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APR 05 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE CIRCUIT OF APPEALS

.....

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
G. Thomas Cooper Jr, Circuit Court Judge

.....

Case No: 2015-002356

.....

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,

.....  
REPLY BRIEF OF APPELLANT  
.....

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

Respondents.

PROOF OF SERVICE

I certify that I have served the Reply Brief on Attorney Eugene H. Matthews by personally delivering a copy of it to their attorney of record, Eugene H. Matthews, at his office at 1900 Barnwell Street, Columbia, South Carolina 29202, on April 5, 2016.

April 5, 2016

 s/  
Clarence B. Jenkins Jr,  
Clarence B. Jenkins Jr,  
945 Wire Rd.

employment opportunities due to "Barred From Applying" which was stated as such.

Here, the Complaint contains allegations that Respondents used or authorized civil or criminal "process" with regards to Appellant which is verifiable as a fact. The (6) pleading states "South Carolina Department Of Employment Workforce (hereafter "SCDEW"), SC Budget And Control Board (hereafter "SCBCB") and Office Of South Carolina Governor secretly blackball my job application seeking employment with State of South Carolina through "Barred From Applying" of Initial Complaint " therefore satisfies the Abuse Of Process.

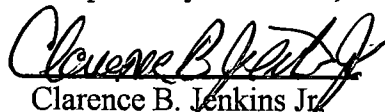
### CONCLUSION

For the reasons detailed above, Respondents has failed to state any justifiable claim against Clarence B. Jenkins Jr, Employee, Appellant.

Therefore, Respondent's dismissal should be Reverse and Remanded to The Trial Court for due processing.

Dated this the day of April, 2016.

Respectfully submitted,



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## ARGUMENT

### I. APPELLANT'S DEFAMATION CLAIMS UNDER SOUTH CAROLINA TORT ACT IS SUBSTANTIATED.

SCDEW, SCBCB and Office of the Governor of South Carolina can not declare immunity from lawsuit under South Carolina Tort Act because S.C. Code 15-78-60 (17) does not apply. S.C. Code 15-78-60 provides exception to waiver of immunity which does not exempt government entity or its employees but holds them accountable for negligent acts. S.C. Code 15-78-60(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude which was committed by Adrienne Sorenson of SCDEW, and authorized by SCDEW, SCBCB and Office of the Governor of South Carolina has been sufficiently stated for a rightful claim under South Carolina Tort Act. S.C. Code 15-78-60(25) applies to exception to waiver of immunity which does not exempt government entity or its employees from being held accountable of grossly negligence.

### II. APPELLANT HAS SUFFICIENTLY STATED A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST THE RESPONDENTS.

SCDEW is a license employer with the State of South Carolina as a job placement agency to assist job seekers with available job opportunities. The grossly negligent act of placing "Barred from Applying" on Appellant job application prevented any assistance from SCDEW seeking employment. "Barred from Applying" was authorized until July 19, 2013 to December 30, 2018 is a sufficient claim for Abuse Of Process. A Prima Facie was established when S.C. Judicial Center denied an

way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability.

### **STANDARD OF REVIEW**

The Trial Court to dismiss under Rule 12(b)(6) was not in align with previous court rulings. First, courts have been generally consistent in concluding that intentional acts of a government employee, intended to do harm, are deemed outside the scope of their employment and, therefore, constitutes an exception to South Carolina's waiver of immunity under the Tort Claims Act. See S.C. Code 15-78-60 (17). The South Carolina Court of Appeals, The South Carolina Tort Act would apply here due to complaint filed within two years limitations and Furthermore S.C. Code 17-78-70(b) Nothing In this chapter maybe construed to give an employee of a government entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. The South Carolina Court of Appeals has confirmed that South Carolina Tort Act is applicable when averments was outside the scope of defendants' official duties that is pled in initial complaint See S.C. Code 15-78-70. Appellant has pled a conspiracy by SCDEW, SCBCB and Office of the Governor of South Carolina in the initial complaint which is a rightful claim under South Carolina Tort Act. In this case, Appellant has stated a claim for which relief can be granted. For that reason, the dismissal must be reverse and remanded back to The Trial Court for due process.

The Trial Court Honorable Judge G. Thomas Cooper Jr, of the Court of Common Pleas of Richland County dismissed Appellant's complaint on October 8, 2015 under Rule 12(b)(6), SCRCPP, after a proposed orders was submitted by each party from a postponement. Appellant would like to offered that Honorable Judge G. Thomas Cooper Jr, erred with his ruling to dismiss initial complaint under Rule 12(b)(6), SCRCPP, because the trial court did not accept as true well-pleaded allegations in a light most favorable to plaintiff in Mylan Laboratories, Inc. v. Matkari, 7 F 3d 1130, 1134 (4<sup>th</sup> Cir.1993) (citations omitted). In Smith v. City Greenwood, 210 WL 2430952 (D.S.C. May 13, 201), the court has ruled that two-year statute of limitations applies even if the Board members acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm or a crime involving moral turpitude. "Id. at 208, 584 S.E. 2d 413 (emphasis added). Doe v. Smith in the court ruling affirmed that Smith an employee of Charleston County Schools who committed an inappropriate act off premises therefore employer could not be held liable even though outside the scope of employment so in contrast Adrienne Sorenson was employed at SCDEW in official duties even though her conduct described as outside the scope of employment therefore her employer becomes liable for gross negligence for "Barred From Applying". Code Ann. 1-13-80(2) it is unlawful employment practice for an employer to limit, segregate or classify employees or applicants from employment in a

originate, utter, circulate or published any false statement therefore a violation pertaining to slander and libel in her capacity at SCDEW under the authority of SCDEW, SCBCB and Office of South Carolina Governor.

- Appellant's claim of Abuse of Process is a sufficient cause of action because it shows SCDEW, SCBCB and Office of the Governor of South Carolina to deny access to available job opportunities and to obtain gainful employment. The Abuse of Process is clearly focused on the availability, equipment and computer software program that SCDEW used to create "Barred From Applying" that denied employment opportunity with S.C. Judicial Center. Furthermore, SCBCB sent notifications to state Agencies of South Carolina informing them to ignored illegal stipulation of "Barred From Applying" is further evidence to substantiated an Abuse Of Process due to clarification. SCDEW's mission is to assist job seekers with available jobs opportunities to obtain gainful employment not hinder which "Barred From Applying" did from July 19, 2013 to December 30, 2018 is an Abuse Of Process.
- Appellant's cause of action is stated under S.C. Code Ann 15-3-550 statute referencing a two year statute of limitations for defamation claims which has been explain and substantiated furthermore is self explanatory for the cause of action . Defamation is the cause of action which has been stated by Appellant and supported by the law.

NeoGov. NeoGov, is the administrators of this computer software program therefore administration rights was given to Adrienne Sorenson of SCDEW Human Resources Office who applied “Barred From Applying”.

Appellant has successfully and substantiated reasons for bringing this lawsuit against Respondents.

- Appellant’s claims of Defamation is a reasonable and substantiated by the stipulation “Warning This Candidate Has Been Marked As “Barred From Applying” (Does Not Meet Minimum Qualifications) is a false characterization based on having Bachelors of Science Degree in Marketing, direct work experience and managerial experience at SCDEW. Appellant has never separated Adrienne Sorenson from Respondents and it is further established through her employment at SCDEW, her specific job duties in SCDEW Human Resources Office, the use of SCDEW equipment and computer software program and the grossly negligence of her actions with “Barred From Applying” until December 30, 2018 per NeoGov Rights. The complete wording of Appellant Initial Complaint, (58-59) with The Trial Court states: (58) Defendant Adrienne Sorenson acting outside the scope of her employment at SCDEW, intentionally and recklessly published defamatory statement in her capacity at SCDEW as a mid-level employee therefore cause deprivation and (59) Defendant Adrienne Sorenson committed “Barred from Applying” with malicious intent,

employment should have made SCDEW Human Resources Office aware of the system error "Barred From Applying" instead of Sharlayne Bellamy of S.C. Judicial Center and Appellant. SCDEW states "Barred From Applying" was an error while SCBCB determined that it was applied by SCDEW and not an error therefore shows a discrepancy in the information provided to Appellant which constitutes fraud. Furthermore, SCBCB through their investigation determined that Adrienne Sorenson of SCDEW applied "Barred From Applying". SCBCB determined that Adrienne Sorenson of SCDEW applied "Barred From Applying" on July 19, 2013 to expired December 30, 2018. Respondents would have This Honorable Court believed that a system error "Barred From Applying" manufactured an actual employee named, Adrienne Sorenson who applied the stipulation, selected a specific date of July 19, 2013 to apply stipulation on its own and select a specific termination date of December 30, 2018 on its own which is deception. Respondents would have This Honorable Court believed a system error on its own to stipulate that Appellant "Does Not Meet Minimum Qualifications". The stipulation specifically states "Warning This Candidate Has Been Marked As "Barred From Applying" (Does Not Meet Minimum Qualifications) which constitutes fraud, intent, willful and malice. The option to select other with computer software programs such as "Barred From Applying" are usually composed manually by an individual when other automatic options are available which requires an explanation in comment section which is stated "This candidate Has Been Marked As "Barred From Applying" per

## STATEMENT OF THE CASE

Appellant filed a lawsuit against South Carolina Department of Employment Workforce (“SCDEW”), South Carolina Budget & Control Board (“SCBCB”), and the Office of the Governor of South Carolina, Respondents. Appellant is a former employee of SCDEW from 2002 to 2005 at Voorhees One Stop Career Center, Denmark, South Carolina through a federal grant at Voorhees College funded by Workforce Investment Act Program. Appellant has alleged that SCDEW was secreting blackballing his applications for employment with state of South Carolina based on constant rejections email letters. Appellant was specifically denied an employment opportunity with S.C. Judicial Center due to a stipulation applied to my state application that states “Barred From Applying” placed by SCDEW. Appellant was not aware of the “Barred From Applying” placed by SCDEW nor was prior notification sent. Respondents accepted responsibility once notifications had been provided by Appellant. Respondents would like to have This Honorable Court believed “Barred From Applying “ was a system error which is a distortion to their corruption. The reason “Barred From Applying” was not a system error due to these facts that SCBCB determined that SCDEW applied the illegal stipulation and furthermore, Appellant had a continuous record of applying for employment with state of South Carolina and did not received any notifications from SCDEW or SCBCB regarding “Barred From Applying” or system error therefore constitutes intent, willful and malicious. The continuous submitting of applications for

**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE TRIAL COURT IMPROPERLY APPLY THE SOUTH CAROLINA TORT CLAIMS ACT?
- II. DID THE TRIAL COURT IMPROPERLY DISMISS UNDER RULE 12(b)(6), SCRPC?
- III. DID THE TRIAL COURT IMPROPERLY CONSIDERED S.C. CODE ANN. 15-3-550?
- IV. DID THE TRIAL COURT IMPROPERLY APPLY COURT RULES & PROCEDURES WHEN DISMISSING LAWSUIT?
- V. DID THE TRIAL COURT IMPROPERLY CONSIDERED SUFFICIENT EVIDENCE THAT WAS MADE AVAILABLE BY APPELLANT?
- VI. DID THE TRIAL COURT IMPROPERLY FAILED TO FIND AN ESTABLISHED A PRIMA FACIE CASE IN SUPPORT OF APPELLANT FOR ABUSE OF PROCESS?
- VII. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN 1-13-80.
- VIII. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-60(25).
- IX. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-60(17).
- X. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-70(b).
- XI. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-60.
- XII. DID THE TRIAL COURT IMPROPERLY APPLY SOUTH CAROLINA CODE ANN. 15-78-70.

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