolina law and the facts presented in this matter bear out a different conclusion, as found by the Court in its Order granting the City's motion for summary judgment.

1. The Court Did Not Misapply the Summary Judgment Standard

The Court did not inappropriately construe inferences in the moving parties' favor as Plaintiff asserts. On summary judgment, the evidence and all *reasonable inferences* must be viewed in the light most favorable to the non-moving party. *See Knight v. Austin*, 396 S.C. 518, 722 S.E.2d 802 (2012) (emphasis added). In this case, Plaintiff argues that this Court should construe all inferences in his favor, even though most of his allegations are based on pure speculation and/or hearsay. "Although all reasonable inferences must be drawn in favor of the nonmoving party, such inferences must 'fall within the range of reasonable probability and not be so tenuous as to amount to speculation or conjecture.'" *Johnson v. Toys 'R' Us-Delaware, Inc.*, 95 Fed. Appx. 1, 5 (4th Cir. 2004) (citation omitted). "It is not sufficient that one create an inference which is not reasonable. *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Id.* The *Corley* court explained:

It would hardly be argued that the testimony of a witness who said he saw a wreck in South Carolina would raise a factual issue if he simultaneously admitted that he

was in a hospital in Boston, Massachusetts, at the time. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.

Id. Likewise, “a court cannot ignore facts unfavorable to [the nonmovant], and it must determine whether a verdict for that party would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 712 (2000).

Here, the collective Defendants presented evidence to the Court that Plaintiff accepted the Code Board of Appeals’ determination that he had failed to meet required standards under the International Building Code (2006) by not appealing the Board’s decision. *See* Frady Aff. at ¶ 17; Williams Aff. at ¶ 23; *see also* Haynie Depo. at 103:13-24. Moreover, Haynie informed Defendant Williams by email dated May 12, 2011 that he was going to scale back the storage shed to less than 120 square feet, so that he would not need a permit as required by the Code. *Id.* Additionally, the collective Defendants submitted evidence that Haynie pled guilty to a rubbish and garbage-rodents violation and paid a fine of \$750 in exchange for the City’s agreement to *nolle prosequi* several other citations, with which Plaintiff now takes issue in this suit. *See* Haynie Depo. at 112:9-15; *see also* Holloway Aff. at ¶ 7. The Court cannot disregard unfavorable evidence to Plaintiff, the non-moving party, and Plaintiff should not be able to continue to assert that the individual Defendants conspired against him and the City failed to supervise such conspiracy, by pointing to the Code Board of Appeals decision that he did not appeal⁴ and alleged “unwarranted” citations to which he pled guilty.

⁴ It is worth noting that although Plaintiff characterizes Frady’s alleged contact with the members of the Code Board of Appeals prior to the hearing as improper, the International Building Code (2006) provides that Frady, as City’s building official, was an *ex officio* member of the Code Board of Appeals, even though he was not permitted to vote on any matter before the board. *See* IBC (2006) § B101.2 (Membership of Board). In addition, the plaintiff has produced no evidence that the alleged contact had any bearing at all on the decision made by the three member panel.

In addition to considering evidence that is unfavorable to the nonmovant, South Carolina law also requires that evidence presented in favor or in opposition to summary judgment must also be competent evidence—not hearsay. *See Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002) (holding inadmissible hearsay cannot be used to support or refute a motion for summary judgment); *see also* Rule 56(e), SCRPC (noting supporting and opposing affidavits shall set forth such facts as would be admissible in evidence). A genuine issue of fact can be created only by evidence which would be admissible at trial. Rule 56(e), SCRPC; *Englert, Inc. v. The Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct.App.1993); *Old Southern Life Ins. Co. v. Bank of North Carolina, N.A.*, 36 N.C.App. 18, 244 S.E.2d 264 (Ct.App.1978) (to defeat summary judgment, party opposing the motion must present competent evidence which would be admissible at trial which shows that a genuine issue of fact exists). For example, Haynie's assertions regarding the Covenant Road project are based solely on incompetent evidence. Mr. Cowles, Haynie's electrical subcontractor on the project, has denied either hearing or telling Haynie that he heard Shaun Greenwood tell Alquza that Plaintiff was a bad contractor and that he need to fire him before the City would allow Alqza to move forward on the project. Further, his testimony does not evidence that he has any personal knowledge of the substance of the conversation between Greenwood, Frady and Alquza. Likewise, Haynie's plumbing subcontractor, Mr. Cook, testified that he never heard any conversation between Alquza and Clark Frady. Haynie's bald, fabricated assertions are not competent evidence and are insufficient to withstand summary judgment.

Although Plaintiff is correct that a non-moving party is required only to present a mere scintilla of evidence to withstand summary judgment, the evidence presented must be competent evidence and relate to and support a cognizable cause of action. Here, Plaintiff is simply

claiming that because he has presented deposition testimony, regardless of its competence or substance, he can withstand summary judgment. He is asking this Court to reach a decision in his favor by singling out morsels of speculative evidence, none of which gives rise to a genuine issue of material fact. The Court did not misapply the facts or the standard for summary judgment, and Plaintiff's motion should be denied.

2. The Court Did Not Misapply the Law of Negligent Supervision

Plaintiff asserts that the Court misapplied negligent supervision law to the case at bar. Plaintiff's entire argument with regard to the Court's analysis on Plaintiff's negligent supervision claim against the individual Defendants is that the Court inappropriately applied *Degenhart v. Knights of Columbus*, 309 S.C. 114, 115-17, 420 S.E.2d 495, 496 (1992). Plaintiff attempts to reargue legal issues that have already been considered and decided by this Court.⁵ This tactic is inappropriate at this procedural stage. A motion for reconsideration is not to be used as a means to reargue matters already considered and disposed of by the Court. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

The Court did not overlook or misapprehend the applicable law with regard to Plaintiff's sole cause of action against the City. No legal theory was left unaddressed and there has been no subsequent or intervening change in the law. In the absence of such conditions, there are no grounds upon which this Court should alter or amend its Order. It is clear that Plaintiff's

⁵ Plaintiff now attempts to assert that the City can be held liable for intentional acts of the individual defendants because the actions occurred on premises that the individuals were privileged to enter as employees of the City. This argument was not raised below in Plaintiff's opposition memorandum or at the summary judgment hearing. Furthermore, with respect to his negligent supervision claim, Plaintiff's Complaint alleges the City "fail[ed] to properly supervise the defendants Frady and Greenwood in the performance of their duties in the numerous complaints which arose." Thus, his negligent supervision allegation does not encompass any allegations of misconduct on the City's premises, as Plaintiff attempts to raise here. Once again, a party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to judgment but did not. *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Mailsource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Therefore, Plaintiff's arguments in this regard are inappropriate for the Court's review.

negligent supervision claim fails on multiple fronts, and Plaintiff has not demonstrated that the Court abused its discretion in dismissing the claims against the City.

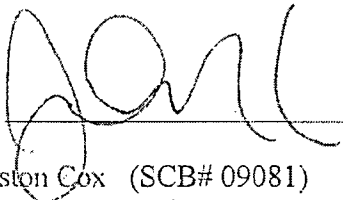
Therefore, Plaintiff's motion should be denied and the Court's Order should stand.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court deny Plaintiff's Consolidated Rule 59(e), SCRPC, Motion to Alter or Amend Judgment with regard to the City.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY: 

A Johnston Cox (SCB# 09081)
1201 Main Street, Suite 1200 (29201)
Post Office Box 7368
Columbia, South Carolina 29202
Tel: (803) 779-1833
Fax: (803) 799-1767
jcox@gwblawfirm.com

ATTORNEYS FOR DEFENDANT CITY OF
FOREST ACRES

Columbia, South Carolina
June 17, 2014.

**J. LEWIS CROMER
& ASSOCIATES, L.L.C.**

ATTORNEYS AND COUNSELORS AT LAW

J. LEWIS CROMER
JULIUS W. BABB, IV • J. PAUL PORTER
ASHLEY C. STORY • RYAN K. HICKS

RECEIVED

AUG 14 2014

J. LEWIS CROMER
& ASSOCIATES, L.L.C.

August 7, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

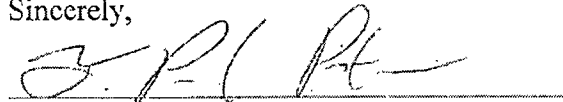
RE: Frank "Doc" Haynie v. The City of Forest Acres, Mark M. Williams,
Shaun Greenwood, and Clark Frady - Case No.: 2012-CP-40-07392

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.
- (3) A filing fee of \$100.

Sincerely,



J. Lewis Cromer, Esquire
J. Paul Porter, Esquire
J. Lewis Cromer and Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant

cc: Kirby D. Shealy, III, Esquire
Adams & Reese, LLP

RECEIVED

AUG 08 2014

SC Court of Appeals

1501 Main Street, 5th Floor
Columbia, SC 29202
Attorney for Respondents Mark M. Williams, Shaun
Greenwood and Clark Frady
A. Johnston Cox, Esquire
Gallivan, White, & Boyd, P.A.
1201 Main Street, Suite 1200
Columbia, SC 29202
Attorneys for Respondent City of Forest Acres

**J. LEWIS CROMER
& ASSOCIATES** I.L.L.C.
ATTORNEYS AND COUNSELORS AT LAW

J. LEWIS CROMER
JULIUS W. BABB, IV • J. PAUL PORTER
ASHLEY C. STORY • RYAN K. HICKS

August 7, 2014

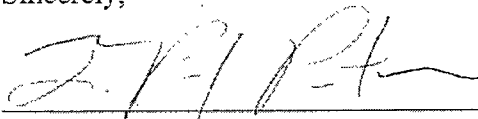
The Honorable Jeanette W. McBride
Clerk of Court for Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: Frank "Doc" Haynie v. The City of Forest Acres, Mark M. Williams,
Shaun Greenwood, and Clark Frady - Case No.: 2012-CP-40-07392

Dear Ms. McBride:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,



J. Lewis Cromer, Esquire
J. Paul Porter, Esquire
J. Lewis Cromer and Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
Attorneys for Appellant

cc: Kirby D. Shealy, III, Esquire
Adams & Reese, LLP
1501 Main Street, 5th Floor
Columbia, SC 29202
Attorney for Respondents Mark M. Williams, Shaun
Greenwood and Clark Frady

A. Johnston Cox, Esquire
Gallivan, White, & Boyd, P.A.

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AUG 08 2014

SC Court of Appeals

1201 Main Street, Suite 1200
Columbia, SC 29202
Attorneys for Respondent City of Forest Acres

**J. LEWIS CROMER
& ASSOCIATES L.L.C.**
ATTORNEYS AND COUNSELORS AT LAW

J. LEWIS CROMER
JULIUS W. BABB, IV • J. PAUL PORTER
ASHLEY C. STORY • RYAN K. HICKS

August 7, 2014

Elizabeth B. Harris, Court Reporter
414 Autumn Circle
Columbia, SC 29206

RE: Frank "Doc" Haynie v. The City of Forest Acres, Mark M. Williams,
Shaun Greenwood, and Clark Frady - Case No.: 2012-CP-40-07392

Dear Ms. Harris:

On February 21, 2014, the above case was tried before the Honorable G. Thomas Cooper, Jr, Circuit Court Judge, in Richland County. My records indicate that you were the court reporter for this case.

I request that you provide me with a full transcript of the proceedings.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



J. Lewis Cromer, Esquire
J. Paul Porter, Esquire
J. Lewis Cromer and Associates, LLC
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Appellant

cc: Kirby D. Shealy, III, Esquire
Adams & Reese, LLP
1501 Main Street, 5th Floor
Columbia, SC 29202

RECEIVED

AUG 08 2014

SC Court of Appeals

Attorney for Respondents Mark M. Williams, Shaun
Greenwood and Clark Frady

A. Johnston Cox, Esquire
Gallivan, White, & Boyd, P.A.
1201 Main Street, Suite 1200
Columbia, SC 29202

Attorneys for Respondent City of Forest Acres

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-7392

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SC Court of Appeals

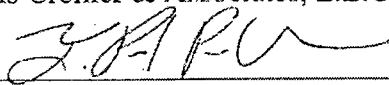
Frank "Doc" Haynie.....Appellant,
v.
The City of Forest Acres, Mark M. Williams, Shaun Greenwood, and Clark Frady...Respondents.

NOTICE OF APPEAL

Frank "Doc" Haynie appeals the order of the Honorable G. Thomas Cooper, dated July 1, 2014. Appellant filed a Motion to Reconsider and received written notice of entry of an order on said motion on July 15, 2014.

J. Lewis Cromer & Associates, L.L.C.

August 7, 2014

BY: 

J. Lewis Cromer
J. Paul Porter
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Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Appellant

Other Counsel of Record:

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A. Johnston Cox, Esquire
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Columbia, SC 29202

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007392

Frank Doc Haynie

City Of Forest Acres

Mark M Williams

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☒ 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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Non-suit);
☐ 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 1 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer

Kirby Darr Shealy III

Alfred Johnston Cox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

RECEIVED

AUG 08 2014

SC Court of Appeals

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Frank "Doc" Haynie,

Plaintiff,

v.

The City of Forest Acres, Mark M. Williams,
Shaun Greenwood and Clark Frady in their
individual capacities,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2012-CP-40-7392

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

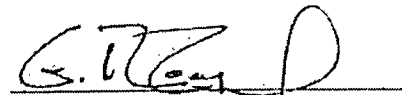
FILED
JUN 30 PM 12:06
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA

This matter comes before the Court by way of Plaintiff Frank "Doc" Haynie's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Plaintiff asks this Court to reconsider its Orders Granting Summary Judgment to Defendants the City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady filed April 14, 2014.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRPC to Reconsider this Court's Orders filed April 14, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
June 25, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-7392

Frank "Doc" Haynie.....Appellant,
v.
The City of Forest Acres, Mark M. Williams, Shaun Greenwood, and Clark Frady...Respondents.

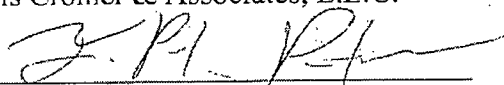
PROOF OF SERVICE

I certify that I, undersigned employee of J. Lewis Cromer & Associates, L.L.C., served the Notice of Appeal on The City of Forest Acres, Mark M. Williams, Shaun Greenwood and Clark Frady by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2014, addressed to their attorneys of record, Kirby D. Shealy, III, with the law firm Adams & Reese, LLP, 1501 Main Street, 5th Floor, Columbia, SC 29202 and A. Johnston Cox with the law firm Gallivan, White, & Boyd, P.A., 1201 Main Street, Suite 1200, Columbia, SC 29202.

J. Lewis Cromer & Associates, L.L.C.

August 7, 2014

BY:


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J. Paul Porter, Esquire
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Phone 803-799-9530
Fax 803-799-9533

Attorneys for Appellant