

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2014-CP-11-0052
Appellate Case No. 2014-000981

SC Court of Appeals

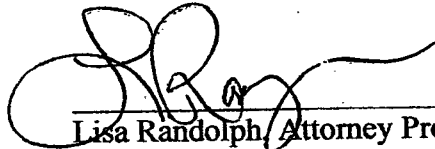
Lisa Randolph and George Randolph, Appellants,

v.

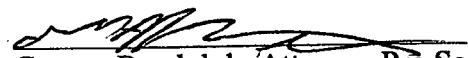
Dolgencorp, LLC, d/b/a Dollar General Store #76751, a/k/a Dollar General,
and Cherokee County, and Blacksburg Police Department, Defendants,
Of Whom Cherokee County and Blacksburg Police Department are the Respondents.

REPLY BRIEF OF APPELLANTS

December 8, 2014



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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors:
brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or
intervenor - green.

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR DISMISSING THE STATUTORY LAW CONTROLLING THE RESPONDENTS CONDUCT IN ACTUAL FRAUD DISMISED ABSENT TRIAL BY JURY?

II. DID THE TRIAL COURT ERR IN DISMISSING GROUNDED IN QUALIFIED IMMUNITY AND BARRING PUNITIVE DAMAGES ABSENT ANY AFFIRMATIVE DEFENSE IN QUALIFIED IMMUNITY AND BARRED RECOVERY OF PUNITIVE DAMAGES?

III. DID THE TRIAL COURT ERR IN CIVIL RIGHTS LAW AND STATUARY LAW BEING DISMISED ABSENT A TRIAL VERDICT?




STATEMENT OF THE CASE

On January 24, 2014, Lisa Randolph and George Randolph, jointly filed this action in the Cherokee County Circuit Court alleging various violations of State and Federal statutory and civil right law, including conspiracy, fraud, defamation, *et alia*, against Dolgencorp, LLC (“Dolgencorp”), d/b/a Dollar General Store #76751, a/k/a Dollar General (Dolgencorp), and Cherokee County (“the County”), and Blacksburg Police Department (“BPD”).

On February 21, 2014, the County, and on February 27, 2014, BPD, filed motions grounded to dismiss in qualified immunity and an absolute bar to punitive damages in law. The Randolph’s filed two Responses in Opposition to Dismiss, one against the County and one against BPD, and both grounded in genuine questions of material facts relevant to the Complaint.

The facts necessary to determine controlling law, if any, and any relative weight of the controlling law, if any, in the judgment and Order of the Trial Court rests significantly, if not completely, on the County and BPD Motions to Dismiss. Written and oral arguments of the Appellants and Respondents to dismiss were joined and argued on March 31, 2014.

The Trial Court filed the Order to Dismiss in favor of the defendants Cherokee County and Blacksburg Police Department on May 1, 2014. The ruling was favorably grounded for the Respondents in barring three of forty exceptions to qualified immunity and in an absolute bar to recovery of punitive damage claims. *S.C. Code §§ 15-78-60(4), (5), and (6), S.C. Code § 15-78-120(b)*. The Trial Court’s grounding provides for ruling against the Randolph’s pursuant to insufficient facts to constitute a cause of action. (Rule 12(b)(6), SCRC.P.)




The Appellants filed for summary judgment and default against Dolgencorp on March 13, 2014, in failing to Answer the Randolph's Complaint in the time required by the Trial Court's rules. On March 19, 2014, Dolgencorp filed an Answer setting out fourteen defenses to the Complaint. Subsequently on March 21, 2014, Dolgencorp filed a motion to preclude entry of default and in the alternative set aside default judgment pursuant to Rules 55(c) and 60(b), SCRCP. Specific to the Dolgencorp motions and the Appellants motions were before the Trial Court on June 2, 2014, and have not been ruled on according to these Appellants awareness.



STATEMENT OF FACTS

The first group of facts occurred on October 19, 2013, and neither involved any awareness, acts, or omissions, of the County nor BPD. Mrs. Randolph entered the Dolgencorp Store and went to the rear where; Mrs. Randolph saw the advertised price on the shelf immediately below the merchandise on the shelf, made a decision and did move several boxes of cat litter to the register at the front and make a purchase. When Mrs. Randolph saw the register price being higher than advertised, she asked the register price be made the same as the advertised price, in response to her question concerning why the register price was higher than advertised. The cashier asked, and the manager refused her, permission to charge Mrs. Randolph the advertised price. The manager also refused to provide the alternate; the lawful burden of proof exemption required to show Mrs. Randolph she was not being defrauded in falsely advertised pricing schemes. The manager collected and kept the higher register price.

The Store manager told Mrs. Randolph directly; she did not need to look at the advertised price, did refuse to provide any exemption required by law to the advertised price, and told Mrs. Randolph the price was whatever she wanted it to be. Because Mrs. Randolph asked that the price to adjusted as advertised, or that a lawful exemption to this advertised be issued, Mrs. Randolph called 911 to report this unlawful act and to ask for a Police Report in assisting to report violations of law directly damaging the Randolphs in being the victim of a financial crime.



REPLY ARGUMENTS

I. THE TRIAL COURT ERRED DISMISSING THE STATUTORY LAW CONTROLLING THE RESPONDENTS CONDUCT IN ACTUAL FRAUD DISMISED ABSENT TRIAL BY JURY.

Actual fraud was present on December 7, 2013. This fraud was concluded prior to the Police Officer arriving in a matter of minutes. Dolgencorp concluded this fraud, and then within the hour the police arrive, the police barred Mrs. Randolph entry with force using police power and police authority. Dolgencorp can take a member of the public's money and the police will not intercede, they will instead forcibly remove a member of the public. A Police Report occurring December 7, 2013, has Mrs. Randolph ascertainably losing money to Dolgencorp, and with force using the BPD on December 7, 2013, observed by BDP with full awareness of actual fraud, and provided to the County, by harming Mrs. Randolph with intent and actual malice, and liable. United States v. E.C. Investments, Inc.

The Randolphs are duly concerned with how Mrs. Randolph chose to exercise rights in statutory and civil rights; law accorded to all members in the public for the public. In the Randolphs' case, where the public is deceived bears is the same deception damaging the public in the same deception in fact, with the same public damage, and bearing the same public damages. Cherokee County and BPD show fraud; S.C. Code § 15-78-70(b).

The County was informed, was asked to provide assistance, and was asked for standby protection in recovering financial loses. The County was informed by Mrs. Randolph that Dolgencorp was responsible for these damages, the damages were clearly liable to Dolgencorp, made liable in state statutory law, and with the facts narrowly applicable between the Randolphs losses in the precise amount gained in Dolgencorp's liability to the Randolphs. Despite actual fraud being committed, no such fraud was recognized by the County. Instead of actual fraud being reported by the County, the

County maintained that Mrs. Randolph was the instigator in a civil disturbance. The County, having the same information available to the Randolphs, refused to follow the same statutory law in the facts. The County did not act to protect the rights of the Randolphs; the County ignored actual fraud harming the Randolphs. Further, even with the Randolphs financial property ascertainably losses, the County validated the acts of Dolgencorp as correct and proper in being validated favorably to Dolgencorp's and as unfavorable to the Randolphs' statutory and civil rights in protecting themselves from financial losses. The Randolphs' find no other reasonable explanation in the County's conduct. The County chose this position in acts described by Mrs. Randolph as clearly not being ascertainable losses.

BPD's conduct was further reinforced in direct observation and private communication between BPD and Dolgencorp. The actual fraud in damages to the Randolphs was hidden, obscured, and redirected by the initial acts of the County, and by BPD in falsely claiming the Randolphs had engaged in a verbal dispute. The Randolphs did not engage in any civil disturbance nor did the Randolphs' engage in any verbal dispute; the Randolphs did engage in their legal right to protect themselves from damages. In the Randolphs attempting to protect these rights, BPD and the County decided the Randolphs had no such rights, no such immunities, and no such privileges. S.C. Const. art. I, § 14. U.S. Const. amend. XIV. U.S. Const. amend. V.

These acts, and lack of, are authoritative and not within the power and authority of Dolgencorp or the Randolphs. What the County communicates in its official capacity is solely reserved to the discretion of the County. What BPD chooses to act on in is only partially discretionary, partially required in law, and completely within color of law in



jurisdiction. In the circumstances and occurrences of this case, does the County and BPD adjudicate the Randolphs' complaints of damages in liabilities after the fact? Or are the Randolphs not entitled to a clear and objective accounting of those facts? Or are the Randolphs to be publicly belittled and punished because they have lost money but it was not enough money? Or did the Randolphs not lose any money to actual fraud at all? Is it lawful for the County to claim a civil disturbance and BPD to claim a verbal altercation because the Randolphs have state statutory damages in public from a public accommodation? S.C. Code § 16-17-410.

BPD and the County are the ones whose conduct first sanctioned Dolgencorp's conduct. The Randolphs trusted the County and BPD. BPD and the County furthered this unlawful course of action in ways and methods only available to them. A lawful object was accomplished using unlawful means, and an unlawful object was accomplished using lawful means. The civil rights of the Randolphs were further made meaningless by suppression and denial, such that the Randolphs could not even complain of losing the Randolphs rights, privileges, and immunities. S.C. Code § 16-5-10.

II. THE TRIAL COURT ERRED IN DISMISSING GROUNDED IN QUALIFIED IMMUNITY AND BARRING PUNITIVE DAMAGES ABSENT ANY AFFIRMATIVE DEFENSE IN QUALIFIED IMMUNITY AND BARRED RECOVERY OF PUNITIVE DAMAGES.

The Randolphs are not in any way or manner attorneys, but do share in at least one critical element required of all attorneys, just as it is required in law enforcement and in those who support the mission of law enforcement; common sense. Mrs. Randolph observed what was occurring in fact using, what to her was common sense. Mrs. Randolph used this same common sense to guide her actions to protect herself from damages made unlawful in State statutes. These State statutes are clear and require nothing more than

common sense for the Randolphs to first understand, and then to follow the law to a legal conclusion in the Plaintiffs' recovery. The trial court must determine pre-trial issues in terms existing or not existing in law. If the Case bears claims even remotely favorable to the Plaintiffs, the trial court is proper in moving the case to trial. The County and BPD claim they 'believe' the contentions of Dolgencorp and do not 'believe' the contentions of the Randolphs. But these contentions are not simply opinions in the case before the court. The facts before the court are genuine questions of material facts and have not been heard properly by the trial court. The County and BPD have acted to ensure these facts are disguised as opinions, whereas the Randolphs have taken their opinions from the facts made relevant in law. It is in the treatment of facts in law, as opinions in believing law, that allow and permit the County and BPD to judge what should not be judged, to claim what should not be claimed, and to make subjective what can only be objective. S.C. Code § 16-17-410.

It is more than unfortunate that Dolgencorp derived financial profit from statutory conduct made criminal, by their acts and conduct in October, 2013, and in November, 2013. But even worse is what the Randolphs have suffered in their treatment at the collective hands of each person who had the power and authority to prevent a miscarriage of justice. Sadly, the Randolphs suffer damages made purposefully in actual fraud, actual malice, intent to harm, and moral turpitude. S.C. Code § 16-5-10. S.C. Code § 16-17-410.

Because the trial court has not allowed the Randolphs discovery, has refused to allow the County to answer the complaint, and refuses to allow BPD to answer the complaint, the Randolphs are forced by the trial court to abandon justice in this case. The Randolphs did not find it necessary to point out the obvious result in repetition, but did note

the amplifying potential. The trial court agrees with the Respondents in their claims of qualified immunity barring recovery. The trial court agrees with the Respondents that punitive damages are barred. Still, the Randolphs do not agree with what the trial court has not compelled to be in a trial court, nor should discovery be not be afforded the jury by the trial court presented by the Appellants in the facts and evidence. S.C. Const. art. I, § 14. U.S. Const. amend. XIV. U.S. Const. amend. V.

Qualified immunity and punitive damages are dependent on the same requisite facts in law being set forth in an answer to the complaint in this case. A complaint has no defense without an answer otherwise. An affirmative defense is still a defense. And a defense is still a proper defense regardless of being an affirmative defense or not. Qualified immunity is at least to protect the government and its employees from good faith error. But there is no good faith allowed to set aside actual fraud in statutory law. Statutory fraud in law can not be addressed differently because a government organization, or any organization, uses fraud to accomplish bad acts or allows such by doing nothing. The good faith in any person who observes fraud by another person and fails to report fraud or fails to stop the fraud where possible, is also fraud. And further, acting, or not acting, in support of actual fraud, is conspiracy to act in fraud.

Qualified immunity, along with any bar to punitive damages, must be explained. Without an explanation, there is only such immunity as can never be questioned as a matter of law. Further, when statutory law addresses the elements of fraudulent acts, any person having facts in the conduct of fraud, is responsible to ensure fraud is at least recognized for what is essentially moral turpitude.

III. THE TRIAL COURT ERRED IN CIVIL RIGHTS LAW AND STATUARY LAW BEING DISMISSED ABSENT A TRIAL VERDICT.



It was with the continuous support of Dolgencorp and the County, that BPD acted to enforce, and not enforce, statutory law and civil rights law, and did so with malice and intent to harm the Randolphs. The Randolphs stated in their Complaint that Mrs. Randolph suffered a sequence of events ending in her forced removal from the Dolgencorp property, permanently. That BPD engaged in such conduct is sufficient in the Police Report to be prima facie. Complaint ¶¶ 65, 66, and 68.

That BPD, the County, and Dolgencorp, each acted together intentionally to prevent and remove the Randolphs rights to claim damages. The Randolphs immunities in setting forth facts, not opinions, is in facts grounded in law. The Randolphs privileges to claim facts, not opinions, was impaired and then stopped by the trial court prior to reaching trial. It was the County who insisted on calling a civil disturbance. It was the County who insisted on maintaining a civil disturbance. And it is the County who still maintains the Randolphs in a civil disturbance.

The Randolphs damages are genuine questions of material facts on October 19, 2013, and on November 23, 2013, and being liable to any acts where Dollar General deceives the Randolphs. Since the Randolphs are precluded from ascertainable losses, under what premise of law does the County address the Randolphs' ascertainable losses? The Randolphs claim of ascertainable losses is a quantifiable loss impaired and stopped because the County placed a lawful restriction in an unlawful purpose. S.C. Code § 16-17-410.

The Randolphs made the same facts available to BPD, in BPD observing these same facts heard by the County. Where the County heard facts, BPD directly observed ascertainable losses in the Randolphs damages. The independent observation of the facts

by BPD was the same observation of facts observed independently by the Randolphs. Instead of gathering and reporting these material facts, BPD abandoned facts showing ascertainable losses in favor of the opinions of Dolgencorp, and set forth in opinions only favorable only to Dolgencorp and unfavorable only to the Randolphs. The Randolphs facts are irrefutable in the Randolphs losses and made plainly visible to the BPD. BPD observed Dolgencorp's acts in deception harming the Randolphs, and then as an opinion in color of law, decided the Randolphs would not recover these losses. S.C. Code § 16-5-10. S.C. Code § 16-17-410.

The County and BPD allowed and supported deception by Dolgencorp, using government power and authority absent the facts available in law. Dolgencorp attempted and failed in maintaining actual fraud between a member of the public accountable in a public accommodation in October and then again on November 23, 2013. But in the same acts repeated on December 7, 2013, the singular difference was Dolgencorp joining with and in the power and authority of the County and BPD. Further, in falsely claiming the Randolphs in a civil disturbance and failing to even mention actual fraud damaging the Randolphs, the County and BPD provided and ensuring the purpose in claiming the only method available to interject themselves between the unlawful acts of Dolgencorp and the deception resulting in the Randolphs ascertainable losses. In denying the damages in ascertainable losses, the County and BPD, added irrecoverable damages in blaming the Randolphs for the acts of Dolgencorp. It is the 'opinion' of the County and BPD that the Randolphs unlawfully engaged in a verbal altercation in a civil disturbance.

Anyone drawing on the same 'facts' claimed by BPD and the County might reach the same conclusions in law; but these are not the material facts and this is not the law



made relevant to those facts pursuant to statutory law. The financial damages are not an opinion, they are a material fact made relevant and proper in statutory law. The County and BPD claim opinions as facts so as to release liability in opinions, not facts. The County and BPD illegally act in opinions simply because explicit facts will not survive the scrutiny in any form favorable to the County and BPD, just as the law is not, and was not, favorable to the conduct of Dolgencorp in law. Dolgencorp acts were not lawful and became criminal in State statutes upon repetition. The County and BPD acted to further this financial deception by interfering with the Randolphs ability to exercise their rights, privileges, and immunities to protect the Randolphs in pursuing financial recovery from damages. The County and BPD acted to stop the Randolphs from financial recovery. And in stopping the Randolphs financial recovery from Dolgencorp's deception, the County, BPD, and Dolgencorp acted to stop the civil rights and statutory rights of the Randolphs from lawful expression to recover financial damages. The Randolphs financial damages are no longer as important as the statutory laws and civil rights laws where the underpinning of all laws are at risk for the Randolphs. It is because of all laws, not in spite of them, that the Randolphs will follow and seek to our rights, privileges, and immunities, where we find the rights of the many are compromised. Those with power and authority may not act, and fail to act, to harm the Randolphs, bearing false oral and written statements, without consequence. S.C. Code § 16-5-10. S.C. Const. art. I, § 14.

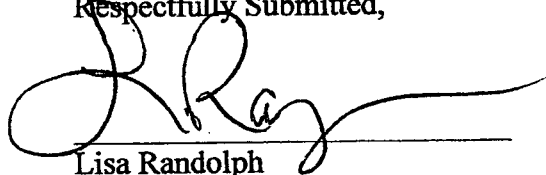
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CONCLUSION

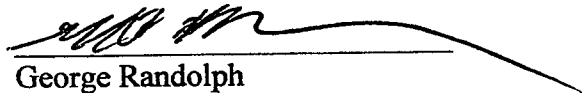
Based on the foregoing arguments and citations of authority, the Appellants, Lisa Randolph and George Randolph, respectfully request that this Court reverse the Trial Court's Order to dismiss and to remand this case for trial on the merits.

Respectfully Submitted,



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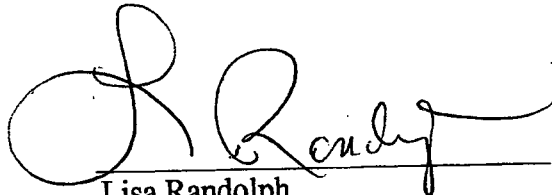
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellants complies with
Rule 211(b), SCACR.

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PROOF OF SERVICE

We certify that on this date we served a copy of the Reply Brief of Appellants on the following Attorneys of Record and the Office of Court Administration, by depositing into the United States Postal Service (USPS) Mail with proper USPS first class postage, on December 8, 2014, addressed to:

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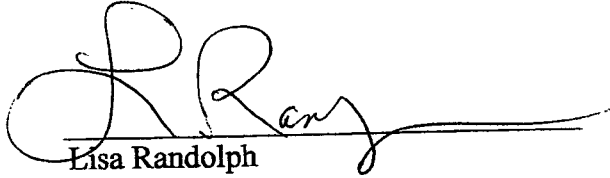
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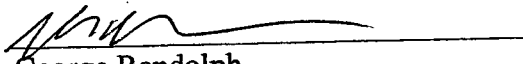


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