

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

G. Thomas Cooper Jr, Circuit Court Judge

Case No. 2015-002356

Clarence B. Jenkins Jr,
Employee,

Appellant,

v.

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

Respondents.

BRIEF OF APPELLANT

Clarence B. Jenkins Jr,
945 Wire Rd.
Neeses, South Carolina 29107
(803) 263-4514
Attorney for Appellant

* 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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2. THE APPELLANT ORIGINAL COMPLAINT NEVER SEPARATED ADRIENNE SORENSON FROM SOUTH DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR WHICH IS CLEARLY DEFINED BY EACH CAUSE OF ACTION. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE
3. JUDGE G. THOMAS COOPER JR, DISMISSED ORIGINAL COMPLAINT AFTER THE COURT WAS INFORMED THAT EVIDENCE ARE AVAILABLE

FOR REVIEW ON SEPTEMBER 15, 2015 WITHOUT SECURING WRITTEN
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STATEMENT OF ISSUES ON APPEAL

1. JUDGE G. THOMAS COOPER JR, ERR IN APPLYING THE LAWS ESTABLISHED BY SC GENERAL ASSEMBLY.
2. JUDGE G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 UNDER RULE 12(b) AFTER SUBMITTING MEMORANDA OF LAW FOR EACH MOTION, PRESENTATION OF ORAL ARGUMENTS ON SEPTEMBER 15, 2015 AND SUBMISSION OF PROPOSED ORDER PER REQUEST BY THE HONORABLE COURT. FURTHERMORE COMPLAINT 2015-CP-40-03112 SHOULD HAVE NOT BEEN DISMISSED UNDER RULE 12(b) BECAUSE EVERY QUALIFYING STIPULATION WAS MET.
3. THE ACTION OF ADRIENNE SORENSON ILLEGALLY BARRED FROM APPLYING WAS NEVER SEPARATED FROM SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR AND UNDER THEIR SUPERVISION.

STATEMENT OF THE CASE

I received an email from Sharlayne Bellamy of SC Judicial Center on July 24, 2013 that my application would no longer be considered for Administrative Specialist II/Docketing

Specialist II position due to receiving notification from the state of South Carolina that candidate has been marked as "Barred From Applying". I have always believed that state of South Carolina was performing the blackball effect against me due to not receiving employment for position which was well qualified for.

I contacted state agencies seeking assistance due to a possible blackball effect that included South Carolina Department Of Employment Workforce and Office Of South Carolina Governor Office that went ignored.

By providing South Carolina Department Of Employment Workforce and South Carolina Budget and Control Board and Office Of South Carolina Governor of "Barred From Applying" after receiving notification from Sharlayne Bellamy therefore they either did not respond at all or declared a system error in an attempted cover up of an illegal employment activity. Judge G. Thomas Copper Jr, dismissed the complaint due to a preponderance of evidence that was never seen by the court..

FACTS

Appellant was "Barred From Applying" by South Carolina Department Of Employment Workforce which is an illegal employment activity referenced by exhibit. Senior Management at state agencies knew about "Barred From Applying" through documented conversation in an attempt to provide a cover up referenced by exhibit. By Appellant being illegally barred from applying prevented employment opportunities through unlawful employment activity therefore created an environment that led to deprivation referenced by exhibit.

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ARGUMENTS

- I. ADRIENNE SORENSON BY APPLYING "BARRED FROM APPLYING" ACTED IN A GROSSLY NEGLIGENCE MANNER AS AN EMPLOYEE OF SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE THEREFORE STATE AGENCIES BECOMES LIABLE AND FURTHERMORE DUE TO ADRIENNE SORENSON BEING REFERRED AS TO ACTING OUT OF SCOPE OF HER

EMPLOYMENT WAS NOT REGARDING AN OFFICIAL DUTY BUT THE GROSSLY NEGLIGENCE CONDUCT. BY ADRIENNE SORENSON BEING EMPLOYED AT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE IN THE HUMAN RESOURCES OFFICE APPLYING "BARRED FROM APPLYING" DURING NORMAL WORK HOURS WAS IN OFFICIAL DUTY.

[The South Carolina Tort Law 15-78-30 and South Carolina Law Exceptions to waiver of immunity 15-78-60 (25).]]

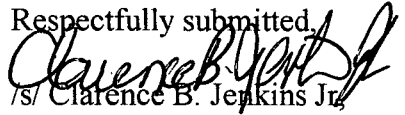
- II. G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 AS PLAINTIFF WAS "BARRED FROM APPLYING" BY DEFENDANTS WHEN A STATE DECLARATION STATES IT IS A PUBLIC POLICY OF THIS STATE THAT ECONOMIC INSECURITY DUE TO UNEMPLOYMENT IS A SERIOUS MENACE TO HEALTH, MORALS AND WELFARE OF THE PEOPLE OF THIS STATE.

[South Carolina Law 41-27-20.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

April 6, 2016

Respectfully submitted,

/s/ Clarence B. Jenkins Jr.
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945 Wire Rd.
Neeses, South Carolina 29107
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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Prakash and Urmila Solanki, Respondents,

v.

Wal-Mart Store #2806, and Spartanburg County Sheriff's
Office, Defendants,

Of whom Wal-Mart Store #2806 is the Appellant.

Appellate Case No. 2012-213247

Appeal From Spartanburg County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5264
Heard March 5, 2014 – Filed August 20, 2014

AFFIRMED

Regina Hollins Lewis and Mary Daniel LaFave, both of
Gaffney Lewis & Edwards, LLC, of Columbia, for
Appellant.

John David Hawkins and Charles Logan Rollins, II, both
of The Hawkins Law Firm, of Spartanburg, for
Respondents.

KONDUROS, J.: Wal-Mart Store #2806 (Wal-Mart) appeals the trial court's award of punitive damages to Prakash and Urmila Solanki (collectively, the Solankis) in an action for gross negligence. It also appeals the trial court's denial

of its post-trial motions for Judgment Notwithstanding the Verdict (JNOV) and for the reversal or reduction of punitive damages. We affirm.

FACTS/PROCEDURAL HISTORY

On November 27, 2009, "Black Friday," the Solankis went shopping at the Wal-Mart in Boiling Springs, South Carolina. After they selected their items, Mr. Solanki went to the self-checkout line; however, he experienced a problem with the register. Ryan Smalls, a Wal-Mart employee, attempted to help Mr. Solanki. When Smalls could not get the self-checkout machine to operate correctly, Smalls took Mr. Solanki to a cashier-assisted register. There were also problems with that register. During the transaction, Mr. Solanki handed Smalls his debit card and identification. Smalls manually stenciled Mr. Solanki's debit card, which he used as a credit card because Mr. Solanki could not remember his pin number. However, the credit card information of Robin Martin was hand keyed into the register during this transaction. A receipt with Martin's credit card information was signed by Mr. Solanki and \$144.70 was charged to her account. The Solankis left the store unaware of the mistake.

On December 1, 2009, Martin notified the Spartanburg County Sheriff's Office her credit card had been stolen and two unauthorized charges were on her account, including Mr. Solanki's purchase at Wal-Mart. Deputy Gina Cashion was assigned to the case. She requested Wal-Mart provide her with the video surveillance and receipts for the date and time of the unauthorized charges. Wal-Mart found one transaction for that date in the amount of \$144.70. It provided Deputy Cashion with video surveillance of the transaction, a copy of the stenciled impression of Mr. Solanki's debit card, the itemized receipt, and the store's copy of the receipt showing Martin's credit card information with Mr. Solanki's signature.

Deputy Cashion tried to contact Mr. Solanki but was unsuccessful. Based on the information at her disposal, she obtained an arrest warrant for Mr. Solanki. He was arrested in Georgia in April 2010 and spent six nights in jail before he was transported to South Carolina where he posted bail. He was indicted on financial transaction card theft and financial transaction card fraud, but the indictments were dismissed on August 24, 2010.

Mr. and Mrs. Solanki filed a complaint against Wal-Mart and the Sheriff's Office for (1) negligence, (2) gross negligence and recklessness, (3) false imprisonment, (4) intentional infliction of emotional distress, (5) defamation and defamation per

se, (6) assault, (7) battery, (8) malicious prosecution, and (9) loss of consortium.¹ The trial court directed a verdict for Wal-Mart on all causes of action except negligence and gross negligence. The jury returned a verdict against Wal-Mart for negligence. They awarded Mr. Solanki \$50,000 in actual damages and \$225,000 in punitive damages against Wal-Mart. They also found Mr. Solanki was comparatively negligent in the amount of 25%. Wal-Mart filed post-trial motions for JNOV, new trial *nisi* remittitur, reversal or reduction of punitive damages, or new trial pursuant to the Thirteenth Juror Doctrine. The trial court denied all of Wal-Mart's motions. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

Wal-Mart asserts the Solankis presented insufficient evidence to submit the issue of punitive damages to the jury. Specifically, Wal-Mart maintains the Solankis presented no evidence at trial its actions were willful, wanton, or reckless. Instead, it argues this is a case of simple negligence, which is not subject to punitive damages. Furthermore, Wal-Mart contends the trial court erred in applying the gross negligence standard without first making a finding of willful, wanton, or reckless misconduct before submission to the jury.

Additionally, Wal-Mart argues the Solankis asserted a heightened duty of care for Wal-Mart beyond the duty a merchant owes to its customers. Wal-Mart maintains it was not under a heightened duty of care, and under the general duty of care a merchant owes to a customer, no facts were presented at trial that demonstrated Wal-Mart breached its duty. Wal-Mart contends the Solankis presented no evidence showing it deviated from industry standards by handing over the evidence in its possession to the Sheriff's Office without conducting its own investigation. We disagree.

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses no evidence that reasonably supports the jury's findings." *Wright v. Craft*, 372 S.C. 1,

¹ The trial court granted a directed verdict on all claims against the Sheriff's Office except for the claims of false imprisonment and malicious prosecution. The jury returned a verdict in favor of the Sheriff's Office on both claims.

18, 640 S.E.2d 486, 495 (Ct. App. 2006). According to Rule 220(c), SCACR, an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000).

The standard of review as regards the refusal to grant a directed verdict is well established: In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. The trial court can only be reversed by this [c]ourt when there is not evidence to support the ruling below.

Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997) (internal quotation marks omitted).

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). "Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Id.* at 378-79, 539 S.E.2d at 533.

To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. *Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984).

In light of *Gamble* [*v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991)], there are now three stages in this state to a trial court's review of punitive damages.

First, the court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damage award. If not, the issue of punitive damages may not be submitted to the jury. If so, the jury should be adequately instructed to assess an appropriate amount of damages. Second, the trial judge must conduct a post-trial *Gamble* review to ensure that the award does not deprive the defendant of due process. If the award is determined to violate the defendant's due process rights, then the trial court must either grant a new trial absolute, or a new trial *nisi* remittitur. If the award is determined not to violate the defendant's due process rights, then the trial court reaches the third inquiry, to wit, whether, in the exercise of its discretion, it finds the award excessive or inadequate.

S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996).

Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care. *Clyburn v. Sumter Cnty. Sch. Dist. # 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994). "While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence." *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning- the conscious failure to exercise due care." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

Gross negligence is ordinarily a mixed question of law and fact. *Clyburn*, 317 S.C. at 53, 451 S.E.2d at 887. "When the evidence supports but one reasonable inference, it is solely a question of law for [the] court, otherwise it is an issue best resolved by the jury. . . . In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006). "[A] merchant is not an insurer of the safety of his customer but owes them only the duty of exercising ordinary care to keep the premises in reasonably safe condition." *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969).

The record contains no evidence the trial court imposed a heightened duty of care on Wal-Mart. At trial, the Solankis' attorney discussed his own belief that Wal-Mart should be subject to a heightened duty; however, the record does not indicate the trial court instructed the jury on a heightened duty.

We find the Solankis presented sufficient evidence of Wal-Mart's willful, wanton, or reckless misconduct to send punitive damages to the jury in two factual circumstances—the taking of the credit card information for the sale and the turning over of the credit card information to law enforcement. The trial court followed proper procedure in making this finding. At the close of all evidence, Wal-Mart moved for a directed verdict, asserting the Solankis had not proven gross negligence, and the trial court denied the motion. In its order denying Wal-Mart's post-trial motions, the trial court explicitly found sufficient evidence of willful, wanton, or reckless misconduct by Wal-Mart to send the issue to the jury. Particularly in light of the standard of review for directed verdict motions, we find sufficient evidence existed at the close of evidence to allow the issue of gross negligence to go to the jury. Wal-Mart attempted to run Mr. Solanki's credit card at least three times. When that was unsuccessful, the employee resorted to manually stenciling Mr. Solanki's credit card; however, the information hand-keyed into the cash register belonged to Martin. At the end of the transaction, the receipt presented had Mr. Solanki's signature but showed Martin's credit card information. These facts combined with Mr. Solanki's testimony that he did not use Martin's credit card could allow a reasonable jury to determine Wal-Mart's actions amounted to gross negligence. When reviewing these facts in the light most favorable to the Solankis, we find no error in the trial court's conclusions.

The trial court also found evidence was presented from which a reasonable jury could have concluded Wal-Mart was aware of the dangerous condition it created. It determined Wal-Mart knew the employee hand-keyed the transaction and testimony was presented Mr. Solanki did not present any card but his own to the cashier. Therefore, viewing all facts in the light most favorable to the Solankis, the trial court determined it would be reasonable to conclude Wal-Mart was responsible for the error in processing the credit card. Furthermore, the trial court concluded Wal-Mart was responsible for the creation and production of the evidence used to arrest Mr. Solanki and it was in the best possible position to point out the discrepancies to the police officers.

II. Post-trial Motions

Wal-Mart asserts the evidence was insufficient to sustain the grant of punitive damages. Therefore, the trial court erred in denying the motion to reverse or reduce the amount of punitive damages.

Regarding the motion for JNOV, Wal-Mart argues the denial of this motion was the first time the trial court made a finding of willful, wanton, or reckless misconduct by Wal-Mart. It maintains this was an error of law. Additionally, it asserts the trial court erred in its evaluation of the *Gamble* factors and the trial court's reasoning is insufficient to sustain an award of punitive damages under a clear and convincing standard. In response to the trial court's evaluation of the first *Gamble* factor (defendant's degree of culpability), Wal-Mart contends the hand keying of Mr. Solanki's credit card only speaks to simple negligence. Additionally, Wal-Mart argues that even if its response to the Sheriff's Office's request for information amounted to negligence, it was only simple negligence, and no evidence was presented Wal-Mart was aware of a dangerous condition it then failed to mitigate. Therefore, it contends the evidence was insufficient to sustain the award of punitive damages.² We disagree.

When reviewing a motion for JNOV, an appellate court must employ the same standard as the trial court. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). On appeal from an order denying a motion for JNOV, an appellate court views the evidence and all reasonable inferences in a light most favorable to the non-moving party. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012).

In *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354, the supreme court of South Carolina specified an eight-factor post-verdict review for trial courts to conduct to determine if a punitive damages award comports with due process. The factors are:

- (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7)

² Wal-Mart makes no argument regarding the *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), factors.

defendant's ability to pay; and finally, (8) . . . other factors deemed appropriate.

Id. The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996).

"[W]e need dwell no longer upon the rationale, or upon the merits or demerits, of the doctrine [of punitive damages]. Acquiescence in it for almost two centuries justifies the conclusion that it is now agreeable to, and part of, the public policy of the state." *Rogers v. Florence Printing Co.*, 233 S.C. 567, 574-75, 106 S.E.2d 258, 261-62 (1958).

As previously noted, the Solankis presented sufficient evidence to send the issue of punitive damages to the jury. Accordingly, the trial court did not err in denying Wal-Mart's post-trial motion to reverse or reduce the amount of the punitive damages. We also disagree with Wal-Mart's proposition it was an error of law for the trial court to explicitly state its finding of willful, wanton, or reckless misconduct for the first time in its order denying Wal-Mart's post-trial motions.

We find the trial court's analysis of the *Gamble* factors is sufficient to sustain the punitive damages award. The trial court made the required *Gamble* analysis after the award of punitive damages. Regarding the defendant's degree of culpability, it found Wal-Mart created and disseminated the evidence used to arrest Mr. Solanki. Therefore, Wal-Mart was in the best position to point out the hand-keying of the credit card information to the Sheriff's Office. As to the duration of the conduct, the trial court determined the transaction itself lasted a few minutes. However, Wal-Mart had the opportunity to explain the odd nature of the transaction throughout the criminal process. Concerning the defendant's awareness or concealment, the trial court found Wal-Mart created the documents and had exclusive knowledge and possession of them when it turned the information over to the Sheriff's Office. Furthermore, Wal-Mart was in the best position to ensure the transaction was handled properly. The trial court stated a punitive damages award may encourage greater oversight in Wal-Mart's and similarly situated vendor's credit card processing procedures. Regarding whether the award is reasonably related to the harm likely to result from such conduct, the trial court found the award was reasonably related to the harm suffered by Mr. Solanki and others who may be improperly accused of a crime due its negligence. It further found Wal-Mart was able to pay the punitive damages award. The court considered the fact that the jury was able to view the transaction on video and then

render its verdict as a significant "other factor." We find the evidence supports the trial court's ruling.

CONCLUSION

Based on the foregoing, the trial court's decision is

AFFIRMED.

LOCKEMY, J., concurs.

WILLIAMS, J: I respectfully dissent and believe the trial court improperly sent the issue of punitive damages to the jury.

The Solankis failed to submit *any* evidence at trial that Wal-Mart's actions in processing Mr. Solanki's credit card or in complying with law enforcement's request were "willful, wanton, or in reckless disregard of [Mr. Solanki's] rights." *See Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 564, 619 S.E.2d 5, 11 (Ct. App. 2005) (finding "the plaintiff must prove the defendant's misconduct was willful, wanton, or in reckless disregard of his rights" to support an award of punitive damages). Although I believe the error in hand-keying Mr. Solanki's credit card information would give rise to a negligence claim against Wal-Mart, no evidence was introduced at trial to show Wal-Mart's conduct was so gross or reckless of consequences that punitive damages were warranted. *See Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) ("The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."); *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952) ("Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, whether called 'gross' or 'ordinary' negligence, does not authorize the jury to give exemplary damages."); *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943) ("While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence.").

Specifically, testimony from trial negates the Solankis' claim that Wal-Mart acted in a reckless manner. Ryan Smalls, the Wal-Mart employee who handled Mr.

Solanki's transaction, testified at trial to Wal-Mart's internal procedures for handling credit card transactions. Smalls testified that Wal-Mart's policy, when a credit card would not swipe at a self-checkout station, was to first try to finalize the transaction at the self check-out station. If this did not work, an employee would suspend the transaction and attempt to process the transaction at the employee's work station. If the credit card still would not work, the employee would hand key the credit card number into the system twice to ensure accuracy, enter the expiration date, and then ask a customer service manager to manually perform an override. After the override was performed, the employee would then enter the three-digit security code on the back of the credit card before finalizing the transaction. According to Smalls, even a manager could not override the transaction if each of these steps were not properly taken. Although Smalls did not independently recollect this transaction with Mr. Solanki, after viewing the video surveillance, he affirmed that each of the foregoing steps was taken during this transaction. Further, although it is regrettable that Mr. Solanki spent six nights in jail as a result of this incident, the Solankis presented no evidence that Wal-Mart's actions of complying with law enforcement's request were unreasonable or that Wal-Mart intentionally and recklessly processed Mr. Solanki's credit card transaction. *See Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 ("In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. A conscious failure to exercise due care constitutes willfulness." (internal citations omitted)).

Moreover, I believe the trial court erred when it failed to adequately assess the culpability of Wal-Mart's conduct *before* charging the jury on punitive damages. *See S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996) ("*First*, the [trial] court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damages award. If not, the issue of punitive damages may not be submitted to the jury." (emphasis added)); *Longshore*, 365 S.C. at 564, 619 S.E.2d at 11 ("[T]rial judges in this state have long been required, *as a threshold matter*, to assess the culpability of a defendant's conduct to determine whether punitive damages are available in a given case (i.e., whether the issue should be submitted to the jury)." (emphasis added) (quoting *South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 152, 478 S.E.2d 57, 58 (1996))). Rather, the extent of the trial court's observation on the issues of gross negligence and punitive damages was as follows:

As a general rule, the issues of gross negligence are properly for the jury to determine. There's evidence, based upon the weirdness of the transaction, for lack of a better word, . . . from which the jury could conclude that, in some way, . . . the defendant Wal-Mart, was grossly negligent in the way they handled the transaction. . . . I'll charge gross negligence and punitives.

I believe the "weirdness of the transaction," standing alone, is insufficient as a matter of law to substantiate a gross negligence claim or to support an award of punitive damages. Thus, I respectfully disagree with the majority and would hold the trial court erred in submitting the issue of punitive damages to the jury.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jenny C. Mishoe, Respondent,

v.

QHG of Lake City, Inc., Appellant.

Appeal From Williamsburg County
Clifton Newman, Circuit Court Judge

Opinion No. 4027
Heard June 15, 2005 – Filed October 3, 2005

AFFIRMED

Charles E. Carpenter, Jr. and S. Elizabeth Brosnan, both
of Columbia and Douglas C. Baxter, of Myrtle Beach, for
Appellant.

Ronnie Alan Sabb and W. E. Jenkinson, III, both of
Kingstree, for Respondent.

HEARN, C.J.: In this civil action, QHG of Lake City, Inc. appeals the award of \$750,000 in actual damages and \$1,250,000 in punitive damages in favor of Jenny C. Mishoe. QHG alleges a new trial should be granted as a result of an improper closing argument and the circuit court's erroneous restriction of the scope of QHG's cross-examination of Mishoe. Moreover, QHG argues the evidence does not support an award of punitive damages. We affirm.

FACTS

On June 3, 1998, Jenny C. Mishoe visited her grandmother at Carolinas Hospital System, a wholly owned facility of QHG of Lake City, Inc. After the visit, Mishoe left the hospital via the emergency room exit and proceeded to her car across the horseshoe drive area in front of the emergency room doors. While walking across the pavement near the emergency room exit, Mishoe's left foot got caught in a hole. Mishoe suffered serious injuries to both her left ankle and right knee.

QHG was required to perform regular, twice-yearly safety inspections of its premises to maintain its accreditation. On July 1, 1997, the head of maintenance for the hospital, Edward McDonald, provided the hospital with a written report stating a hole existed in the pavement near the emergency room exit. The hospital took no action to repair the hole or warn visitors and patients of the hole's existence.

The matter proceeded to trial and the jury returned a verdict in Mishoe's favor in the amount of \$750,000 actual damages and \$1,250,000 punitive damages. The jury found Mishoe ten percent comparatively

directed verdict and judgment notwithstanding the verdict on the issue of punitive damages, which the circuit court denied. The circuit court also denied QHG's motion for reconsideration. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

QHG alleges the circuit court erred in denying its motion for a directed verdict and judgment notwithstanding the verdict on the issue of punitive damages.^[1] Specifically, QHG argues the circuit court erred because there was no clear and convincing evidence the hospital's actions constituted willful, wanton, or reckless conduct. We disagree.

In reviewing the denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the circuit court. Gilliland v. Doe, 357 S.C. 197, 199, 592 S.E.2d 626, 627 (2004). When ruling on directed verdict or JNOV motions, the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. South Carolina State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

On appeal from the denial of a motion for directed verdict or JNOV, the appellate court may only reverse if there is no evidence to support the circuit court's ruling. South Carolina Prop. & Cas. Guar. Ass'n v. Yessen, 345 S.C. 512, 521, 548 S.E.2d 880, 885 (Ct. App. 2001). Neither the circuit court nor the appellate court has the authority to decide credibility issues or resolve conflicts in testimony. Garrett v. Locke, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992).

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. S.C. Code Ann. § 15-33-135 (2004); Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). A conscious failure to exercise due care constitutes willfulness. Welch v. Epstein, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness. See McGee v. Bruce Hosp. Sys., 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. Welch, 342 S.C. at 301, 536 S.E.2d at 419.

The amount of damages, actual or punitive, remains largely within the discretion of the finder of fact, as reviewed by the trial judge. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The trial judge is vested with considerable discretion over the amount of a punitive damages award, and this court's review is limited to correction of errors of law. Welch, 342 S.C. at 305, 536 S.E.2d at 421. Moreover, the appellate court must affirm the circuit court's punitive damages finding if any evidence reasonably supports the court's factual findings. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct. App. 2004).

Here, the evidence demonstrates the head of maintenance for QHG provided actual, written notice of the existence of the hole in question to the CEO of the hospital on July 1, 1997, almost one year before the accident occurred. QHG took no action to repair the hole after receiving notice of its existence. Moreover, the hospital took no precautions to warn visitors or patients of the existence of the hole. Therefore, we find the evidence of this written notice is sufficient to submit the issue of QHG's willful, wanton, reckless or malicious conduct to the jury.

QHG next argues the circuit court erred in failing to grant its motion for a mistrial. QHG alleges comments made by Mishoe during closing arguments could not be remedied by the circuit court's curative instruction and, therefore, a mistrial was warranted. Specifically, QHG claims any reference to the \$2.8 million sales price of the hospital resulted in sufficient prejudice to justify a mistrial. We disagree.

The granting or denying of a motion for mistrial is within the sound discretion of the trial judge. Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 118, 512 S.E.2d 510, 521 (Ct. App. 1998). Absent an abuse of discretion, the decision of the trial judge will not be overturned on appeal. Id. The burden is on the moving party to show not only error, but also the resulting prejudice. Id. The granting of a motion for a mistrial is an extreme measure which should be taken only when an incident is so grievous that the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999).

When an objection is timely made to improper remarks of counsel during closing arguments, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks. McElveen v. Ferre, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989). In this matter, counsel for Mishoe made the following remarks to the jury on the issue of punitive damages:

What is the reasonable relationship to harm-and there was harm-and the defendant's ability to pay. [sic] I ain't too much worried about that hospital paying. When they left Williamsburg County, they left with 2.8 million dollars worth of our money just when they left.

At that time, counsel for QHG objected, and stated:

QHG: Your Honor, I'd object to any testimony about how much money the hospital sold for, and everybody knows-

The Court: The objection is-

QHG: -the price of the deal

The Court: Yes, sir.

QHG: And I would move for a mistrial.

The Court: Pardon?

QHG: I'd move for a mistrial.

The Court: Ladies and gentlemen, the objection is sustained and you are to disregard the last argument by counsel. And, counsel, you are not to argue that particular issue. The motion is otherwise denied.

After the curative instruction was given, no additional objection was made by QHG.

The circuit court followed the procedure established in McElveen. The judge ruled on QHG's objection, offered a curative instruction to the jury, and admonished Mishoe's counsel not to mention the sales price and the fact it was "our money" again. See McElveen, 299 S.C. at 381, 385 S.E.2d at 41. The curative instruction adequately corrected the statement and advised the jury to disregard. Moreover, the sales price of the hospital had already been admitted, and the jury heard the amount during the trial. QHG cannot demonstrate evidence of a prejudicial effect warranting a mistrial. See Creighton, 334 S.C. at

110, 312 S.E.2d at 321. Therefore, we find the trial judge did not abuse his broad discretion in denying the mistrial motion.

III. Scope of cross-examination

QHG also argues the trial court erred in limiting the scope of its cross-examination of Mishoe. Specifically, QHG asserts the circuit court erred in prohibiting it from questioning Mishoe on her prior litigation history as it was relevant to her credibility. We disagree.

The admission and rejection of testimony is largely within the trial judge's sound discretion and will not be disturbed on appeal absent a showing that the trial court abused its discretion or its decision was controlled by an error of law. Ippolito v. Hospitality Mgt. Assocs., 352 S.C. 563, 569, 575 S.E.2d 562, 566 (Ct. App. 2003).

In this case, QHG argues the medical records of Dr. Hazelwood, a treating physician, are important to prove that Mishoe's medical condition had nothing to do with the fall at the hospital. The trial judge allowed QHG to introduce the majority of the medical records of Dr. Hazelwood. The trial judge allowed into evidence the portion of the records relevant to QHG's argument. The evidence in those records was relevant to the issue of whether Mishoe sought treatment from Dr. Hazelwood for injuries unrelated to the fall at the hospital was admitted. The only sentence the trial judge did not admit was Dr. Mendes "refused to see her again because of her prior experience with litigation." The trial judge allowed QHG to cross-examine Mishoe on her relevant medical history. Therefore, we hold the trial judge did not abuse his discretion in limiting the scope of the cross-examination.

CONCLUSION

For the aforementioned reasons, the decision of the circuit court and award of punitive damages is hereby

AFFIRMED.

BEATTY and SHORT, JJ., concur.

[1] QHG does not ask this court to review the circuit court's Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), punitive damages analysis. Although QHG takes issue with opposing counsel's comment during closing argument regarding the \$2.8 million sale of the hospital, it does so only by arguing a mistrial should have been granted. See infra. QHG does not assert the use of the \$2.8 million sales price was an improper method to value QHG's net worth.

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. 2015-CP-40-03112

Clarence B. Jenkins Jr,
Employee,

Appellant,

v.

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

Respondents,

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

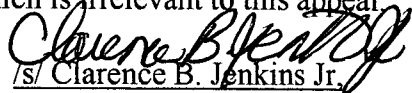
Appellant proposes the following be included in the Record on Appeal:

1. Transcripts
2. Order of October 8, 2015;
3. Order of September 15, 2015;
4. Plaintiff Proposed Order September 25, 2015;
5. Complaint;
6. Answer;
7. Memoranda Of Law September 3, 2015;

8. Unlawful Employment Practices, Exception 1-13-80 (1) (2);
9. South Carolina Tort Law 15-78-30;
10. South Carolina Law Slander and Libel 15-3-550;
11. South Carolina Law Declaration 41-27-20;
12. South Carolina Law Exemption to immunity 15-78-60 (25);
13. Rule 12(b);
14. Defendant's Exhibits 1, 2, 3, and 4.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 6, 2016


/s/ Clarence B. Jenkins Jr.

Clarence B. Jenkins Jr,
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Neeses, South Carolina 29107
(803) 263-4514

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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,

RECORD OF APPEAL

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I

TRANSCRIPTS

March 8, 2016

Order of October 8, 2015

[ORDER GRANTING DEFENDANTS MOTION TO DISMISS BY JUDGE G. THOMAS COOPER JR.,]

Order of September 15, 2015

[STATEMENT OF JUDGMENT BY THE COURT BY G. THOMAS COOPER JR.,]

Complaint

[COMPLAINT BY CLARENCE B. JENKINS JR.,]

Answer

[MOTION TO DISMISS OF DEFENDANTS BY ATTORNEY EUGENE H. MATTHEWS.]

Memoranda Of Law

[MEMORANDA OF LAW BY CLARENCE B. JENKINS JR.,]

Proposed Order

[PROPOSED ORDER BY CLARENCE B. JENKINS JR.]

South Carolina Code Of Law

[TORT CLAIM ACT SECTION 15-78-30].

South Carolina Code Of Law

[DECLARATION OF STATE POLICY SECTION 41-27-20.]

South Carolina Code Of Law

[EXCEPTIONS TO WAIVER OF IMMUNITY SECTION 15-78-60 (25).]

South Carolina Code Of Law

[UNLAWFUL EMPLOYMENT PRACTICES; EXCEPTIONS SECTION 1-13-80 (1) (2).]

South Carolina Code Of Law

[TWO YEARS SECTION 15-3-550 (1).]

Rule 12 (b)

[DEFENSES AND OBJECTIONS-HOW PRESENTED.]

Defendant's Exhibit 1

[Email Notification of Barred From Applying from Sharlayne Bellamy of SC Judicial Center.]

Defendant's Exhibit 2

[Email Communications between Sharlayne Bellamy and Terrashima Ellerbe of South Carolina Budget and Control Board.]

Defendant's Exhibit 3

[Email Communications from Samuel Wilkins to Valerie Wilkie pertaining to sending notification to state agencies that received Barred From Applying.]

Defendant's Exhibit 4

[Email Communications from Ed Cavazos to Samuel Wilkins of South Budget and Control Board providing verification Adrienne Sorenson of South Carolina Department Of Employment

Workforce applied barred from applying on July 19, 2013 to December 30, 2018.]

3

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 6, 2016


/s/ Clarence B. Jenkins Jr.
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Attorney for Appellant

1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND

IN THE CIVIL COURT

3
4 CLARENCE B. JENKINS,)

5 Plaintiff,)

6 -vs-)

7 S.C. DEPARTMENT OF
8 EMPLOYMENT WORKFORCE,
9 ET AL,)

10 Defendants.)

TRANSCRIPT OF RECORD

15-CP-40-03112

RECEIVED

FEB 16 2016

SC Court of Appeals

11 September 15, 2015
12 Columbia, South Carolina

13
14
15 B E F O R E:

16 HONORABLE G. THOMAS COOPER, JR., Judge.

17
18
19 A P P E A R A N C E S:

20 CLARENCE B. JENKINS appeared pro se.

21 EUGENE H. MATTHEWS, Esquire
22 Attorney for the Defendants

23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses.)

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence.)

1 (The following proceedings are reported on
2 September 15, 2015.)

3 THE COURT: This is Clarence Jenkins versus
4 South Carolina Workforce; is that correct?

5 MR. JENKINS: Yes, Your Honor.

6 MR. MATTHEWS: Yes, sir, Your Honor.

7 THE COURT: I have four motions here. It
8 looks like -- yes, sir.

9 MR. MATTHEWS: Your Honor, I was just
10 anticipating this, but our motion to dismiss was filed
11 first.

12 MR. JENKINS: Your Honor, I object to that
13 motion because --

14 THE COURT: All right. That's good enough.
15 Go ahead, Mr. Matthews.

16 MR. MATTHEWS: Yes, sir.

17 THE COURT: Let me just try to sort this out.
18 There is a motion to dismiss.

19 MR. MATTHEWS: Yes, sir.

20 THE COURT: That was filed June 23, 2015.
21 Then there is a motion to compel the defendants to
22 answer the complaint filed on July 27th. There is a
23 motion to quash the dismissal on July 2nd. Then there
24 is a motion to leave and motion to amend the complaint
25 in August.

1 We have got three motions from Mr. Jenkins and
2 a motion to dismiss from the Department. It looks like
3 Mr. Jenkins has also filed a memorandum of law in
4 opposition, again, to the request for dismissal.

5 Is that pretty much what we have got here for
6 today?

7 MR. JENKINS: Yes, sir, Your Honor.

8 MR. MATTHEWS: Yes, sir.

9 THE COURT: Okay. Well, there is another
10 memorandum, a memorandum of law, in August. That's what
11 you are calling it.

12 So let's look at the dismissal, and then I
13 will hear from Mr. Jenkins as to why he thinks that is
14 not the thing to do.

15 MR. JENKINS: Yes, Your Honor.

16 THE COURT: I would be glad to hear from you,
17 Mr. Matthews.

18 MR. MATTHEWS: Thank you, Your Honor. All of
19 these motions began with the complaint. Mr. Jenkins is
20 proceeding pro se. He has filed a claim apparently
21 against three departmental entities: Department of
22 Employment Workforce, the Budget and Control Board,
23 which is now the Department of Administration, and the
24 Office of the South Carolina Governor.

25 COURT REPORTER: Judge, I'm sorry.

1 I'm having a little bit of trouble hearing
2 you, Mr. Matthews, and you are talking down.

3 MR. MATTHEWS: I will take care of that.

4 COURT REPORTER: Thank you so much. And
5 excuse me.

6 MR. MATTHEWS: The complaint, as filed by
7 Mr. Jenkins, would be or the caption would be the
8 Department of Employment Workforce, which I will call
9 DEW; the Budget and Control Board, which is now the
10 Department of Administration, but for ease of reference,
11 I will just call the Board; and the Office of the South
12 Carolina Governor, which for ease of reference, I will
13 call the Governor's Office.

14 There are three separate causes of action
15 alleged in the complaint. One is for defamation. The
16 other is for abuse of process. The last is a cause of
17 action that references the two-year Statute of
18 Limitations for defamation claims or the third section
19 is simply a reference to the statute on the Statute of
20 Limitations.

21 With regard to the defamation claim, as we
22 read the four corners of the complaint, it appears that
23 even if we do at this point accept his allegations as
24 true, he has pled himself away from defending [sic] the
25 entities because he has pled that the person who did the

1 thing of which he complains, which is placing a bar from
2 applying-designation on his applications, is someone
3 named Ms. Sorenson.

4 He indicates in his complaint that she did so
5 maliciously and outside the scope of her duty. If
6 that's the case, then the acceptance of pleadings as
7 true, the entities are not proper parties under the Tort
8 Claims Act.

9 The statutory provisions there are Subsection
10 60-17 which talks about, of course, if a State employee
11 does this thing, then the Department, as entities, are
12 not proper parties.

13 It's the same thing under 15-78, Section 70.
14 When an employee does something which offends
15 Mr. Jenkins and he thereby complains, the proper party
16 there is the individual, not the Department.

17 As regards to the abuse of process claim, our
18 arguments are rather simple. Abuse of process requires,
19 as one of its element, a willful act and abuse of
20 process that is not proper in the regular conduct of the
21 proceedings. That requires some abuse of process.

22 In his complaint he complains of many things,
23 but none of them are abuses of process. For that reason
24 he has simply brought a cause of action that's improper.
25 He may have complained of other things regarding these

1 defendants, but abuse of process can't be one of them
2 simply because they have not abused the process as that
3 is defined in that cause of action.

4 I will answer any questions that you may have,
5 sir.

6 THE COURT: What statutes did you reference?

7 MR. MATTHEWS: The statutes I cited were 15-70
8 and 60, subsection 17, and 15-78, subsection 70 as
9 regards to the State employee acting outside the scope
10 of duty or in this case for defamation, malice would be
11 required.

12 In regard to -- again, we look to his own
13 complaint as we must at this stage. And in the
14 complaint he, of course, describes Ms. Sorenson as
15 acting as -- paragraphs 37, 38, and 35 -- committing
16 intentional acts by manipulating computer functions
17 performed with malice towards the plaintiff.

18 Again, paragraph 39 describes that
19 Ms. Sorenson has performed such an egregious act on her
20 own without permission, that such an act is criminal.
21 In paragraphs 58 and 59 he alleges that she did so
22 outside the scope of her employment and with malicious
23 intent. As a matter of law, he cannot sue the
24 departments that are at issue.

25 I believe, by correction, that the only

1 defendants that have been served are the entities.
2 There are no individual plaintiffs named in the caption.
3 Although there are some named in the causes of action,
4 to our knowledge none have been served.

5 THE COURT: All right. Mr. Jenkins.

6 MR. JENKINS: Yes, Your Honor. I am here
7 today just basically trying to correct a wrong that was
8 done by the Department of Employment Workforce, South
9 Carolina Budget and Control Board, and the Office of
10 South Carolina Governor.

11 THE COURT: Tell me what they did wrong.

12 MR. JENKINS: What had happened, I was
13 applying for a State position because I have a
14 Bachelor's degree in marketing. I have done the type of
15 work at South Carolina DEW that they do as far as
16 program rep.

17 As a matter of fact, the last position that I
18 held, I was WIA assistant director before. I worked for
19 a college through a program where we did the same job as
20 anybody would do in the Columbia office or Orangeburg
21 office.

22 We assist applicants with job searchment, job
23 placement, resume writing, interviewing skills. We also
24 sign them up for the WIA program as well, and we did
25 12-months follow up with that person.

1 THE COURT: Who were you working for?

2 MR. JENKINS: I was working for Voorhees
3 College. The program was called the Voorhees One-stop
4 Career Center.

5 THE COURT: Okay.

6 MR. JENKINS: And that's the name that all --
7 the former DEW agency was pretty much named a one-stop
8 career center.

9 What had happened, I was applying for State
10 positions. I kept getting rejection letters after
11 rejection letter. Sometimes I would get five within
12 about ten minutes. It kept going on, and I would call
13 DEW to ask them --

14 THE COURT: Where did you apply?

15 MR. JENKINS: I applied online through the
16 State Job Corps. So I was keeping track of my jobs that
17 I would apply for. And at one time I got 14 letters. I
18 got 14 rejection e-mails in the same day, probably
19 within 50 minutes or an hour's time.

20 So I continued to call and try to get the
21 answers. They were lying to me the whole time to be
22 honest with you. I couldn't get a straight answer
23 whatsoever.

24 So what happened, I continued to apply for
25 jobs. As a matter of fact, the senior HR personnel at

1 DEW was called Kerry Paul. She called my house. She
2 said, "You have no need to contact DEW any further. We
3 have no interest in hiring you."

4 She said that a letter would be coming stating
5 that. I said, "Ma'am, I can't believe you are calling
6 my house telling me this." I said, "I don't believe
7 that is legal employment practices."

8 So after she hung up, I went to go see her
9 e-mail. She had done blocked my e-mail account from
10 contacting her by e-mail. Then three days later a
11 letter came to my house stating just as what she said,
12 where they kind of had dressed it up; but it was pretty
13 much the same facts that she presented.

14 So I continued to apply for State jobs. It
15 just so happened that I got an e-mail from Sharlayne
16 Bellamy at South Carolina Judicial Center for a job
17 at --

18 THE COURT: South Carolina what?

19 MR. JENKINS: Judicial Center.

20 THE COURT: Judicial Center?

21 MR. JENKINS: Yes, sir, that I had applied
22 for. She said, "Well, we can no longer consider your
23 application because we have received notification that
24 you have been barred from applying."

25 I was sitting there in shock, and I responded

1 back to her. I said, "What notification? Who did such
2 a thing?" She responded back and she said I contacted
3 the Governor's Office for the State of South Carolina.
4 I have not done so.

5 She sent me an actual link of how the screen
6 printout looks. When my name comes up, it has, "This
7 candidate has been marked and barred from applying for
8 State positions."

9 So then there was an additional e-mail where
10 many people -- she contacted the Budget and Control
11 Board asking them, "How did this happen? Because
12 Mr. Jenkins was kind of surprised, and he was very angry
13 with me."

14 The Budget and Control Board, a person named
15 Terra Ellerby -- I got all this information in these
16 folders here -- Terra Ellerby sent notification to her
17 senior staff asking for information.

18 So there were many people at the Budget and
19 Control Board. There were many people at South Carolina
20 DEW. There were many people at the Office of the
21 Governor who knew this had happened because I had
22 contacted the Governor's Office requesting assistance.

23 I got e-mails where I contacted her office.
24 One of the reasons why South Carolina DEW and the Budget
25 and Control Board, the only reason why they are here

1 today is because they got caught.

2 So that's the only reason why they have owned
3 up to it. If they would have never gotten caught, they
4 would have never owned up to it today. That's why they
5 are here.

6 So when you look at the law -- and the reason
7 why they intended to blackball me and did not notify me
8 because during that same week, I had applied for other
9 jobs with the State of South Carolina, even at DEW; and
10 DEW didn't send me notification saying that they
11 received this error. This was an error for application.

12 I had applied for at least seven other jobs
13 with the State of South Carolina. The Judicial Center
14 was the only one that contacted me with notification.
15 DEW did not. The Budget and Control Board did not.

16 But yet they all -- I sent them notification
17 of what had happened, and everybody said, "Oh, it was a
18 system problem." That's what DEW said, right? But then
19 the Budget and Control Board said that DEW made a change
20 in their system intentionally.

21 So you've got two agencies, both of them
22 saying something that is totally different. DEW says it
23 was a system error. The Budget and Control Board said
24 that DEW did it and know they did it.

25 So when you look at the laws that governs the

1 State of South Carolina, as far as the defamation
2 process, my character has been slandered. It has been
3 slandered because I have been unable to attain State
4 employment.

5 It's not because I did anything wrong, not
6 because I'm unfit, it's all because an employee,
7 Adrienne Sorenson, did something, marked me as a
8 candidate being barred.

9 It was within the scope of her position
10 because she was on the job when she did it. She may
11 have been a midlevel employee. She may have acted or
12 manipulated on the system, but I'm pretty sure she had
13 her supervisor's approval.

14 Because I have other documentation in the
15 folder as well that everything that Adrienne Sorenson
16 did, it referred me back to Kerry Paul, who was her
17 director at the time. So there's many documentation.

18 As far as the defamation, I have been for two
19 years defending a lawsuit against someone for slander,
20 marked for barred from applying took place in July of
21 2013. I filed my complaint here in Richland County on
22 May 21, 2015.

23 So that's within the two years time period.
24 So that qualifies that. When you think about the reason
25 why my complaint is civil and not criminal because

1 Adrienne Sorenson, the State of South Carolina, was
2 notified.

3 I contact the Office of Inspector General. I
4 contacted the South Carolina Attorney General's Office.
5 I filed it with this documentation, and not one of those
6 agencies sought to make charges against Ms. Sorenson or
7 to held her accountable.

8 I want it made that relationship to show that
9 what she did according to the rules in the State of
10 South Carolina, it was criminal, but I'm not trying to
11 criminalize Adrienne Sorenson here today.

12 I am trying to bring a civil complaint against
13 all those who was involved, and that includes the South
14 Carolina Department of Employment Workforce, South
15 Carolina Budget and Control Board, and the Office of
16 South Carolina Governor.

17 Now, when you think about South Carolina Code
18 of Law 1-13-30, Section (M), which says a covered entity
19 means an employer, employment agency, labor
20 organization, or joint management committee. All those
21 fall in that category.

22 When you go down to Section 1-13-80 it says:
23 (A) It is an unlawful employment practice for the
24 employer to fail or refuse to hire, bar, discharge from
25 employment or otherwise discriminate against an

1 individual with respect to the individual's compensation
2 based on race, religion, color, sex, age, national
3 origin, or disability.

4 Section 2 of that same law, 1-13-80: To
5 limit, segregate, or classify employees or applicants
6 for employment in a way which would deprive or tend to
7 deprive an individual of employment opportunities or
8 otherwise adversely affect the individual's status as an
9 employee because of the individual's race, color,
10 religion, sex, age, national origin, or disability.

11 That is exactly what happened to me. I was
12 classified and therefore by being classified, it took
13 away in effect my employment opportunity. That's what
14 they have done. They have completely destroyed my
15 character.

16 Furthermore, when this all happened, I had a
17 written documentation that shows where the Budget and
18 Control Board had gotten up a list of all agencies that
19 I applied for and sent them notification asking them to
20 ignore the bar from applying. It's too late then. I am
21 damaged goods.

22 I am damaged goods. My character has been
23 damaged. I have always been told, a good name is more
24 than money because a good name carries you places where
25 other people and money can't do sometimes. In this case

1 my name has been destroyed, and those who knew about it
2 need to be held accountable.

3 Let me go a little bit further. Section
4 15-3-550 refers to slander, two years. An action for
5 libel, slander, or false imprisonment; and (2) an action
6 upon a statute for a forfeiture. Within two years you
7 can apply a slander libel lawsuit.

8 There is something else I would like to make
9 mention of as well if I could. Section 1-13-30, letter
10 (f): An employment agency means any person regularly
11 undertaking to procure employees for an employer or to
12 procure for employees opportunities to work for an
13 employer and includes an agent of such a person.

14 That's what DEW did. That's what their job
15 was. Their job was to assist me with job opportunity.
16 And by you marking me as barred from applying then there
17 is not a chance in hell -- no disrespect -- that I would
18 get a job.

19 If the State of South Carolina saw me okay to
20 work for them; there ain't no way that they would have
21 referred me out to private employees. Because you can't
22 have your cake and ice cream.

23 You can't say I can't work there and then say
24 I'm good on another end. That is not going happen. We
25 don't live in that society. We don't have a very

1 forgiving spirit.

2 Another argument I would like to make, this is
3 a declaration of policy. It says the General Assembly
4 declare the practice of discriminating against any
5 individual because of race, religion, color, sex, age,
6 national origin, or disability is a matter of State
7 concern and declares that discrimination is unlawful and
8 in conflict with the ideals of South Carolina and the
9 nation, as this discrimination interferes with
10 opportunities of the individual to receive employment
11 and to develop according to the individual's own ability
12 and is degrading to human dignity.

13 That's what happened to me because I would be
14 unable to attain employment. I've had to live on the
15 sympathy of family members. I applied for food stamps.
16 As a matter of fact, I am still getting food stamps
17 because of the way the system has barred me.

18 That's why I said I am damaged goods, not
19 because I did anything at DEW, not because I violated
20 anybody, not because I'm harassing. All I wanted was an
21 opportunity to work.

22 And DEW, somehow or another, they saw me and
23 treated me that way; and I can't think of why because I
24 don't even know any of those people there. I have done
25 nothing to them.

1 As a matter of fact, they went to the point of
2 making a false accusation that I was harassing them.
3 Well yet, not one agency has made them prove that
4 accusation.

5 I have asked them: Show me the records where
6 I have harassed you. I have not made threats to you. I
7 have not called you at home. I have not asked you for
8 your home address or your phone number. I have not made
9 threats toward your spouse or your children.

10 But that's what they accused me of. They
11 went so far as they bring me a letter that they were
12 fixing to call the local law enforcement to file charges
13 on me. This is a charge of harassment on your record.
14 That would have been a mark on me that I would have
15 forever.

16 That's unfair to me. That's why I was asking
17 that their request to have dismissal would be another
18 black mark on me because they are not worthy of being
19 dismissed because what they did was awful. It was
20 shameful in the State of South Carolina to do that to
21 your own citizens.

22 So I am just asking for a opportunity to prove
23 my case and let it be heard. I am trying to right a
24 wrong. When I filed the complaint to the United States
25 Department of EEOC, they referred me to South Carolina

1 Human Affairs.

2 Sharon Dorn, an investigator at the Human
3 Affairs, she determined through her investigation based
4 on who she contacted at the Budget and Control Board,
5 barred from applying is an intentional act.

6 It was not a system error. It was not
7 something that just happened. It was intentionally
8 applied. And when you look -- and the reason why you
9 know how it was intentionally applied, when they made a
10 mark in the system to be barred from applying for jobs
11 in the State of South Carolina, it's upwards of 2018.
12 That's five years, five and a half years.

13 That is intentional. That is not a system
14 error. I am asking this Court: Please do not allow
15 South Carolina DEW and South Carolina Budget and Control
16 Board, and the Office of the Governor to get away with
17 this. I have a right to clear my name. I need to clear
18 my name. I need justice. That's all I have to say at
19 this stage. Thank you, Your Honor.

20 THE COURT: Mr. Matthews.

21 MR. MATTHEWS: Thank you, Your Honor. Well,
22 it's certainly true that Mr. Jenkins is not beneath
23 justice and neither are the defendants. The statutes to
24 which he is referring 1, Section 13 have to do with the
25 State Human Affairs law.

1 If Mr. Jenkins wished to sue any of these
2 defendants under that law, he presumably had that
3 opportunity. When the State Human Affairs Commission
4 concludes an investigation, it actually sends out to the
5 complainant a notice of right to sue, which is a
6 jurisdictional requirement to come before this Court.

7 I have looked at his complaint and see no
8 claim under the State Human Affairs law. No notice was
9 amended to the complaint. So I really don't know
10 whether he is correct or not; but presuming he is, he is
11 estopped from bringing that claim. Presumably the
12 statute has run.

13 For all the passion and grievance -- and I am
14 sure he does feel aggrieved as many plaintiffs do -- the
15 fact of the matter is that doesn't deprive the
16 defendants in this case from the defenses that our law
17 provides.

18 That include the defenses under the State Tort
19 Claims Act which we properly pled. There is certainly
20 nothing that prevents this Court from dismissing this
21 case because we think against the defendants who have
22 been served, he simply has not stated a claim.

23 I know Mr. Jenkins feels passionate about what
24 has been done, but that doesn't deprive and that doesn't
25 permit him to sue these entities for issues that fall

1 under the pleadings in his own complaint that forbid him
2 to do.

3 THE COURT: All right. Anything else,
4 Mr. Jenkins?

5 MR. JENKINS: Yes, sir.

6 THE COURT: All right.

7 MR. JENKINS: 41-27-20, a declaration of State
8 policy. I am just going to list it for the Court.
9 Economic insecurity due to unemployment is a serious
10 menace to health, morals, and welfare of the people of
11 this State.

12 By South Carolina Department of Employment
13 Workforce, their primary job is to help job applicants
14 become employed, find suitable employment. And by them
15 being that agency and by them going to the point where
16 they barred me from applying for jobs I was well
17 qualified for, they have went against the best policy
18 that the State Assembly of South Carolina has made and
19 has on the books.

20 They violated that policy. They did not be
21 the agency to be in the business of helping somebody,
22 and they barred me from attaining employment. According
23 to this policy, I have become a menace to society. It
24 affects my welfare and my morals, which that is a fact.
25 That is definitely a fact.

1 One more thing. The Human Affairs Commission,
2 Your Honor, when I tell you my back has been against the
3 wall, been against a giant, I have been fighting a
4 giant; and I'm not afraid of the giant.

5 The South Carolina Human Affairs, with all the
6 information that they had, they didn't have the backbone
7 to declare a decision in my favor. With all the
8 information that they had, they had an article in the
9 paper where the former Director, Mr. Abraham Turner, who
10 stated that during this time as the director, most of
11 the employment I have in the form of training is the
12 type of work that they did at DEW.

13 I am qualified. I worked as -- I started off
14 as a job developer, a resource specialist, WIA
15 coordinator, intake coordinator, WIA case manager. I
16 became the WIA systems director. I was nominated for
17 regional employee of the year at one year because of my
18 work performance.

19 Then they had this thing where individuals
20 come into the office and see how you are doing. One of
21 the comments that was made about me is that all other
22 State employees in the State of South Carolina need to
23 model their work practice after me. That was one of the
24 compliments that I got because I did my job and I did it
25 well.

1 Then, furthermore, to go into that, as far as
2 job skills, each month I produced the highest level of
3 people who become employed because of the time that I
4 spend with them doing applications, working with them to
5 make sure in my job that they were out there so there is
6 enough to go around.

7 Again though, I am not separating Adrienne
8 Sorenson from all the governmental entities. She was
9 their employee. She did her job. What she did, she did
10 at the time she was asked for.

11 And based on all other communications, written
12 communications, where Adrienne Sorenson sent me a
13 rejection letter saying that, "You have been denied from
14 applying for this position," it always went back to
15 Kerry Paul.

16 So by Adrienne Sorenson being a mid-level
17 employee, I do not believe that she did this on her own
18 accord. And if she did, shame on her and shame on her
19 supervisor at DEW for not having to do that, but I don't
20 think she did that.

21 And then there is one other point I want to
22 make. When I actually applied and notified all of them,
23 you know the first time I heard from the Governor's
24 Office?

25 I tried for at least a year and a half, two

1 years, to get to go in to meet with Governor Hailey at
2 her office at my expense of meeting with her where she
3 was going to the county office, not one time.

4 All her staff did was put up roadblocks,
5 roadblocks. She is not available. She is not here.
6 But the one time that I heard from Governor Hailey's
7 office is when I sent her a copy of barred from
8 applying.

9 That's when a representative of her office
10 called me and left me a message about what is it you
11 want to do with me? At that point nothing could be done
12 then.

13 Then, furthermore, in a written communication
14 in these folders right here where barred from applying
15 was notified to them, that's the only time they owned up
16 to it.

17 They never contacted me, Your Honor, not one
18 time. They would have never owned up to it, and I
19 wouldn't be here today if it wasn't for the inadvertent
20 error of Sharlayne Bellamy contacting me and letting me
21 know that you are being barred from this position.

22 Other than that they would still be hiding in
23 the dark, hiding their hand. They would still be lying
24 to me. There is good communication in the folder where
25 senior staff at Budget and Control Board, at DEW, was

1 having conversations about who should we contact here?
2 If we respond, how should we respond?

3 They also wanted to know, have EEOC asked me
4 anything. This is all in the folder. And declare what
5 DEW did and what the Budget and Control Board did and
6 what the Office of South Carolina's Office did is a
7 shame in the State of South Carolina. I should have
8 that right because as I stated here, my name has been
9 attacked and my name has been scorned. So I am suing
10 for that.

11 Section 41-27-240, it talks about employment
12 office. It says: Employment office means a free public
13 employment office operated by this State or other office
14 maintained for the purpose of serving applicants or
15 claimants or maintained as a part of a state-controlled
16 system of public employment offices.

17 That is Section 41-27-240. Here again, when
18 they barred me from applying, they violated that very
19 law that has been established by the General Assembly of
20 South Carolina. That's a violation.

21 The reason why you know South Carolina DEW and
22 South Carolina Budget and Control Board all was aware of
23 this is because Section (B) under that same law states:
24 The department must work in conjunction with the State
25 Budget and Control Board to coordinate its computer

1 system with computer systems of other state agencies so
2 that the department may more efficiently match
3 unemployed persons with available jobs.

4 That was their job, to match people with
5 available jobs. So they had a system working in
6 conjunction with one another to match people to
7 available jobs, but yet on that same system, I was
8 completely destroyed. I was violated by that.

9 Section (B) under 15-78-330 says "Claim" means
10 any written demand against the State of South Carolina
11 or a political subdivision for money only, on account of
12 loss, caused by the tort of any employee of the State or
13 a political subdivision while acting within the scope of
14 his official duty.

15 THE COURT: Mr. Jenkins, I think I understand.

16 MR. JENKINS: Yes, sir.

17 THE COURT: Let me say that these motions in
18 front of me, you've got a motion to compel the
19 defendants to answer the complaint. Do you understand
20 that?

21 MR. JENKINS: Yes, sir.

22 THE COURT: Well, under our civil procedure,
23 they don't have to. A defendant does not have to answer
24 the complaint until they've had -- if they want to file
25 a motion to dismiss, they can have it heard before they

1 file an answer. So I have got to deny your motion.
2 That's what the rules say and the rules provide for
3 that.

4 MR. JENKINS: Okay.

5 THE COURT: So I can't compel them to answer
6 the complaint.

7 MR. JENKINS: Yes, sir.

8 THE COURT: Now, you also ask that I hold them
9 to -- that I deny their motion to dismiss, and I'm going
10 to take that one, and I'm going to think about it.

11 MR. JENKINS: Thank you.

12 THE COURT: And then you filed a motion to
13 quash the dismissal of defendant's request. I cannot
14 grant either under the rules. The other motion that you
15 filed is a motion for leave to amend the complaint.
16 What are you talking about? You want to amend the
17 complaint?

18 MR. JENKINS: Yes, sir. Yes, Your Honor. The
19 reason why I made that motion, one, I became aware that
20 at one time the South Carolina Budget and Control Board
21 used to be the chief operating agency for all other
22 State agencies in the State of South Carolina.

23 But due to a new act that was passed by the
24 General Assembly back in 2014, they have South Carolina
25 Administration. It has become the chief operating

1 agency, and the Budget and Control Board has been
2 separated in subdivisions.

3 THE COURT: Right.

4 MR. JENKINS: So, therefore, I'm not sure
5 whether the Budget and Control Board still has the
6 liability insurance that they had when they were the
7 chief operating agency. That was a point of trying to
8 include and make sure that everybody is included.

9 THE COURT: Well, do you still want to amend
10 your complaint?

11 MR. JENKINS: Yes, sir. The reason why is
12 Adrienne Sorenson, which is named as a party to the
13 complaint as a person that barred my from applying, I
14 misspelled her name. I spelled the last name with an E
15 and it should be with an O. So as long as to make sure
16 the proper party is applied, I asked that --

17 THE COURT: They haven't raised that issue.
18 The defendants haven't said anything about that.

19 MR. JENKINS: Okay.

20 THE COURT: And I don't know that your other
21 reason, because the Budget and Control Board changed its
22 name and probably the function, the function has been
23 resolved in the other departments of the Governor's
24 office.

25 MR. JENKINS: Yes, sir.

1 THE COURT: How about that?

2 MR. JENKINS: Yes, Your Honor.

3 MR. MATTHEWS: Your Honor, with respect we
4 urge you to rule first --

5 THE COURT: I understand that.

6 MR. MATTHEWS: -- on the motion to dismiss.

7 THE COURT: I know. I want you to answer that
8 question.

9 MR. MATTHEWS: Did you need me to answer a
10 question?

11 THE COURT: I just asked you.

12 MR. MATTHEWS: Please, again, Your Honor.

13 THE COURT: I said, how do you respond to his
14 motion to --

15 MR. MATTHEWS: With leave to amend?

16 THE COURT: To amend.

17 MR. MATTHEWS: My first answer is this.
18 Because none of the individual defendants getting
19 served, he is simply wanting to change the name of one
20 of the defendants because they have not made an
21 appearance because they have not --

22 THE COURT: Which one are you talking about?
23 Who has he not served?

24 MR. MATTHEWS: He has not served any of the
25 defendants.

1 THE COURT: You mean he has not served the
2 individual?

3 MR. MATTHEWS: Correct.

4 THE COURT: He hasn't served any of the
5 individual defendants?

6 MR. MATTHEWS: There are no individuals who he
7 has listed in his complaint --

8 THE COURT: Who did he serve?

9 MR. MATTHEWS: To my knowledge he served the
10 Department of Employment Workforce, the Budget and
11 Control Board, and the Office of the Governor.

12 THE COURT: So he served these defendants?

13 MR. MATTHEWS: Yes, sir.

14 THE COURT: Okay.

15 MR. MATTHEWS: To the extent that you -- well,
16 the Budget and Control Board now is, as you are aware,
17 its functions have been split up between a number of
18 agencies, including the Department of Administration.
19 From his complaint frankly, I don't know who within
20 that, who he is trying to sue; therefore --

21 THE COURT: I think he is trying to sue the
22 Department of Administration.

23 MR. MATTHEWS: Well, if that's the case, Your
24 Honor, then if you are of a mind to grant his motion,
25 then you certainly have the power to do that. My only

1 issue with the entire motion to amend though, ordinarily
2 when there is a motion and you are contemplating whether
3 to grant a motion to amend, there is an actual proposed
4 amended complaint to look at.

5 THE COURT: I know that.

6 MR. MATTHEWS: And none is here. So I don't
7 know exactly what it is.

8 THE COURT: He told you those two things.

9 MR. MATTHEWS: Then my response then is this.
10 It doesn't matter because the complaint still does not
11 state a claim upon which relief can be granted.

12 THE COURT: Okay. That's what I wanted your
13 opinion on. The fact that he spelled somebody's name
14 wrong...

15 MR. MATTHEWS: Is of no...

16 THE COURT: It's not jurisdictional.

17 MR. MATTHEWS: Yes, sir.

18 THE COURT: Do you understand what he's
19 telling me? The complaint that you have is all right in
20 terms of the people that you have named.

21 MR. JENKINS: Yes, sir.

22 THE COURT: And the fact that you spelled
23 somebody's name wrong is not important.

24 MR. JENKINS: Okay.

25 THE COURT: What Mr. Matthews is saying is

1 that even given that fact, that there's nothing wrong
2 with the complaint, it still doesn't give you a cause of
3 action against those three entities. That's his
4 position.

5 MR. JENKINS: Yes, sir.

6 THE COURT: I'm not saying I agree with it.

7 MR. JENKINS: Yes, sir.

8 THE COURT: I'm just saying that's his
9 position.

10 MR. JENKINS: Yes, Your Honor.

11 THE COURT: Okay. I will deny the motion to
12 amend the complaint. At this point in the process, I
13 usually ask the lawyers -- and I'm going to ask you too
14 even if you don't have a lawyer --

15 MR. JENKINS: Yes, sir.

16 THE COURT: -- to send me a proposed order,
17 what you think I ought to rule.

18 MR. JENKINS: Okay.

19 THE COURT: Do you understand?

20 MR. JENKINS: Yes, Your Honor.

21 THE COURT: How long do you need to do that?

22 MR. JENKINS: I would suggest maybe two weeks
23 at the most.

24 THE COURT: Two weeks. That would be fine.

25 MR. JENKINS: Okay. Thank you, your Honor.

1 THE COURT: I know Mr. Matthews doesn't need
2 two weeks because he has got all these secretaries and
3 lawyers and everything else working for him.

4 MR. JENKINS: Yes, Your Honor.

5 THE COURT: But I will give you as much time
6 as you need.

7 MR. JENKINS: Thank you, Your Honor.

8 THE COURT: Do you think two weeks is enough?

9 MR. JENKINS: Let's shoot for three. That way
10 I can be certain. I really do appreciate that.

11 THE COURT: Let me see here. Today is the
12 15th. I'll give you 15 days.

13 MR. JENKINS: Okay.

14 THE COURT: You've got to have in by the end
15 of the month, September 30th; okay?

16 MR. JENKINS: Okay. Thank you, Your Honor.

17 THE COURT: Now, you don't use e-mail, do you?

18 MR. JENKINS: I do, yes, Your Honor.

19 THE COURT: Do you want to send it to me on
20 the e-mail or do you want to send it to me on paper?
21 What is the easiest for you?

22 MR. JENKINS: E-mail.

23 THE COURT: All right. I will give you the
24 e-mail address where you are going to send it.

25 MR. JENKINS: Okay.

1 THE COURT: Here you go. We are adjourned for
2 the day. My clerk has the address for you.

3 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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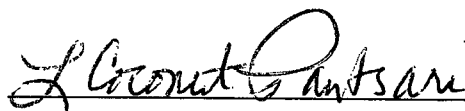
C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Richland County, South Carolina, on the 15th day of September, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

RECEIVED

FEB 16 2016
February 4, 2016
SC Court of Appeals



Court Reporter

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003112

Clarence B Jenkins Jr

SC Department of Employment Workforce

South Carolina Governor

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Non Resp.); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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 12 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Clarence B Jenkins Jr

Eugene Hamilton Matthews

Clarence B Jenkins Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Clarence B. Jenkins, Jr.,)
)
Plaintiff,)

C/A No.: 2015-CP-40-03112

v.)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

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

2015 OCT 12 AM 11:36
FILED
RICHLAND COUNTY
JANETTE W. McCOY
C.C.P. & G.S.

This matter came before this Court on September 15, 2015, on the Motion to Dismiss filed by Defendants 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 "Defendants") under Rule 12(b)(6), SCRCP. The Court also heard several motions filed by *pro se* Plaintiff, which were alternatively denied or dismissed as moot.

Having considered the memoranda provided by each side and the arguments of the parties, I hereby GRANT the Defendants' Motion to Dismiss and DISMISS this case with prejudice as the three named Defendants.¹

STANDARD OF REVIEW

In considering a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, the trial 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 question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for

¹ Although the Complaint references certain individuals, none have been served as individual parties to this case.

relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In this case, the Complaint does not state a claim for which relief can be granted. For that reason, the lawsuit must be dismissed.

PLAINTIFF'S ALLEGATIONS

Plaintiff is a former employee of SCDEW. (Plaintiff's Complaint, ¶ 7). He alleges that the Defendants "secretly blackballed [his] job application seeking employment with [the] State of South Carolina." (Plaintiff'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. (Plaintiff's Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Plaintiff's Complaint, ¶¶ 37-38).

Plaintiff purports to bring three (3) causes of action against the Defendants:

- Plaintiff attempts to allege a "**Defamation**" claim against the Defendants related to the "Barred for Applying" code allegedly entered into the State's computer system. Plaintiff variously described this as a "well formed plan" and that the Defendants' individual employees committed "intentional acts by manipulating computer functions performed with malice towards Plaintiff." (Plaintiff's Complaint, ¶¶ 37-38, 55). More specifically, Plaintiff 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." (Plaintiff's Complaint, ¶ 39). Plaintiff also alleges that she did so "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59).
- Plaintiff also attempts to allege an "**Abuse of Process**" claim² based on the same allegations. (Plaintiff's Complaint, ¶55).
- Plaintiff'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, Plaintiff's "Third Cause of Action" does not state a claim. (Plaintiff's Complaint, ¶¶ 56-59).

² Plaintiff's Second Cause of Action also includes a reference to a "Violation of S.C. Code Computer." This is not a legally cognizable claim.

OPINION

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

Under South Carolina law, each of the Defendants 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 Plaintiff's own pleadings, the act for which he seeks redress – being "blackballed" because Adrienne Sorensen tagged Plaintiff's applications for employment with a "Barred for Applying" code – was done "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59). For that reason, the Plaintiff's own allegations bar recovery from these three specific Defendants 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).

II. PLAINTIFF HAS FAILED TO STATE A *PRIMA FACIE* CLAIM FOR ABUSE OF PROCESS AGAINST THE DEFENDANTS, 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, 715 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

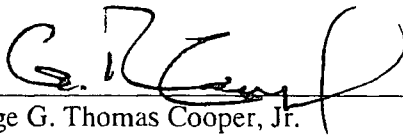
Here, the Complaint contains no allegation that any of the Defendants used or authorized civil or criminal “process” with regard to Plaintiff. Lacking this element, Plaintiff’s abuse of process claim fails and must be dismissed with prejudice.

CONCLUSION

For the reasons detailed above, Plaintiff 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.

This lawsuit is therefore DISMISSED with prejudice, with each side bearing its own costs and fees.

AND IT IS SO ORDERED.



Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

10 - 8 ., 2015

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003112

Clarence B. Jenkins Jr.

SC Department of Employment Workforce

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. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ **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.

Plaintiff's Motion to Compel Defendants to Answer Complaint is DENIED.

Defendant's Motion to Dismiss is UNDER ADVISEMENT. Proposed orders in 15 days, September 30, 2015.

Plaintiff's Motion to Quash Dismissal of Defendants Request is DENIED.

Plaintiff's Motion to Leave and Motion to Amend Complaint is DENIED.

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
		\$
		\$
		\$

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 2126

Date 9-15-15

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 17 day of Sept, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Clarence B. Jenkins Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

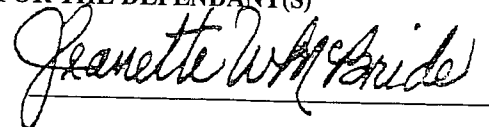
Eugene Hamilton Matthews

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

L. Coconut Pantsari

Clerk of Court



SCANNED

THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Clarence B. Jenkins Jr.

Plaintiff,

vs.

SC Department Of Employment
Workforce, SC Budget And Control Board
Office Of South Carolina Governor

Defendants,

) IN THE COURT OF COMMON PLEAS FOR
) THE FIFTH JUDICIAL CIRCUIT
)
)
)

Case No. 2015-CP-⁴⁰~~08~~

03112

**COMPLAINT
(JURY TRIAL REQUESTED)**

2015 MAY 21 PM 3:03
JAMES L. HARRIS
C.C.B. & C.S.

FROM: AND COUNTY
FILED:

The Plaintiff, complaining of the defendants, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is a resident of the county of Orangeburg, State of South Carolina.
2. SC Department Of Employment Workforce (hereafter "SCDEW"), SC Budget And Control Board (hereafter "SCBCB") and Office of SC Governor are agencies of the State of South Carolina doing business and maintaining offices in Richland County, South Carolina.
3. SCDEW and SCBCB are connected with Office of SC Governor being an intricate part of the State of South Carolina Organization for maintaining an environment free from criminal activities such as corruption.
4. All pertinent actions alleged in the Complaint took place in Richland County.
5. Jurisdiction and venue are proper in this Honorable Court.

FACTS

6. 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".
7. Plaintiff had previously had employment with SC Ready Works formerly known as Voorhees One Stop Career Center for (4) four years of professional work experience.
8. Plaintiff held positions of Resource Specialist I, Job Developer, Case Manager, WIA coordinator/intake and finally Assistant WIA Director of Voorhees One Stop Career Center.
9. Plaintiff was an exceptional employee at Voorhees One Stop Career Center being nominated regional employee of the year by director, received excellent performance evaluations and received exemplary comments stating that all employees should pattern after Plaintiff by secret shoppers program.
10. Plaintiff was top performer each month at Voorhees One Stop Career Center for job placements.
11. SCDEW would send between (4) to (15) fifteen rejections email letters in a day sometimes within minutes of each other which has been documented and

recorded before "Barred From Applying" was provided to Plaintiff therefore constitutes deprivation.

12. Plaintiff received (2) two rejections email letters from SCDEW on February 23, 2012 within 5:56 pm to 6:10 pm a total of (14) fourteen minutes which is documented as applications not receiving proper consideration before "Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation..

13. Plaintiff received (2) two rejections email letters from SCDEW on December 10, 2011 within 7: 29 pm to 7: 35 pm a total of (6) six minutes which is documented as verification that applications are not receiving proper consideration before 'Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation.

14. Plaintiff received (7) seven rejection email letters from SCDEW on January 25, 2012 within 4:52 pm to 5:32 pm a total of (92) ninety-two minutes which is documented as verification that applications are not receiving proper consideration before "Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation..

15. Plaintiff received 15 (fifteen) rejection email letters February 3, 2012 with first (10) ten within 3:35 pm to 4:33 pm a total (58) fifty-eight minutes and (4) four coming within 8:23 pm to 8:37 pm a total of (14) fourteen minutes an

additional at 10:22 pm which is documented as verification that applications are not receiving proper consideration before "Barred From Applying" notification was provided therefore constitutes deprivation.

16. Plaintiff received (5) five rejections email letters from SCDEW on March 14, 2012 within 1:24 pm to 8:54 pm a total of (7,5) seven and half-hours from SCDEW which is documented as verification that applications are not receiving proper consideration therefore constitutes deprivation

17. Plaintiff called SCDEW requesting to speak with Adrienne Sorensen regarding {3} three email rejections letters pertaining to same job number within minutes which is not an accurate functioning of an automatic system that filter out applications as stated by SCDEW Senior Management which is documented and recorded.

18. SCDEW and Office of South Carolina Governor was informed by Plaintiff email and phone calls regarding the constant rejections letters pertaining to state employment that came within minutes of each others that have been recorded and documented therefore did not receive any protection.

19. SCDEW, SCBCB and Office Of South Carolina Governor was informed regarding the actions of being blackball through many phone calls and emails which have been recorded and documented therefore did not received

any protection before receiving notification of "Barred From Applying" therefore constitutes deprivation.

20. Plaintiff was treated a hostile manner by SCDEW employees when seeking information on job application and application rejection email letters by being place on hold for five minutes with no communication, by hanging up the phone, by avoidance and by given instructions not to call SCDEW.

21. Plaintiff sought the assistance of Office Of South Carolina Governor with employment that went unanswered when there is public record of her office helping friends obtaining jobs within the State Of South Carolina who is not qualified for positions being advertised.

22. "Barred From Applying" was applied to my state job application without notification provided to Plaintiff that prevented employment from July 19, 2013 to December 30, 2018 therefore constitutes deprivation.

23. SCDEW Senior Management and Human Resource Office discriminated against my job application without justification that was unknown to Plaintiff until inadvertently actions of Sharlayne Bellamy of SC Judicial Center which is deprivation.

24. SCDEW Senior Management and Human Resources made threats to not have any contact SCDEW Office and they have no interest in hiring me.as

stated by SCDEW Human Resource Manager, Kerry Paul on March 11, 2013.

25. SCDEW Human Resource Manager, Kerry Paul stated on March 11, 2013 by phone that a letter will be coming regarding my employment status with them and and not to have any contact with their agency which is a public agency to assist job seekers with employment therefore places a barrier to self sufficiency therefore a life of poverty which constitutes deprivation.

26.. SCDEW Interim Human Resource Manager, Koa Morgan stated there will be no more communication with me regarding employment and made false accusations of harassment with threats of calling local law enforcement to file charges in written letter dated March 13, 2013 that was sent to my home which provided verification to Kerry Paul threats made on March 11, 2013 by phone.

27. SCDEW, SCBCB and Office of South Carolina Governor Nikki Haley was informed by email communication of the threatened phone by SCDEW Human Resource Manager, Kerry Paul therefore did not receive any protection from attacks by Senior Management at SCDEW.

28. "Barred From Applying" Notification was inadvertently sent by Sharlayne Bellamy of SC Judicial Center on July 24, 2013 stating my application for Administrative Specialist I/Docketing Specialist II position will no longer be

considered because of receiving this warning therefore an employment opportunity was denied therefore maintaining a life of poverty.

29. SCDEW, SCBCB and Office Of South Carolina Governor are intertwine with each other with the intent of assisting citizens of this state with job opportunities not to established a system that denies employment and the ability to be self sufficient.

30. An independent investigation completed by South Carolina Human Affairs Commission Investigator, Sharon Dorn determined that "Barred From Applying" was intentionally applied to my job application account which denied employment opportunities which has been recorded and documented at South Carolina Human Affairs Commission.

31 The Plaintiff has personal knowledge that Defendants, SCDEW, SCBCB and Office Of South Carolina Governor has a well formed plan to act in a manner that have surely caused Plaintiff serious character assassination with defect regarding employment that has a life long lasting effect being intentionally authorized.

32. SCDEW and SCBCB, both stated that "Barred From Applying" was a system error which is not true as verified by independent investigation completed by Investigator, Sharon Dorn of South Carolina Human Affairs

is Commission and written documentations that shows Adrienne Sorensen of SCDEW did it on July 19, 2013.

33. SCDEW, SCBCB and Office of South Carolina Governor would not provide Plaintiff with hard written documentations of when "Barred From Applying" became active upon request after request from July, 2013 to March, 2015.

34. SCBCB finally provide hard verification to Plaintiff of when "Barred From Applying" in April, 2015 after (21) twenty-one months of making request which is recorded and documented.

35. The hard written verification of "Barred From Applying" received in April, 2015 confirmed that Adrienne Sorensen committed a computer crime against Plaintiff on July 19, 2013.

36. The hard written verification provided to Plaintiff of "Barred From Applying" received in April 2015 confirmed that Adrienne Sorensen manipulated SCDEW Job Application Portal to be in effect until December 30, 2018 which was unknown to Plaintiff therefore constitutes deprivation.

37. SCDEW and SCBCB provided prior written letters to Plaintiff stating that it was a system error when the corrupt actions was competed under their supervision and verification of Adrienne Sorensen actions on July 19, 2013.

38. SCDEW and SCBCB sent letters stating a system error in July, 2013 to August, 2013 when they had evidence that it was not according to their own investigation showed that verification was provided to them July 26, 2013.

39. It is reasonable to believe that Adrienne Sorensen is a mid-level employee in SCDEW Human Resource Office therefore to performed such an egregious act on her own without permission is criminal not prosecuted by the State Of South Carolina.

40. By "Barred From Applying" being place against Plaintiff job application for (5 ½) five and half years sought to destroy my ability to become financially stable and employable by not having active employment.

41. "Barred From Applying" was an assault, libel and slander on Plaintiff —character—that had an adverse effect therefore constitutes deprivation..

42. "Barred From Applying" prevented Plaintiff opportunities to receive employment opportunities that was comparable to my education and professional work experience.

43, SCDEW and SCBCB sent notifications to (35) thirty-five State of South Carolina Agencies informing them to ignored the "Barred From Applying"

because it was an error but the damage has been done. Plaintiff is damaged goods because a corrections and notification was sent to each potential employer therefore constitutes deprivation.

44. The (35) notifications was sent to SCDEW itself as verified by written documentations that is recorded and confirmed the intentional harm committed because of them being self notified when knowing the criminal act was performed by a staff employee, Adrienne Sorensen in SCDEW Human Resources Office.

45. SCBCB and SCDEW, both manipulated the actions of "Barred From Applying through interoffice communications with each other on how to approach the situation regarding Plaintiff concerns.

46. The false accusation of harassment claims by SCDEW has not been proven or ordered to provide verification but accepted without justification and therefore discredit Plaintiff name, character and with public shame.

47. The threatened bodily harm is mental anguish, mental stress, mentally and physically dysfunctional to be unfit for employment.

48. The threat is imminent because it has denied Plaintiff employment opportunities and SCDEW, SCBCB accepted responsibility and liability

therefore performed immediate attempts to correct the irreparable damage which is deprivation.

49.. Plaintiff has suffered public and private shame by being blackball with "Barred From Applying" supporting himself with food-stamps therefore living a life of poverty.

50. "Barred From Applying" was attached to my application from July 19, 2013 until December 30, 2018 due to inadvertently actions of Sharlayne Bellamy of SC Judicial Center providing notification therefore constitutes deprivation under U.S. Law.

51. SCDEW, SCBCB and Office Of South Carolina Governor Senior Staff all knew about "Barred From Applying" pertaining to Plaintiff according to written communications that has been documented,

FIRST CAUSE OF ACTION

(DEFAMATION AGAINST DEFENDANTS KERRY PAUL, ADREINNE SORENSEN, KOA MORGAN, ABRAHAM TURNER, STEPHANI HAMBERG, CHERYL STANTON, JOHN FINAN, SAMUEL WILKINS, MARCIA ADAMS AND SOUTH CAROLINA GOVERNOR NIKKI HALEY IN THEIR INDIVIDUAL CAPACITY AND SCDEW, SCBCB AND OFFICE OF SOUTH CAROLINA

52. Defendant's written statement and actions infer Plaintiff is unfit for his profession and is a liar and constitutes slander per se

53. These Defendant's statement and actions are intended to brand

Plaintiff as incompetent, unprofessional, trouble-maker and a liar and infer he is incapable of performing his job. These false statements and actions have already seriously injured Plaintiff's reputation as a potential state employee unable to obtain suitable employment.

54, The publication and re-publication of these false statements and actions by these Defendants have caused Plaintiff to suffer general damages and special damages including pain and mental anguish, and damage to his reputation. Additionally, Plaintiff seeks punitive damages against Defendants Sorensen, Paul, Morgan, Turner, Wilkins, Hamberg, Adams, Finan, Stanton and Haley for statements made and actions done in their individual capacity.

SECOND CAUSE OF ACTION
**(VIOLATION OF S.C. CODE COMPUTER AND ABUSE OF PROCESS
AGAINST DEFENDANTS ADRIENNE SORENSEN, KERRY PAUL, KOA
MORGAN, ABRAHAM TURNER, CHERYL STANTON, JOHN FINAN,
SAMUEL WILKINS, MARCIA ADAMS, STEPHANI HAMBERG AND SOUTH
CAROLINA GOVERNOR NIKKI HALEY IN THEIR INDIVIDUAL CAPACITY
AND SCDEW, SCBCB AND OFFICE OF SOUTH CAROLINA GOVERNOR)**

55. Plaintiff has been injured by these Defendants' intentional acts by manipulating computer functions performed with malice towards Plaintiff and Plaintiff is entitled to compensable damages, punitive damages against Defendants Sorensen, Paul, Morgan, Turner, Wilkins, Adams, Hamberg, Stanton, Finan and Haley in their individual capacity, attorney fees and costs.

THIRD CAUSE OF ACTION
**(VIOLATION OF S.C. CODE 15-3-550 AGAINST SCDEW, SCBCB AND
OFFICE OF SOUTH CAROLINA GOVERNOR)**

56. Defendants SCDEW, SCBCB And Office Of South Carolina Governor violated this policy by making written false statements therefore constitutes per section (1) of this statute, as a resident of this State injured by SCDEW's, SCBCB's and Office Of South Carolina Governor's intentional misuse and violations of this statute, Plaintiff is entitled to damages, injunctive relief, and attorney fees and costs under deprivation statutes.

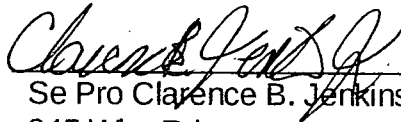
57. Defendants SCDEW, SCBCB and Office Of South Carolina Governor all are agency of this State of South Carolina therefore had prior knowledge of NEOGOV computer software and potential harm caused by Defendant, Adrienne Sorensen as an employee of the State.

58. Defendant Adrienne Sorensen 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 caused deprivation.

59. Defendant Adrienne Sorensen committed "Barred From Applying" with malicious intent originate, utter, circulate or published any false statement therefore a violation pertaining to slander and libel in her capacity at SCDEW under the authority SCDEW, SCBCB and Office Of South Carolina Governor.

Wherefore, Plaintiff respectfully requests this Court grant Plaintiff the damages requested herein, as well as such other relief the Court deems appropriate, including costs and attorney fees.

Se Pro Clarence B. Jenkins Jr



Se Pro Clarence B. Jenkins Jr
945 Wire Rd.

Neeses, SC 29107

Telephone (803) 263-4514

Email: upscale81@yahoo.com

Attorney for Plaintiff

Neeses, South Carolina

Date 5-21-2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clarence B. Jenkins, Jr.,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-40-03112

**MOTION TO DISMISS
OF DEFENDANTS**

NOW COME the Defendants 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 “Defendants”), by and through counsel, and file this Motion to Dismiss under Rule 12(b)(6), SCRCP, seeking dismissal of each of Plaintiff’s claims with prejudice. In support of this Motion, the Defendants state as follows:

PLAINTIFF’S ALLEGATIONS

Plaintiff is a *pro se* litigant and alleges that he is a former employee of SCDEW. (Plaintiff’s Complaint, ¶ 7). He alleges that the Defendants “secretly blackballed [his] job application seeking employment with [the] State of South Carolina.” (Plaintiff’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. (Plaintiff’s Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Plaintiff’s Complaint, ¶¶ 37-38).

Plaintiff purports to bring three (3) causes of action against the Defendants:

- Plaintiff attempts to allege a “**Defamation**” claim against the Defendants related to the “Barred for Applying” code allegedly entered into the State’s computer system. Plaintiff variously described this as a “well formed plan” and that the Defendants’ individual employees committed “intentional acts by manipulating computer functions performed with malice towards Plaintiff.” (Plaintiff’s Complaint, ¶¶ 37-38, 55). More specifically, Plaintiff 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.” (Plaintiff’s Complaint, ¶ 39). Plaintiff also alleges that she did so “outside the scope of her employment” and “with malicious intent.” (Plaintiff’s Complaint, ¶¶ 58-59).
- Plaintiff also attempts to allege an “**Abuse of Process**” claim¹ based on the same allegations. (Plaintiff’s Complaint, ¶55).
- Plaintiff’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, Plaintiff’s “Third Cause of Action” does not state a claim. (Plaintiff’s Complaint, ¶¶ 56-59).

For the reasons stated below, Plaintiff has failed to state a claim against the Defendants and his lawsuit must be dismissed with prejudice.

LEGAL ARGUMENT

I. PLAINTIFF’S DEFAMATION CLAIM FAILS UNDER THE PROVISIONS OF THE SOUTH CAROLINA TORT CLAIMS ACT.

Under South Carolina law, each of the Defendants 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 with intent to harm, with malice, or outside the scope of his or her duty. S.C. Code Ann. §§ 15-78-60(17), 15-78-70.

According to Plaintiff’s own pleadings, the act for which he seeks redress – being “blackballed” because Adrienne Sorensen tagged Plaintiff’s applications for employment with a “Barred for Applying” code – was done “outside the scope of her employment” and “with malicious intent.” (Plaintiff’s Complaint, ¶¶ 58-59). For that reason, the Plaintiff’s own

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

allegations bar recovery from the Defendants 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); *Smith v. City of Greenwood*, 2010 WL 2430952, at *2 (D.S.C. May 13, 2010) (noting [District] "courts have been generally consistent in concluding that intentional acts of a governmental employee, intended to do others harm, are deemed outside the scope of their employment," therefore constituting an exception to South Carolina's waiver of immunity under the Tort Claims Act) (slip op. attached); *Doe v. Smith*, 2014 WL 2968925, at *1 (S.C. App. June 30, 2014) (affirming the trial court's award of summary judgment to governmental entities pursuant to the Tort Claims Act where loss resulted from employee conduct outside of the scope of his official duties) (slip op. attached).

Simply put, as a matter of South Carolina law, the claim is not justiciable and must be dismissed with prejudice.

II. PLAINTIFF HAS FAILED TO STATE A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST THE DEFENDANTS, 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 of 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, 715 567 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

Here, there is no allegation that any of the Defendants used or authorized civil or criminal “process” with regard to Plaintiff. Lacking this element, Plaintiff’s abuse of process claim fails and must be dismissed with prejudice.

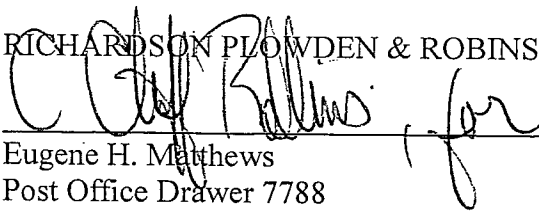
CONCLUSION

For the reasons detailed above, Plaintiff has failed to state any justiciable claim against any of the Defendants. Therefore, Plaintiff’s lawsuit must be dismissed with prejudice, and the Court should award the Defendants any other such relief as the Court deems just and proper.

Dated this the 22nd day of June, 2015.

Respectfully submitted,

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THE GOVERNOR OF SOUTH CAROLINA**

Slip Opinion

Smith v. City of Greenwood,
2010 WL 2430952 (D.S.C. May 13, 2010)

2010 WL 2430952

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina,
Anderson/Greenwood Division.

Julia B. SMITH, Plaintiff,

v.

CITY OF GREENWOOD; Mathis Plumbing
& Heating Company, Inc; James H. Mathis;
Steven J. Brown; Lawrence Ouzts; and Ronnie
Powell, in their individual capacities, Defendants.

Civil Action No. 8:09-2061-
HFF-BHH. | May 13, 2010.

Attorneys and Law Firms

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Greenwood, SC, for Defendants.

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

BRUCE HOWE HENDRICKS, United States Magistrate
Judge.

*1 This matter is before the Court on Defendant Brown's,
Ouzts' and Powell's motion to dismiss pursuant to Federal
Rule of Civil Procedure 12 [Doc. 33], requesting that the civil
conspiracy claim against them be dismissed. In her Amended
Complaint [Doc. 13], the plaintiff has pled claims for race
discrimination pursuant to Title VII of the Civil Rights Act of
1991, as amended, for interference with contractual relations,
and civil conspiracy.

Pursuant to the provisions of Title 28, United States Code,
Section 636(b)(1)(A), and Local Rule 73.02(B)(2)(g), D.S.C.,
all pretrial matters in employment discrimination cases are
referred to a United States Magistrate Judge for consideration.

APPLICABLE LAW

MOTION TO DISMISS STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a motion
to dismiss for failure to state a claim should not be granted
unless it appears certain that the plaintiff can prove no set
of facts which would support its claim and would entitle
it to relief. In considering a motion to dismiss, the court
should accept as true all well-pleaded allegations and should
view the complaint in a light most favorable to the plaintiff.
Mylan Laboratories, Inc. v. Matkari, 7 F.3d 1130, 1134 (4th
Cir.1993) (citations omitted).

DISCUSSION

The defendants Brown, Ouzts, and Powell contend that the
plaintiff's civil conspiracy claim should be dismissed because
it was not pled prior to the expiration of the two-year statute of
limitations period under the South Carolina Tort Claims Act
("SCTA"). See S.C. Code § 15-78-110. The plaintiff responds
that the SCTA does not apply to her claim of civil conspiracy
and, therefore, a three-year statute of limitations is applicable.
Specifically, the plaintiff argues that she has expressly sued
the defendants in their individual, as opposed to official,
capacities, which removes them from the ambit of the SCTA.

Section 15-78-70 of the Act provides:

(a) This chapter constitutes the exclusive remedy for any
tort committed by an employee of a governmental entity.
An employee of a governmental entity who commits a tort
while acting within the scope of his official duty is not liable
therefor except as expressly provided in subsection (b).

(b) Nothing in this chapter may be construed to give an
employee of a governmental 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.*

S.C. Code § 15-78-70 (emphasis added). Under Section
15-78-30: " 'Scope of official duty' or 'scope of state
employment' means (1) acting in and about the official
business of a governmental entity and (2) performing official
duties." S.C. Code § 15-78-30(i).

The plaintiff has specifically alleged in her Amended Complaint that “[s]uch actions on the part of the named defendants in their *individual capacities* and all *acting outside the course and scope of their employment* amount to an unlawful conspiracy.” (Am. Compl. ¶ 29 (emphasis added).) Accordingly, the plaintiff has attempted to remove her conspiracy claim from the scope of the SCTA by alleging that the acts of the defendants were expressly outside of the scope and course of the defendants’ employment.

*2 The defendant’s contend that regardless of the averment, the SCTA is the exclusive statutory remedy for all torts against government employees and, therefore, its statute of limitations controls the timeliness of the conspiracy claim, even if it is ultimately proven that the defendants’ actions exceeded the scope of their duties. The plaintiff, in contrast, contends that the averment itself, alleging acts outside of the course of the defendants’ employment, exempts the claim from the SCTA. Both parties have relied on the South Carolina Court of Appeals’ decision, in *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (S.C.Ct.App.2003), to fan their cause.

In *Flateau*, the South Carolina Court of Appeals considered whether the STCA applied to common law tort claims of outrage, invasion of privacy, and civil conspiracy brought against individual employees of the S.C. Commission for the Blind. Unlike the present case, the Complaint did not allege actions outside of the scope of the defendants’ employment and, instead, expressly averred that “[a]t all time of the incident ..., the Defendants were members of the Board of the South Carolina Commission for the Blind.” *Id.* at 204, 584 S.E.2d 413. The court of appeals emphasized 6 separate averments that reinforced the express allegation in the Complaint that the defendants were acting pursuant to their official duties. *Id.* at 204–05, 584 S.E.2d 413. The Court of Appeals ultimately concluded that the “pleadings clearly and unequivocally” alleged acts taken in accord with the board members “official duties” about “the official business of the Commission.” *Id.* at 205, 584 S.E.2d 413. As a result of its determination that the SCTA “controls,” the court of appeals subsequently concluded that the Act’s two-year statute of limitations, therefore, applied. *Id.* at 207, 584 S.E.2d 413.

The plaintiff, here, counters that *Flateau* is readily distinguishable from the present case, insofar as allegations of official conduct were pled there, and not here. The defendants have impressively reinforced their view of *Flateau* by citing

a difficult portion of it, which appears at the very end of that decision and which would tend to support the defendants’ present position on the applicability of the SCTA statute of limitations. Namely, the court of appeals, stated in its conclusion, “We rule the 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).

This statement has caused the undersigned some consternation and is, frankly, hard to understand. The court of appeals did not expound on its stray remark. The Court has tried to understand *Flateau* both in the context of its specific facts and holding and prior precedent.

First, courts have been generally consistent in concluding that intentional acts of a governmental employee, intended to do others harm, are deemed outside the scope of their employment and, therefore, constitute 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, *Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 486 S.E.2d 9, 11 (S.C.App.1997); the Fourth Circuit, *Anthony v. Ward*, 336 Fed. Appx. 311, 316–17 (4th Cir.2009) (“The jury’s finding that Defendants had civilly conspired against Plaintiff was sufficient to remove from the purview of the SCTCA’s protected class of government employees.”); and courts of this district, *Moody v. Darnell*, 2010 WL 297810, at *3 (D.S.C. January 21, 2010); *Carthens v. Lewis*, 2009 WL 394299, at *6 (D.S.C. February 17, 2009); *Harkness v. City of Anderson, S.C.*, 2005 WL 2777574, at *4 (D.S.C. October 25, 2005); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C.1999), have all agreed.

*3 Second, the court of appeals analysis, in *Flateau*, specifically turned on the way in which the Complaint had been pled. The court went to some length to explain how the averments implicated the SCTA, by virtue of their focus on official duty acts. It is a reasonable interpretation of the difficult conclusion in *Flateau*, that the court meant to say that the statute of limitations for the SCTA was applicable, even if it was later demonstrated that acts outside of the scope of the defendants’ employment were committed, because the Complaint had rightly implicated the SCTA in the first instance. The Court is unaware of any other interpretation which would render *Flateau* and prior and controlling precedent comparably harmonious.

Turning to the Complaint at issue here, the plaintiff has, differently than in *Flateau*, pled her claim so as to limit her allegations to conduct which purports to either be 'beyond the scope of the defendants' employment or otherwise intended to cause harm. See S.C. Code § 15-78-70. As stated, the Amended Complaint alleges that the conspiracy was performed in the defendants' "individual capacities" and "outside the course and scope of their employment." (Amend. Comp. ¶ 29.) The defendants would be liable, therefore, if at all, only to the extent their conduct, in fact, proved of the kind left expressly beyond the reach of the SCTCA. Moreover, a civil conspiracy claim requires, as one of its three elements, proof of an intent to injure the plaintiff. See *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 511 (2006); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15, 31 (Ct.App.2000). Accordingly, the Court finds the SCTCA, and its concomitant statute of limitations, inapplicable. Instead, the general three-year statute of limitations applies to the civil conspiracy claim pursuant to S.C. Code § 15-3-530(5). See *Dorman v. Campbell*, 331 S.C. 179, 500 S.E.2d 786, 788-790 (S.C.Ct.App.1998). This district has recently agreed. See *Moody v. Darnell*, 2010 WL 297810, at *3 (D.S.C. January 21, 2010) ("Based upon the allegations in the complaint, the SCTCA statute of limitations would not apply to these claims." (emphasis added)). The defendants do not contend that the claim is untimely under that general statute of limitations.

To the extent the district court disagrees and finds that the Act is, in fact, applicable, the claim must be dismissed without prejudice and the statute of limitations issue left undecided. The circuit courts of South Carolina have exclusive jurisdiction over state-law claims against governmental entities pursuant to the South Carolina Tort Claims Act ("SCTCA"). See S.C. Code Ann. § 15-78-100(b). The District of South Carolina has recognized this limitation on its jurisdiction, based both on Section 15-78-100 and Section 15-78-20(e) of the South Carolina Code, which, expressly preserve the State of South Carolina's Eleventh Amendment immunity from suit in federal court. See *Stewart v. Beaufort County*, 481 F.Supp.2d 483, 493 (D.S.C.2007); *Smith v. Ozmint*, 2007 WL 858749, at *35 (D.S.C. March 20, 2007). Accordingly, whatever claims the plaintiff has pursuant to SCTCA should be dismissed *without prejudice*.

CONCLUSION AND RECOMMENDATION

*4 Wherefore, based upon the foregoing, the Court recommends that the defendants' motion to dismiss be DENIED.

IT IS SO RECOMMENDED.



Slip Opinion

Doe v. Smith,
2014 WL 2968925 (S.C. App. June 30, 2014)

2014 WL 2968925

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

Jane DOE, Appellant,

v.

Charles SMITH, Charleston County School District
and James Island High School, Respondents.

Appellate Case No.2013-000084.

No. 2014-UP-267. | Heard May
7, 2014. | Decided June 30, 2014.

Appeal From Charleston County; W. Jeffrey Young, Circuit
Court Judge.

Attorneys and Law Firms

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County School District and James Island High School; Robin
Lilley Jackson, of Senni Legal, LLC, of Charleston, for
Respondent Charles Smith.

Opinion

PER CURIAM.

*1 Jane Doe appeals the order of the trial court granting
summary judgment to Charles Smith, Charleston County
School District (District), and James Island High School
(High School) on her claims for breach of fiduciary duty,
outrage, and gross negligence. We affirm.

(1) We find the trial court did not err in granting the District
and the High School summary judgment on Doe's negligent
supervision claim. See S.C. Code Ann. § 15-78-60(25) (2005)
(providing a governmental entity is not liable for a loss
resulting from the "responsibility or duty including but not
limited to supervision, protection, control, confinement, or
custody of any student, ... except where the responsibility

or duty is exercised in a grossly negligent manner ...");
Degenhart v. Knights of Columbus, 309 S.C. 114, 116-
17, 420 S.E.2d 495, 496 (1992) (stating an employer may
be liable for negligent supervision when the employee
intentionally harms another when he is on the employer's
premises, he is on premises he is privileged to enter only as
an employee or is using the employer's chattel, the employer
knows or has reason to know he has the ability to control the
employee, and the employer knows or has reason to know
of the necessity and opportunity to exercise such control);
Moore v. Berkeley Cnty. Sch. Dist., 326 S.C. 584, 591-92,
486 S.E.2d 9, 13 (Ct.App.1997) (finding district not liable
for negligent supervision when although there was evidence
teacher's classroom was conducted in a lax manner and
some teachers observed what they considered "inappropriate"
behavior in the classroom, none of the alleged classroom
incidents were of such a character that the administration
would have, if aware of them, reasonably anticipated that the
teacher would engage in sexual intercourse with a student in
her own home after school hours). Doe presented no evidence
that the District knew or had reason to know of a need to
exercise control over Smith to prevent him from abusing Doe.

(2) We find Doe's contention the School District and the High
School failed to exercise slight care because it made no effort
to offer guidance, accommodation, or other support to Doe
after her suicide attempt is not preserved for appellate review.
See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731,
733 (1998) ("It is axiomatic that an issue cannot be raised for
the first time on appeal, but must have been raised to and ruled
upon by the trial judge to be preserved for appellate review.").

(3) We find the trial court did not err in holding the
District and the High School are not liable under a theory
of *respondeat superior*. See S.C. Code Ann. § 15-78-60(17)
(2005) (excluding a governmental entity from liability for
a loss resulting from "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 ..."); *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d
625, 633 (Ct.App.2013) (stating the modern doctrine of
respondeat superior makes a master liable to a third party
for injuries caused by the tort of his servant committed
within the scope of the servant's employment); *Kase v. Ebert*,
392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct.App.2011)
("If a servant steps aside from the master's business for
some purpose wholly disconnected with his employment, the
relation of master and servant is temporarily suspended; and
this is so *no matter how short the time*, and the master is not

liable for his acts during such time.”(internal citations and quotation marks omitted)); *Frazier v. Badger*, 361 S.C. 94, 103, 603 S.E.2d 587, 591 (2004) (“[S]exual harassment by a government employee is not within the employee’s ‘scope of employment.’ ”); *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct.App.1993) (holding an employee clearly was acting in his individual capacity and not as an agent for the defendants when he sexually assaulted the victim in his office).

*2 (4) Doe failed to challenge the trial court’s granting of summary judgment to the District and the High School on Doe’s breach of fiduciary duty claim and outrage claim. She also failed to challenge the trial court’s ruling that all of Doe’s claims against the High School fail because the High School did not exist as a separate legal entity until 2003. These rulings are the law of the case. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”); *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct.App.1998) (holding an “unchallenged ruling, right or wrong, is the law of the case and requires affirmance”).

(5) We find Doe failed to challenge properly the trial court’s ruling that her claims against Smith for outrage and punitive damages were barred by the Tort Claims Act. Her only discussion of this ruling is in a footnote in her brief within the argument section “The Respondents owed a duty of care to Doe,” in which she states: “To the extent Smith was acting outside the scope of his employment by taking Doe for rides in his car and tending to Doe after her suicide attempt, the ruling by the trial court barring the claims of outrage and for punitive damages against Smith are in error because those limitations on liability apply only to employees acting within the scope of their employment.” *See* Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); *Walde v. Ass’n Ins. Co.*, 401 S.C. 431, 435 n. 1, 737 S.E.2d 631, 633 n. 1 (Ct.App.2012) (refusing to address an issue when the appellant’s brief did not include an issue on appeal addressing this contention, did not argue the specific issue, and only briefly referred to this concern in another argument without providing any supporting authority); *Fassett v. Evans*, 364

S.C. 42, 50 n. 5, 610 S.E.2d 841, 846 n. 5 (Ct.App.2005) (holding that even if a one-sentence argument could be construed as raising a separate issue on appeal, it was abandoned for being conclusory and failing to cite any supporting authority).

(6) We find the trial court did not err in holding Doe’s claims were barred by the statute of limitations. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 336, 340, 534 S.E.2d 672, 680, 682 (2000) (stating a plaintiff must present at the summary judgment stage and at trial independently verifiable, objective evidence that corroborates a repressed memory claim in order to assert the discovery rule); *id.* at 335, 534 S.E.2d at 680 (explaining the requirement of corroborating evidence “appropriately balances the plaintiff’s interest in pursuing a valid claim and the defendant’s interest in being able to defend a stale or false claim”); *id.* at 335–36, 534 S.E.2d at 680 (noting reasons for the requirement are “the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff’s memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff’s mind”); *id.* at 336, 534 S.E.2d at 680 (listing examples of corroborating evidence that may satisfy the objective verifiability requirement as “(1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness’s account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred”). In order to avoid application of the statute of limitations, Doe was required to establish independently verifiable, objective evidence to corroborate her repressed memory claim. We find Doe failed to present evidence that meets the requirements of *Moriarty*.

***3 AFFIRMED.**

HUFF, THOMAS, and PIEPER, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Clarence B. Jenkins Jr.	)	CASE NO: 2015-CP-40-03112
	)	
Plaintiff,	)	MEMORANDUM OF LAW
Vs.	)	
	)	
SCDEW, SCBCB and Office	)	
Of South Carolina Governor	)	
	)	
Defendants,	)	
	)	
	)	
	)	

NOW COME the Defendants South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor regarding “Barred From Applying” which was an intentional act known to all but unknown to Plaintiff. I am asking this Honorable Court to decline Defendant’s request for dismissal base on the South Carolina Code of Laws that South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor violated employment laws with “Barred From Applying”.

FACTS

SCDEW and SCBCB through deliberately and corrupt actions provided written communication that it was a system error but an independent agency as South Carolina Human Affairs determined that “Barred From Applying” was an intentional act. Plaintiff

has expired which is not accordance with facts of the civil complaint. "Barred From Applying was confirmed on July 22, 2013 and civil complaint filed May 21, 2015 therefore within the two years requirement.

LEGAL ARGUMENT

SECTION 16-16-10. Definitions. For purposes of this chapter:

(a) "Computer" means a device that performs logical, arithmetic, and memory functions by manipulating impulses including, but not limited to, all input, output, processing, storage, computer software, and communication facilities that are connected or related to a computer in a computer system or computer network. For the purposes of this section, "computer" includes, but is not limited to, mainframes, servers, workstations, desktops, and notebooks; industrial controls such as programmable logic controllers and supervisory control and data acquisition systems; portable hand-held computing devices such as personal digital assistants and digital cellular telephones; data communications network devices such as routers and switches; and all other devices that are computer-based or communicate with or are under the control of a computer such as appropriate telephone switches, medical devices, and cable and satellite television interface systems. "Computer" does not include automated typewriters or typesetters.

SECTION (15-78-60) Exceptions to waiver of immunity: {25} responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of

SECTION 16-7-150. Slander and libel.

Any person who shall with malicious intent originate, utter, circulate or publish any false statement or matter concerning another the effect of which shall tend to injure such person in his character or reputation shall be guilty of a misdemeanor and, upon conviction therefor, be subject to punishment by fine not to exceed five thousand dollars or by imprisonment for a term not exceeding one year, or by both fine and imprisonment, in the discretion of the court; provided, that nothing herein shall be construed to abridge any right any person may have by way of an action for damages for libel or slander under the existing law.

SECTION 15-3-550. Two years.

Within two years:

- (1) an action for libel, slander, or false imprisonment; and
- (2) an action upon a statute for a forfeiture or penalty to the State

SECTION 15-78-30. Definitions.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

received verification from SCBCB by Freedom of Information Request which showed Adrienne Sorenson in her scope of duty performed "Barred From Applying" until December 30, 2018 which prevented employment opportunities that has caused deprivation. Defendants are alleging that Plaintiff complaint considered the act of Adrienne Sorenson to be criminal and may not be brought as part of a civil action therefore the mentioning of such was to show how the State of South Carolina perceived her actions. The State of South Carolina did not prosecute Adrienne Sorenson after being dutifully notified of her actions therefore dismiss Defendants claim of a criminal act and for the purpose of this civil lawsuit but as such that has been stated as justifiable verification to slander and libel acts. Defendants are suggesting that Plaintiff stated Adrienne Sorenson did do "outside the scope of her employment and with malicious intent" which was only to show such an egregious act with "Barred From Applying" had to be approved by supervisory management due to being a lower level human resources employee because when responding to past email rejection letters from her referred back to Supervisor Kerry Paul and therefore a previous pattern suggest the same procedure. Adrienne Sorenson did act within scope of her job while at her employment location site of SCDEW. The malicious intent is referring the denied of a job opportunity at SC Judicial Center, denied other job opportunities and expiration date of December 30, 2018. Defendants are claiming no Abuse of Process which is in totally disagreement. Defendants are alleging that Plaintiff two years statue limitations for a Defamation claims

any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

SECTION 41-27-20. Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of

a

licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

SECTION 15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor clearly violated Section 41-27-20 Declaration of State public policy: without intending that this section shall supersede, either or modify the specific provisions contained in chapter 27 through 41 of this Title but as a guide to the interpretation and application of chapter 27 through 41 of this Title, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this state etc.,al. "Barred From Applying" being applied to Plaintiff created that menace environment to health, morals and welfare under South Carolina Law Code 41-27-20.

SECTION 1-13-80. Unlawful employment practices; exceptions.

(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate

against an individual with respect to the individual's compensation or terms, conditions,

8

or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;

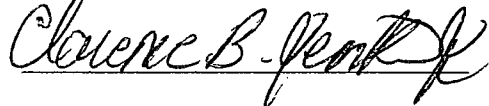
(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;

The egregious act of "Barred From Applying" discriminated and deny employment opportunities, please refer to South Carolina Code of Law Section 41-27-240, 41-27-650 (B), 41-42-10, 41-29-120 (a, d), 1-13-20, 16-7-150, 1-13-80 {1}{2}.

CONCLUSION

For this reason detailed above, Defendants has failed to state any justifiable claim against any of the Plaintiff. Therefore, Defendant's Dismissal must be denied and allow the civil complaint to move forward which is just according to violations of the laws that govern the state of South Carolina.

Respectfully submitted,



Clarence B. Jenkins Jr.
Pro Se Plaintiff
945 Wire Rd.
Neeses, SC 29107
(P) (803) 263-4514
Email: upscale81@yahoo.com

September 3, 2015
Neeses, South Carolina

RE: Fw: Proposed Order

Friday, September 25, 2015 1:55 PM

From: "Cooper G. Thomas Law Clerk (Lauren E. Patterson)" <GCooperLC@sccourts.org>

To: "Clarence Jr" <upscale81@yahoo.com>

Mr. Jenkins,

Thank you for your order.

Lauren Patterson
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1701 Main St., Room 320
P.O. Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax: (803) 576-1741

-----Original Message-----

From: Clarence Jr [mailto:upscale81@yahoo.com]
Sent: Friday, September 25, 2015 2:47 PM
To: Cooper, G. Thomas Law Clerk (Lauren E. Patterson); gmatthews@richardsonplowden.com
Subject: Fw: Proposed Order

Ms. Patterson:

Please receive Pro Se Plaintiff's Proposed Order as requested. I have forward a copy to Atty. Matthews. Please notify if document was not received.

Sincerely,

Clarence Jenkins Jr

-- On Fri, 9/25/15, clarence jenkins <clarence491@live.com> wrote:

> From: clarence jenkins <clarence491@live.com>
> Subject:
> To: upscale81@yahoo.com
> Date: Friday, September 25, 2015, 2:37 PM
>
>
>
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> Final
> Version

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|                                        |   |                                  |
|----------------------------------------|---|----------------------------------|
| IN THE STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS     |
|                                        | ) |                                  |
| COUNTY OF RICHLAND                     | ) |                                  |
|                                        | ) |                                  |
| Clarence B. Jenkins Jr.                | ) | C/A No.: 2015-CP-40-03112        |
|                                        | ) |                                  |
| Plaintiff,                             | ) |                                  |
|                                        | ) | <b>ORDER DENYING DEFENDANT'S</b> |
| vs.                                    | ) |                                  |
|                                        | ) | <b>MOTION TO DISMISS</b>         |
|                                        | ) |                                  |
| SC Department Of Employment            | ) |                                  |
| Workforce, SC Budget And Control Board | ) |                                  |
| Office Of South Carolina Governor      | ) |                                  |
|                                        | ) |                                  |
| Defendants,                            | ) |                                  |
|                                        | ) |                                  |
| _____                                  | ) |                                  |

The matter came before the court on September 15, 2015 on the Motion To Dismiss filed by Defendants South Carolina Department Of Employment Workforce (SCDEW), South Carolina Budget And Control Board (SCBCB) And Office Of South Carolina Governor. Plaintiff filed a Memorandum Of Law In Opposition to Defendant's Motion To Dismiss based on a over whelming preponderance of evidence readily to be inspected by this Honorable Court for verification of unlawful employment practices that has promoted defamation through slander, libel and abuse of process while preventing

employment opportunities. The fact that Attorney Eugene H. Matthews for Defendants have asked this Honorable Court to dismiss complaint with prejudice instead of fairness and truth is of serious concerns which SCDEW, SCBCB And Office Of South Carolina Governor therefore has shown a willful act to violate the laws of this state established by South Carolina General Assembly. By the state of South Carolina classifying Plaintiff as "Barred From Applying" violated South Carolina Code of Law 1-13-80. South Carolina General Assembly attempted to promote dignity, fairness and harmony for one another therefore declared under South Carolina Code of Law 1-13-80 (A) (B) SECTION 1-13-80. Unlawful employment practices; exceptions.

(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;

(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;

(B) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of the

individual's race, color, religion, sex, age, national origin, or disability, or to classify or refer for employment an individual on the basis of the individual's race, color, religion, sex, age, national origin, or disability.

Having considered the memoranda provided by each side and the arguments of the parties, I hereby GRANT the Plaintiff's Motion In Opposition To Dismiss Complaint and affirmed the law as established by the South Carolina General Assembly to govern.

### **STANDARD OF REVIEW**

In considering Memorandum Of Law In Opposition To Dismiss per Defendant's Request asked that this Honorable Court base its ruling on all allegations set forth in complaint because of the severity and a total disregard for the law. Plaintiff's Complaint specifically addressed Defamation by slander and libel as a claim which South Carolina Code of Law 15-3-550 affirmed. SCDEW, SCBCB And Office Of South Carolina Governor are all government entities where "Barred From Applying" was activated under their authority and supervision therefore is subject to the Tort Law of SC Code of Law 15-78-40. By SCDEW, SCBCB And Office Of South Carolina Governor all committed an unlawful employment practices under SC Code of Law 1-13-80 (A) {1,2} which discriminated against Plaintiff would be subject to the South Carolina Tort Claims Act Law 15-78-40.

### **DEFENDANT'S ALLEGATIONS**

Defendants has alleged no wrong doings and has not accepted responsibility for any issues raised in complaint. Defendants are alleging that Plaintiff's application was not secretly blackballed by state of South Carolina. Defendants has made no acknowledgment of "Barred From Applying" either by Adrienne Sorenson under the authority and supervision of SCDEW, SCBCB and Office of South Carolina Governor. Defendants has made referenced to SCDEW, and SCBCB was system error due to (Plaintiff's Complaint (37-38) but has failed to recognized in (38) that their own investigation had evidence that it was not a malfunction. Defendants are alleging that individual persons named in the complaint has not been served and because of this inaccurate and reckless statement only seek to deceive this Honorable Court due to government entities; SCDEW, SCBCB and Office of South Carolina Governor has clearly been notified as party. Defendants has stated that Defamation has not occur when Plaintiff Complaint outlined with First Cause Of Action as such through slander and libel of written communications. Defendants has stated no Abuse Of Process but SC Code Of Law 41-27-20 Declaration of State Public Policy clearly states: Economic insecurity due to unemployment is a serious menace to health, moral and welfare of the people of this state when involuntary. Defendants has alleged that Final Cause Of Actions does not described an independent cause of action which is clearly define by SC Code Of Law 15-3-550 as a stated claim therefore justification has been established that speaks directly to the injured.

## **OPINION**

Defendants; SCDEW, SCBCB and Office Of South Carolina has taken assurance that with the preponderance of evidence against them available through discovery this Honorable Court without answering the complaint will be granted a Motion To Dismiss with prejudice. To make a request for prejudice have asked this Honorable Court for a decision not based on evidence but bias and preferential treatment. Defendants to make false claims that individual persons have been named as party to complaint and not contacted is judicial obstruction.

### **DEFENDANTS ARE ALLEGING DEFAMATION CLAIMS FOR SOUTH CAROLINA TORT CLAIMS ACT FAILS UNDER THE LAW SOUTH CAROLINA CODE OF LAW 15-78-10.**

Defendants are alleging that because Adrienne Sorenson has been determined to have activated "Barred From Applying" which is outside scope of her duty as an employee of SCDEW therefore South Carolina Tort Claims Act does not apply. SECTION 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement. (25) 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. Adrienne Sorenson secretly applied "Barred From Applying"

to expired December 30, 2018 unknown to applicant which has denied employment opportunities and as an employee of SCDEW acted in a grossly manner therefore he employer which is a government entity therefore can not apply immunity. Adrienne Sorenson was at her employment which is SCDEW on July 19, 2013 at 11:11 am when "Barred from Applying" was activated therefore out of the scope of her employment does not apply but within the scope of her duties applies. SC Code Of Law 15-78-30 (I) refers to Scope of Official Duty or Scope of State Employment means (1) acting in and about the official business of a governmental entity and (2) performing official duties. SC Code Of Law 15-78-30 (I) {1,2} specifically applies to the actions of Adrienne Sorenson in her official duty at SCDEW in the human resources department. Defendants are referring to Plaintiff's Complaint (58-59) suggesting Adrienne Sorenson acted outside the scope of her employment but failed to realized that (59) states Adrienne Sorenson committed "Barred From Applying" with malicious intent, 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. SC Code of Law 15-78-60 does not apply to this complaint and does not exempt SCDEW, SCBCB And Office Of South Carolina Governor.

**DEFENDANTS ARE ALLEGING PLAINTIFF HAS FAILED A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS DEFENDANTS, AND FOR THAT REASON, IT MUST BE DISMISSED.**

In reading Defendant's statement it is assuming that Plaintiff has not suffered of an (1) ulterior motive by Barred From Applying and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. Plaintiff have suffered harm from SCDEW with senior level staff calling and making threats that there will be no interests in employment with false accusations of harassment by employees which has not been substantiated. SCDEW Senior Staff, Koa Morgan sent a letter to my residence advising not to have contact with a public agency that assist job applicants, false accusations of harassment and threats of filing charges with local law enforcement. Plaintiff has affirmed that "Barred From Applying" activated by Adrienne Sorenson under the authority and supervision of SCDEW, SCBCB And Office Of South Carolina Governor had an ulterior motive by such an egregious act because of the financial hardship that created a life of poverty currently surviving on foodstamps. The branding of Plaintiff "Barred From Applying" until December 30, 2018 would have life long lasting harm as unfit for employment opportunities publicly and privately as character assassination. Plaintiff has been unable to obtain employment that is compatible with education and past work experiences. Plaintiff has affirmed that "Barred From Applying" was a willful act in the use of the process not proper in the regular conduct of the proceeding because the primary function and fundamental basis for SCDEW is to assist with job seekers with employment. "Barred From Applying" for job opportunities became a willful act in the use of the process not proper in the regular conduct of the proceeding. Defendants would send Plaintiff email rejection letters for state of South Carolina positions applied for within

minutes of each other on the same day from four (4) to fourteen (14) therefore applications were not receiving proper consideration before "Barred From Applying" was known. Plaintiff had declared to government entities that he was being blackballed before "Barred From Applying". Plaintiff was not aware of "Barred From Applying" until receiving notification from Sharlayne Bellamy of S.C. Judicial Center stating this application can not be considered for employment since receiving that notification from the state of South Carolina. The state of South Carolina did not contact Plaintiff regarding notification of "Barred From Applying" when other positions was applied with the state of South Carolina during the same week. This Honorable Court with confidence can be assured that "Barred From Applying" was a willful and overt act because soon as notification was provided by Plaintiff it was immediately removed by Terrashima Ellerbe of SCBCB on July 25, 2013 at 8:22 am within the scope of her duties. Defendants has suggested that "Barred From Applying" activated by Adrienne Sorenson to be unauthorized therefore do not reach the element of willful which Plaintiff degreed with because all other numerous previous correspondences from her was sent under the authority of immediate Supervisor Kerry Paul that would suggest the same process for other job duties. Plaintiff has never suggested that Adrienne Sorenson as a Defendants but SCDEW, SCBCB And Office Of South Carolina Governor which are government

entity and therefore South Carolina Tort Claims Act Law is suitable and must be applied due to an employee grossly negligence act working for a government agency.

Here, the Defendant's Motion To Dismiss contains baseless allegations with regards to unlawful unemployment practices that has been stated in Complaint and affirmed by the preponderance of evidence which is readily to be inspected by this Honorable Court as verification therefore is justifiable to deny dismissal on fairness and truth.

### **CONCLUSION**

For the reasons detailed above, Plaintiff has stated justifiable claims against South Carolina Department Of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor.

The Defendant's Motions To Dismiss with prejudice is DENIED and Plaintiff's Complaint moves forward with Discovery due to preponderance of evidence.

AND IT IS SO ORDERED.

---

Judge G. Thomas Cooper, Jr.

Fifth Judicial Circuit

\_\_\_\_\_, 2015

# South Carolina Legislature

South Carolina Law > Code of Laws > Title 15

## South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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### Title 15 - Civil Remedies and Procedures

#### CHAPTER 78

#### South Carolina Tort Claims Act

#### SECTION 15-78-10. Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

HISTORY: 1986 Act No. 463, Section 1.

#### SECTION 15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

#### SECTION 15-78-30. Definitions.

- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;
- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;
- (16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;
- (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;
- (18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;
- (19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;
- (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;
- (22) termination or reduction of benefits under a public assistance program;
- (23) institution or prosecution of any judicial or administrative proceeding;
- (24) holding or conduct of elections;
- (25) 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;
- (26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.
- (27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.
- (28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.
- (29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.
- (30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.
- (31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.
- (32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.
- (33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.
- (34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.
- (35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.
- (36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.
- (37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.
- (38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.
- (39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.
- (40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 5, 6; 1988 Act No. 373, Section 2; 1988 Act No. 664; 1988 Act No. 675, Section 1; 1989 Act No. 132, Section 2; 1990 Act No. 351, Section 2; 1996 Act No. 386, Section 3; 1997 Act No. 35, Section 6; 1999 Act No. 77, Section 4; 2000 Act No. 362, Section 1; 2000 Act No. 387, Part II, Section 69A.5; 2000 Act No. 387, Part II, Section 97B; 2000 Act No. 407, Section 3; 2005 Act No. 6, Section 2, eff January 13, 2005; 2005 Act No. 81, Section 2, eff May 26, 2005; 2005 Act No. 137, Section 2, eff May 25, 2005.

**SECTION 15-78-70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) "Political subdivision" means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) "Governmental health care facility" means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 3, 4; 1990 Act No. 351, Section 1; 1994 Act No. 380, Section 2; 1996 Act No. 271, Section 1; 2008 Act No. 199, Section 2, eff April 16, 2008.

#### **SECTION 15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.**

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

HISTORY: 1986 Act No. 463, Section 1.

#### **SECTION 15-78-50. Right of injured person to file claim; non-liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.**

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

HISTORY: 1986 Act No. 463, Section 1.

#### **SECTION 15-78-60. Exceptions to waiver of immunity.**

The governmental entity is not liable for a loss resulting from:

(1) legislative, judicial, or quasi-judicial action or inaction;

(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

(6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;

(7) a nuisance;

(8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;

(9) entry upon any property where the entry is expressly or impliedly authorized by law;

(10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;

# South Carolina Legislature

South Carolina Law > Code of Laws > Title 41

## South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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### Title 41 - Labor and Employment

#### CHAPTER 27

#### Employment and Workforce - General Provisions

#### ARTICLE 1

#### Short Title; Purpose; Construction; Amendments

##### SECTION 41-27-10. Short title.

Chapters 27 through 41 of this title shall be known and may be cited as the "South Carolina Department of Employment and Workforce".

HISTORY: 1962 Code Section 68-1; 1952 Code Section 68-1; 1942 Code Section 7035-81; 1936 (39) 1716; 1966 (54) 2640; 2010 Act No. 146, Section 11, eff March 30, 2010.

##### SECTION 41-27-20. Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

HISTORY: 1962 Code Section 68-38; 1952 Code Section 68-36; 1942 Code Section 7035-82; 1936 (39) 1716; 1941 (42) 369.

##### SECTION 41-27-30. Construction.

Nothing in Chapters 27 through 41 of this title must be construed to cause the department or the courts of this State in interpreting these chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under these chapters with coverage requirements pursuant to Section 3101 et seq. of the Federal Internal Revenue Code.

HISTORY: 1962 Code Section 68-39; 1952 Code Section 68-37; 1942 Code Section 7035-99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1957 (50) 580; 2010 Act No. 146, Section 12, eff March 30, 2010.

##### SECTION 41-27-40. Amendments.

The General Assembly reserves the right to amend or repeal all or any part of Chapters 27 through 41 of this Title at any time and there shall be no vested private right of any kind against any such amendment or repeal. All the rights, privileges, and immunities conferred by such chapters or acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal such chapters at any time.

HISTORY: 1962 Code Section 68-40; 1952 Code Section 68-38; 1942 Code Section 7035-103; 1936 (39) 1716; 1939 (41) 487.

#### ARTICLE 3

#### Definitions

# South Carolina Legislature

South Carolina Law > Code of Laws > Title 15

## South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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### Title 15 - Civil Remedies and Procedures

#### CHAPTER 78

#### South Carolina Tort Claims Act

#### SECTION 15-78-10. Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

HISTORY: 1986 Act No. 463, Section 1.

#### SECTION 15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

#### SECTION 15-78-30. Definitions.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) "Political subdivision" means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) "Governmental health care facility" means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

HISTORY: 1988 Act No. 463, Section 1; 1988 Act No. 352, Sections 3, 4; 1990 Act No. 351, Section 1; 1994 Act No. 380, Section 2; 1996 Act No. 271, Section 1; 2008 Act No. 199, Section 2, eff April 16, 2008.

#### **SECTION 15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.**

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

HISTORY: 1986 Act No. 463, Section 1.

#### **SECTION 15-78-50. Right of injured person to file claim; non-liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.**

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

HISTORY: 1986 Act No. 463, Section 1:

#### **SECTION 15-78-60. Exceptions to waiver of immunity.**

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;
- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;

- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;
- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;
- (16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;
- (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;
- (18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;
- (19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;
- (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client of these persons;
- (22) termination or reduction of benefits under a public assistance program;
- (23) institution or prosecution of any judicial or administrative proceeding;
- (24) holding or conduct of elections;
- (25) 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;
- (26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.
- (27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.
- (28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.
- (29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.
- (30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.
- (31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.
- (32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.
- (33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.
- (34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.
- (35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.
- (36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.
- (37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.
- (38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.
- (39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.
- (40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 5, 6; 1988 Act No. 373, Section 2; 1988 Act No. 664; 1988 Act No. 675, Section 1; 1989 Act No. 132, Section 2; 1990 Act No. 351, Section 2; 1996 Act No. 386, Section 3; 1997 Act No. 35, Section 6; 1999 Act No. 77, Section 4; 2000 Act No. 362, Section 1; 2000 Act No. 387, Part II, Section 69A.5; 2000 Act No. 387, Part II, Section 97B; 2000 Act No. 407, Section 3; 2005 Act No. 6, Section 2, eff January 13, 2005; 2005 Act No. 81, Section 2, eff May 26, 2005; 2005 Act No. 137, Section 2, eff May 25, 2005.

**SECTION 15-78-70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

HISTORY: 1962 Code Section 1-360.27; 1972 (57) 2651; 1973 (58) 698; 1979 Act No. 24 Sections 4-7; 1996 Act No. 426, Section 4.

**SECTION 1-13-80. Unlawful employment practices; exceptions.**

(A) It is an unlawful employment practice for an employer:

- (1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;
- (2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;
- (3) to reduce the wage rate of an employee in order to comply with the provisions of this chapter relating to age.

(B) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of the individual's race, color, religion, sex, age, national origin, or disability, or to classify or refer for employment an individual on the basis of the individual's race, color, religion, sex, age, national origin, or disability.

(C) It is an unlawful employment practice for a labor organization:

- (1) to exclude or to expel from its membership or otherwise to discriminate against an individual because of the individual's race, color, religion, sex, age, national origin, or disability;
- (2) to limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's race, color, religion, sex, age, national origin, or disability;
- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) It is an unlawful employment practice for a covered entity:

- (1) to exclude or otherwise deny equal jobs or benefits to a qualified individual because of a known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (2) to fail or make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operations of the business of the covered entity; or to deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
- (3) to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity;
- (4) to fail to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant, except where the skills are the factors that the test purports to measure.

(E) It is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of the individual's race, color, religion, sex, national origin, or disability in admission to or employment in a program established to provide apprenticeship or other training.

(F) It is an unlawful employment practice for an employer to discriminate against an employee or applicant for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual or for a labor organization to discriminate against a member or applicant for membership because the individual has opposed a practice made an unlawful employment practice by this chapter or because the individual has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter.

(G) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization or relating to a classification or referral for employment by the employment agency or relating to admission to or employment in a program established to provide apprenticeship or other training by the joint labor-management committee indicating a preference, limitation, specification, or discrimination based on race, color, religion, sex, national origin, or disability, except that the notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(H) It is unlawful for an employer, labor organization, or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization or relating to a classification or referral for employment by the employment agency indicating a preference, limitation, specification, or discrimination based on age.

(I) Notwithstanding any other provision of this chapter:

(1) It is not an unlawful employment practice for an employer to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program on the basis of the individual's religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(2) It is not an unlawful employment practice for a party subject to the provisions of this section to compile or assemble information as may be required pursuant to Section 1-13-70(i) or Federal Equal Employment Opportunity Commission or federal contract compliance requirements or pursuant to another law not inconsistent with this chapter.

(3) It is not an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations if the differences are not the result of an intention to discriminate because of race, religion, color, sex, national origin, or disability; nor is it an unlawful employment practice for an employer to give and to act upon the results of a professionally developed ability test if the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, or disability. It is not an unlawful employment practice under this chapter for an employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(4) Nothing contained in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which a preferential treatment is given to an individual because the individual is an Indian living on or near a reservation.

(5) This chapter does not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society of its activities. It is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

**SECTION 15-3-550.** Two years.

Within two years:

- (1) an action for libel, slander, or false imprisonment; and
- (2) an action upon a statute for a forfeiture or penalty to the State.

**HISTORY:** 1962 Code Section 10-145; 1952 Code Section 10-145; 1942 Code Section 390; 1932 Code Section 390; Civ. P. '22 Section 333; Civ. P. '12 Section 139; Civ. P. '02 Section 114; 1870 (14) 448, Section 116; 1988 Act No. 391, Section 3; 2001 Act No. 102, Section 2.

**SECTION 15-3-555.** Statute of limitations for action based on sexual abuse or incest.

(A) An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

(B) Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section's effective date.

**HISTORY:** 2001 Act No. 102, Section 3.

**SECTION 15-3-560.** One year.

Within one year:

- (1) An action concerning or in any manner relating to wages claimed under a Federal statute or regulation;
- (2) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; and
- (3) An action against any county of this State having a population as shown by the United States official census of 1930 or any subsequent United States official census in excess of eighty-five thousand brought by any former, present or future officer, including county auditors and county treasurers, employee or agent thereof on account of any claim for salary, wages, fees, costs or other emolument or claim alleged to be due him on account of services rendered or performed, or brought upon any such claim by an assignee or personal representative thereof.

**HISTORY:** 1962 Code Section 10-146; 1952 Code Section 10-146; 1942 Code Sections 391, 396-1; 1932 Code Section 391; Civ. P. '22 Section 334; Civ. P. '12 Section 140; Civ. P. '02 Section 115; 1870 (14) 448 Section 117; 1938 (40) 1631; 1945 (44) 337.

**SECTION 15-3-570.** Action for penalty.

An action upon a statute for a penalty or forfeiture given, in whole or in part, to any person who will prosecute for it must be commenced within one year after the commission of the offense. If the action be not commenced within the year by a private party it may be commenced within two years thereafter in behalf of the State by the Attorney General or the solicitor of the circuit where the offense was committed, unless a different limitation be prescribed in the statute under which the action is brought.

**HISTORY:** 1962 Code Section 10-147; 1952 Code Section 10-147; 1942 Code Section 393; 1932 Code Section 393; Civ. P. '22 Section 336; Civ. P. '12 Section 142; Civ. P. '02 Section 117; 1870 (14) 448 Section 119.

**SECTION 15-3-580.** Actions by motor carriers for charges.

All actions at law by motor carriers subject to Chapter 23 of Title 58 for the recovery of their charges or any part thereof shall be commenced within two years from the time the cause of action accrues and not thereafter. The cause of action by a motor carrier for its charges shall for the purpose of this section be deemed to accrue upon delivery or tender of delivery by the carrier.

**HISTORY:** 1962 Code Section 10-147.1; 1952 (47) 2170.

**SECTION 15-3-590.** Actions against motor carriers for overcharges.

(1) Actions at law for the recovery of overcharges against motor carriers subject to Chapter 23 of Title 58 shall be commenced within two years from the time the cause of action accrues and not thereafter, subject to the provisions of subsection (2) of this section; provided, that if a claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation, the period shall be extended to include six months from the time notice in writing was given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof.

(2) The cause of action against a motor carrier for overcharges shall for the purpose of this section be deemed to accrue at the time the charges are paid to the carrier.

(3) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Public Service Commission.

**HISTORY:** 1962 Code Section 10-147.2; 1952 (47) 2170.

**SECTION 15-3-600.** Action for other relief.

An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued.

**HISTORY:** 1962 Code Section 10-148; 1952 Code Section 10-148; 1942 Code Section 394; 1932 Code Section 394; Civ. P. '22 Section 337; Civ. P. '12 Section 143; Civ. P. '02 Section 118; 1870 (14) 448 Section 120.

**SECTION 15-3-610.** Action upon current account.

In an action brought to recover a balance due upon a mutual, open and current account when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

**HISTORY:** 1962 Code Section 10-149; 1952 Code Section 10-149; 1942 Code Section 392; 1932 Code Section 392; Civ. P. '22 Section 335; Civ. P. '12 Section 141; Civ. P. '02 Section 116; 1870 (14) 448 Section 118.

**RULE 12**  
**DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR**  
**MOTION - MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.** A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

**Note:**

This Rule 12(a) is identical to the Federal Rule except that it changes the time to answer from 20 to 30 days, and the time to plead after motion denied from 10 to 15 days. No other changes in State practice are affected by the Rule.

**Note to 1986 Amendment:**

The amendment to Rule 12(a)(2) sets the time for response after a motion to strike at 15 days, which is the same time set for pleading after a successful motion for a more definite statement.

**Note to 1995 Amendment:**

Rule 12(a) is amended to provide special time periods for the State to respond to applications for post-conviction relief because the thirty day time period for civil litigation is often extended so that the State may obtain a transcript of the proceeding before responding.

**(b) How Presented.** Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the

**From:** Clarence Jr [mailto:upscale81@yahoo.com]  
**Sent:** Wednesday, July 24, 2013 10:16 AM  
**To:** Bellamy, Sharlayne N.; patricia.fuller@eeoc.gov  
**Subject:** Re: Administrative Specialist II/Docketing Specialist II

Ms. Bellamy:

I would like to know who sent you notification of me being barred from applying from state positions. I have not been told or sent notification that employment with SC has been barred. I see this action to be illegal, fraudulent, unfair, injustice and discrimination as tax paying citizens who has not done anything wrong.

I am requesting that you respond to your illegal action in writing because this is my first time being informed of such and receiving notification.

Sincerely,

Clarence Jenkins Jr.

---

**From:** "info@governmentjobs.com" <info@governmentjobs.com>  
**To:** upscale81@yahoo.com  
**Sent:** Wednesday, July 24, 2013 8:36 AM  
**Subject:** Administrative Specialist II/Docketing Specialist II

\*-----\*  
Replies to this email will be sent to Sharlayne Bellamy <snbellamy@sccourts.org>  
\*-----\*

July 24, 2013

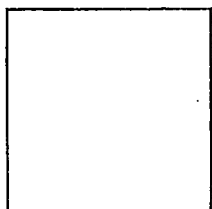
Clarence Jenkins Jr.  
945 Wire Rd.  
Neeses, SC 29107

Dear Clarence:

We are sorry to inform you that your application for the Administrative Specialist II/Docketing Specialist II position will no longer be considered since we received notification that you have been "barred from applying" for State positions.

Very truly yours,

S.C. Judicial Department  
Human Resources Office



**Subject:** Fw: Administrative Specialist II/Docketing Specialist II  
**From:** Clarence Jr (upscale81@yahoo.com)  
**To:** clrne\_jnkns@yahoo.com;  
**Date:** Wednesday, July 24, 2013 2:03 PM

## ----- Forwarded Message -----

**From:** "Bellamy, Sharlayne N." <snbellamy@sccourts.org>  
**To:** Clarence Jr <upscale81@yahoo.com>; "patricia.fuller@eeoc.gov" <patricia.fuller@eeoc.gov>  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II

Good afternoon Mr. Jenkins:

I do not govern or control the State's website for job postings; therefore, I have not performed any illegal, fraudulent, unfair, unjust or discriminatory action towards you.

By way of this e-mail, I am notifying you that the State of South Carolina's website gave me a warning when your application came through.

Please feel free to review the notice I received below:

**NEOGOV** 

Search  

Class ▼ Post ▼ Benefits ▼ Reports ▼ CandidateTrack ▼ Tests ▼ Requisitions ▼ List ▼

 My HR

[View Applicants By Step](#)

Exam Plan **32328 - Administrative Specialist II/Docketing Specialist II**

Evaluation Step **Application Received**

**WARNING**  
This candidate has been marked as  
"Barred From Applying" (Does not meet minimum qualifications).

| Applicant                | Name | Person ID |
|--------------------------|------|-----------|
| *Jenkins Jr., Clarence B |      | 2274761   |

\* Required

\* Pass/Fail Step: ☐ Passed ☐ Failed ☒ Other

Reject Reason:  Select == 

Comments: This candidate has been marked as "Barred From Applying" per NEOGOV.

Save

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**From:** Clarence Jr (mailto:upscale81@yahoo.com)  
**Sent:** Wednesday, July 24, 2013 10:16 AM  
**To:** Bellamy, Sharlayne N.; patricia.fuller@eeoc.gov  
**Subject:** Re: Administrative Specialist II/Docketing Specialist II

Ms. Bellamy:

I would like to know who sent you notification of me being barred from applying from state positions. I have not been told or sent notification that employment with SC has been barred. I see this action to be illegal, fraudulent, unfair, injustice and discrimination as tax paying citizens who has not done anything wrong.

**Wilkins, Sam**

---

**From:** Ellerbe, Terrashima  
**Sent:** Friday, July 26, 2013 3:43 PM  
**To:** Wilkins, Sam  
**Subject:** FW: Administrative Specialist II/Docketing Specialist II

**Importance:** High

Terra Ellerbe  
Human Resources Consultant  
SC Budget & Control Board  
Human Resources Division  
8301 Parklane Rd Suite A220  
Columbia, SC 29223  
[tellerbe@ohr.sc.gov](mailto:tellerbe@ohr.sc.gov)  
803-896-5043

---

**From:** Bellamy, Sharlayne N. [<mailto:snbellamy@sccourts.org>]  
**Sent:** Wednesday, July 24, 2013 1:21 PM  
**To:** Ellerbe, Terrashima  
**Cc:** Rivers, Georgette  
**Subject:** FW: Administrative Specialist II/Docketing Specialist II  
**Importance:** High

Good afternoon Terra:

Please review the e-mails below and let me know what you can find out about Mr. Clarence B. Jenkins, Jr. being barred from applying for this job.

He was pretty upset with me, but you will see my comment back to him regarding this action.

Sharlayne Bellamy  
SC Judicial Department  
1015 Sumter Street, Suite 101  
Columbia, SC 29201  
[www.sccourts.org/](http://www.sccourts.org/)

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this email in error, please contact the sender and delete the material from any computer.

---

**From:** Bellamy, Sharlayne N.  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**To:** 'Clarence Jr'; [patricia.fuller@eeoc.gov](mailto:patricia.fuller@eeoc.gov)  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II  
**Importance:** High

**Subject:** Fw: Administrative Specialist II/Docketing Specialist II  
**From:** Clarence Jr (upscale81@yahoo.com)  
**To:** clmc.jnkns@yahoo.com;  
**Date:** Wednesday, July 24, 2013 2:03 PM

## ----- Forwarded Message -----

**From:** "Bellamy, Sharlayne N." <snbellamy@sccourts.org>  
**To:** Clarence Jr <upscale81@yahoo.com>; "patricia.fuller@eeoc.gov" <patricia.fuller@eeoc.gov>  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II

Good afternoon Mr. Jenkins:

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By way of this e-mail, I am notifying you that the State of South Carolina's website gave me a warning when your application came through.

Please feel free to review the notice I received below:

| NEOGOV                                                                                                                                                                                                                                                                                                                                                            |                | Search   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------|
| Class                                                                                                                                                                                                                                                                                                                                                             | Post           | Benefits |
| Reports                                                                                                                                                                                                                                                                                                                                                           | CandidateTrack | Tests    |
| Requisitions                                                                                                                                                                                                                                                                                                                                                      | List           |          |
| My HR                                                                                                                                                                                                                                                                                                                                                             |                |          |
| View Applicants By Step                                                                                                                                                                                                                                                                                                                                           |                |          |
| Exam Plan 32328 - Administrative Specialist II/Docketing Specialist II                                                                                                                                                                                                                                                                                            |                |          |
| Evaluation Step Application Received                                                                                                                                                                                                                                                                                                                              |                |          |
| <p><b>WARNING</b><br/>           This candidate has been marked as<br/>           "Barred From Applying" (Does not meet minimum qualifications).</p>                                                                                                                                                                                                              |                |          |
| <p>* Required</p> <p>Applicant: Name Person ID<br/>           *Jenkins Jr., Clarence B 2274761</p> <p>* Pass/Fail Step: <input type="radio"/> Passed <input type="radio"/> Failed <input checked="" type="radio"/> Other</p> <p>Reject Reason: == Select ==</p> <p>Comments: This candidate has been marked as "Barred From Applying" per NEOGOV.</p> <p>Save</p> |                |          |

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**From:** Clarence Jr [mailto:upscale81@yahoo.com]  
**Sent:** Wednesday, July 24, 2013 10:16 AM  
**To:** Bellamy, Sharlayne N.; patricia.fuller@eeoc.gov  
**Subject:** Re: Administrative Specialist II/Docketing Specialist II

Ms. Bellamy:

I would like to know who sent you notification of me being barred from applying from state positions. I have not been told or sent notification that employment with SC has been barred. I see this action to be illegal, fraudulent, unfair, injustice and discrimination as tax paying citizens who has not done anything wrong.

I am requesting that you respond to your illegal action in writing because this is my first time being informed of such and receiving notification.

## Wilkins, Sam

---

**From:** Wilkins, Sam  
**Sent:** Monday, July 29, 2013 3:16 PM  
**To:** Wilkie, Valerie  
**Cc:** Ellerbe, Terrashima  
**Subject:** Email Message

Valerie,

Here is the message for the email that Terra is providing us a list of agencies. Thanks.

Sam

From July 19-25, 2013, the e-recruitment system, NeoGov, published an **incorrect** notice concerning an applicant, Clarence Jenkins, Jr., indicating Barred from Applying. In reviewing the application of Mr. Jenkins concerning any postings you had open during that period of time, please disregard that incorrect notice. Thank you.

## **Wilkins, Sam**

---

**From:** Ellerbe, Terrashima  
**Sent:** Monday, July 29, 2013 3:12 PM  
**To:** Wilkins, Sam  
**Cc:** Wilkie, Valerie  
**Subject:** RE: Memo to Agencies

Sam,

Here's a list of all agencies that received an application from Clarence Jenkins Jr.

Adjutant General's Office  
Aiken Technical College  
Budget & Control Board  
Central Carolina Technical College  
Denmark Technical College  
Department of Commerce  
DEW  
DHEC  
HHS  
Insurance  
DJJ  
LLR  
DMV  
PRT  
PPP  
Revenue  
DSS  
DOT  
Election Commission  
Florence-Darlington Tech  
Governor's Office  
John de la Howe  
Lieutenant Governor's Office  
Midlands Tech  
Northeastern Tech  
Orangeburg-Calhoun Tech  
Piedmont Tech  
Judicial Dept.  
PEBA  
Spartanburg Community College  
State Accident Fund  
Housing  
Human Affairs Commission  
The Citadel  
Voc. Rehab.

**Terra Ellerbe**  
**Human Resources Consultant**

## Wilkins, Sam

**From:** Ed Cavazos <ecavazos@neogov.com>  
**Sent:** Friday, July 26, 2013 6:39 PM  
**To:** Wilkins, Sam  
**Subject:** Fwd: Applicant

Hi Sam -

Here's a snapshot of what took place.

Ed

----- Forwarded message -----

**From:** Joanne Hilty <joanne@neogov.com>  
**Date:** Fri, Jul 26, 2013 at 2:54 PM  
**Subject:** RE: Applicant  
**To:** Ed Cavazos <ecavazos@neogov.com>

Here's the audit trail and who made the change and when. They can pull this up as well by going to the Master Profile and clicking on 'audit trail' in the upper right.

Applicant **Clarence Jenkins Jr.**

Created **12/07/07 11:54 AM**

Updated on **07/25/13 8:22 AM** by Terra Ellerbe

| Field Label          | Old Value | New Value |
|----------------------|-----------|-----------|
| Barred from applying | Yes       | No        |

Updated on **07/19/13 11:11 AM** by Adrienne Sorenson

| Field Label               | Old Value | New Value                            |
|---------------------------|-----------|--------------------------------------|
| Barred from applying      | No        | Yes                                  |
| Barred Reason             |           | Does not meet minimum qualifications |
| Barred from applying Date |           | 12/30/2018                           |

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

**RECEIVED**

APR 06 2016

**SC Court of Appeals**

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.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),  
SCACR.

April 6, 2016

  
s/ Clarence B. Jenkins Jr.

Clarence B. Jenkins Jr,  
945 Wire Rd.  
Neeses, South Carolina 29107

(803) 263-4514

Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

APR 06 2016

SC Court of Appeals

G. Thomas Cooper Jr, Circuit Court Judge

Case No. 2015-002356

Clarence B. Jenkins Jr,  
Employee,

Appellant,

v.

South 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 Final Brief on Attorney Eugene H. Matthews by personally delivering a copy of it to their attorney of record, Attorney Eugene H. Matthews, at his office at 1900 Barnwell Street, Columbia, South Carolina 29202, on April 6, 2016.

April 6, 2016

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

Neeses, South Carolina 29107  
(803) 263-4514  
Attorney for Appellant