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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

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SC Court of Appeals

Case No.: 2015-CP-40-03112

Clarence B. Jenkins, Jr.,

Appellant,

v.

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

Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT PROPERLY DISMISS THE LAWSUIT FILED BY THE APPELLANT UNDER THE SOUTH CAROLINA TORT CLAIMS ACT?

- II. DID THE TRIAL COURT PROPERLY FIND THAT THE APPELLANT FAILED TO SET FORTH A *PRIMA FACIE* CASE IN SUPPORT OF HIS CLAIM FOR ABUSE OF PROCESS?

STATEMENT OF THE CASE

Appellant filed a lawsuit against the Respondents South Carolina Department of Employment & Workforce (“SCDEW”), South Carolina Budget & Control Board (“SCBC&B” or the “Board”) and the Office of the Governor of South Carolina (hereinafter collectively the “Respondents”). Appellant is a former employee of SCDEW. (Appellant’s Complaint, ¶ 7). He alleges that the Respondents “secretly blackballed [his] job application seeking employment with [the] State of South Carolina.” (Appellant’s Complaint, ¶ 6). He specifically claims that his applications for employment were rejected because a SCDEW employee named Adrienne Sorensen entered a “Barred from Applying” code to his applications. (Appellant’s Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Appellant’s Complaint, ¶¶ 37-38).

Appellant attempted to bring three (3) causes of action against the Respondents:

- Appellant attempts to allege a “**Defamation**” claim against the Respondents related to the “Barred for Applying” code allegedly entered into the State’s computer system. Appellant variously described this as a “well formed plan” and that the Respondents’ individual employees committed “intentional acts by manipulating computer functions performed with malice towards Appellant.” (Appellant’s Complaint, ¶¶ 37-38, 55). More specifically, Appellant argues that “it is reasonable to believe” that a single SCDEW employee, Adrienne Sorensen, “performed such an egregious act on her own without permission,” and that such an act was “criminal.” (Appellant’s Complaint, ¶ 39). Appellant also alleges that she did so “outside the scope of her employment” and “with malicious intent.” (Appellant’s Complaint, ¶¶ 58-59).
- Appellant also attempts to allege an “**Abuse of Process**” claim¹ based on the same allegations. (Appellant’s Complaint, ¶ 55).
- Appellant’s final cause of action is stated under S.C. Code Ann. § 15-3-550 with the statute referencing a two-year statute of limitations for defamation claims. Because the statute does not describe an independent cause of action, Appellant’s

¹ Appellant’s Second Cause of Action also includes a reference to a “Violation of S.C. Code Computer.” This is not a legally cognizable claim.

“Third Cause of Action” does not state a claim. (Appellant’s Complaint, ¶¶ 56-59).

This matter came before the Honorable Judge G. Thomas Cooper, Jr., of the Court of Common Pleas of Richland County on September 15, 2015, on the Respondents’ Motion to Dismiss filed by under Rule 12(b)(6), SCRCPP. Judge Cooper also heard several motions filed by the Appellant, which were alternatively denied or dismissed as moot.

STANDARD OF REVIEW

In considering a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCPP, the circuit court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s “ ‘failure to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *FOC Lawshe Ltd. P’ship v. Int’ l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (S.C. App. 2002) (quoting Rule 12(b)(6), SCRCPP). The circuit court “must dispose of a motion for failure to state a cause of action based solely upon the allegations set forth on the face of the complaint.” *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted). “The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Id.* The South Carolina Court of Appeals applies the same standard of review implemented by the circuit court. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (S.C. App. 2001); *Hambrick v. GMAC Mortgage Corp.*, 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (S.C. App. 2006).

In this case, the Complaint does not state a claim for which relief can be granted. For that reason, the lawsuit must be dismissed.

ARGUMENT

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

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

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

In his appeal, Appellant does not address these issues in any discernable way. He merely repeats his allegation that Adrienne Sorenson acted in a grossly negligent manner. For reasons that are unclear, he also references S.C. Code Ann. § 15-78-60(25).²

² This provision of the S.C. Tort Claims Act preserves governmental immunity in cases involving "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner[.]"

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

The South Carolina Supreme Court has defined abuse of process as “employment of legal process for some purpose other than which it was intended by law to effect – the improper use of a regularly scheduled process.” *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 695 (1967). It is distinguished from malicious prosecution by saying it “involves the malicious misuse or perversion of the process, after its issuance, for an end not lawfully warranted by it.” *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (1983). The elements, as articulated in *Huggins*, are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.

The second element, a “willful act,” has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]” *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc. v. United Food & Commercial Worker’s Int’l Union*, 351 S.C. 65, 71, 567 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

Here, the Complaint contains no allegation that any of the Respondents used or authorized civil or criminal “process” with regard to Appellant. Lacking this element, Appellant’s abuse of process claim fails.

In his brief, Appellant has raised no discernable argument that addresses these matters, or otherwise speaks to the elements of his Abuse of Process claim. For this reason, his appeal on this issue must also be dismissed.

Because Appellant was not under the “supervision, protection, control, confinement, or custody” of any Respondent, this provision does not apply to this case.

CONCLUSION

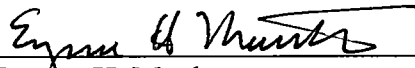
For the reasons detailed above, Appellant has failed to state any justiciable claim against South Carolina Department of Employment & Workforce, the South Carolina Budget & Control Board, or the Office of the Governor of South Carolina.

Therefore, Appellant's appeal should be DISMISSED, and the judgment of the trial court should be UPHELD.

Dated this the 25th day of March, 2016.

Respectfully submitted,

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