STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
Win Myat	)	Case No.: 2012-CP-43-2030
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tuomey Regional Medical Center	)	
	)	
Defendant.	)	
	)	
	)	
	)	

ORDER

This matter is before the Court on a number of post-trial motions filed by the Plaintiff, Dr. Win Myat, and the Defendant, Tuomey Regional Medical Center. A hearing on these motions was held on March 8, 2016. Present at the hearing were William R. Padget, Esquire, and Francis M. Hinson, IV, Esquire, Attorneys for the Plaintiff, and David C. Holler, Esquire, Attorney for the Defendant. For the reasons set forth below, the Court denies Defendant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict (JNOV). The Court finds that the Defendant is entitled to protection under the South Carolina Solicitation of Charitable Funds Act (SCFA), which caps tort liability of qualifying "charitable organizations" at the same liability limits imposed by S.C. Code Ann. § 15-78-120, the South Carolina Tort Claims Act ($300,000.00 for a single occurrence of liability). Thus, the jury verdict of $2,500,000 is reduced to $300,000. Further, the Court denies Plaintiff's Motions to Reconsider allowing Defendant to amend its answer and reopen its case.

BACKGROUND AND TRIAL

This is a slip and fall case brought by Dr. Win Myat (Plaintiff), a physician employed by

Tuomey Regional Medical Center (Defendant). The complaint was filed on October 15, 2012. On April 21, 2014, Tuomey moved for Summary Judgment on liability. Plaintiff's current counsel, William Padget, filed a Notice of Appearance on July 7, 2014.

A consent scheduling order was entered on November 7, 2014, and a mediation report was filed on February 19, 2015. By Order of May 5, 2015, the case was set for a date certain trial on August 24, 2015.

On August 21, 2015, Tuomey moved to amend its Answer to assert the protections of South Carolina Code Section 33-56-180, also known as the Solicitation of Charitable Funds Act (the Act). Plaintiff's initial complaint asserted, and Tuomey's answer alleged, that Tuomey was a charitable organization. Tuomey had previously identified itself as a charitable organization under the Act subject to the limitation of liability under Section 33-56-180 in its discovery responses to Plaintiff. The Court granted the motion to amend, and on August 24, 2015, Defendant filed an Amended Answer, alleging that it qualified for and should receive a cap on liability under the SCFA. On September 8, 2015, Plaintiff filed a motion to reconsider that decision. On September 10, 2015, Plaintiff filed a reply to Tuomey's amended answer.

Prior to trial, and in response to Defendant's motion for summary judgment, Plaintiff stipulated that he would not argue that Tuomey had actual or constructive knowledge of the liquid on the floor and failed to correct the problem, but would proceed to trial solely to prove that the liquid on which Plaintiff slipped, was more likely than not, put on the floor by one of Tuomey's employees.[1] This slip and fall case was tried before a jury beginning August 31, 2016. At the close of Tuomey's case on September 1, 2015, Plaintiff moved for a directed verdict, arguing that Tuomey failed to present evidence that it was a charitable organization entitled to

[1] Defendant Tuomey moved for summary judgment on April 21, 2014, arguing that there was no evidence: (1) that Tuomey had actual or constructive knowledge of the dangerous condition (i.e. the liquid on the floor) and failed to remedy it; or (2) that the dangerous condition was created by one of Tuomey's employees.

protection under Section 33-56-180. Tuomey immediately moved to reopen its case and requested judicial notice of its 501(c)(3) status and the protections of Section 33-56-180. Tuomey presented evidence and also offered to submit testimony on its 501(c)(3) status at that point in time. On September 2, 2015, the Court granted Tuomey's motion to reopen its case and took the issue of Tuomey's 501(c)(3) status under advisement. On September 11, 2015, Plaintiff moved to reconsider the Court's reopening of the evidence on the issue of 501(c)(3) status.

During the pendency of the trial and because the parties agreed the application of Section 33-56-180 was a question of law for the court and not a question of fact for the jury, the parties agreed to continue with the trial to a jury verdict and thereafter address issues regarding Tuomey's 501(c)(3) status, if necessary, at a later date. Following a jury verdict of $2.5 million on September 2, 2015, the Court allowed Plaintiff to conduct discovery on the issue of Tuomey's 501(c)(3) status and the application of Section 33-56-180.

The court held a status conference on September 29, 2015. At that conference, a motion to compel (filed on September 29, 2015) by Plaintiff was resolved by consent. Following discovery, a hearing was held on March 8, 2016, on the issue of Tuomey's 501(c)(3) status. The Court entertained arguments on all issues pending at that time.

DISCUSSION

I. Motion for Directed Verdict and Judgment Notwithstanding the Verdict

The standard for ruling on a motion for directed verdict is the same as for a motion for judgment notwithstanding the verdict. A judge can grant a directed verdict motion when the evidence is only susceptible of one reasonable inference. *See e.g.*, *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011). A motion for judgment

notwithstanding the verdict is a renewal of the motion for directed verdict. SCRCP 50(a) and (b).

"In ruling on directed verdict or JNOV motions, 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." *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 570, 780 S.E.2d 252, 258 (2015) (citing *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002)). Denying motions for directed verdict and JNOV is proper if more than one inference can be drawn from the evidence presented. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994) (citing *Vacation Time of Hilton Head Inc. v. Lighthouse Realty, Inc.*, 286 S.C. 261, 332 S.E.2d 781 (Ct. App. 1985)). Additionally, if the evidence yields an ambiguous inference, i.e., one that is in doubt, denying the motion is similarly appropriate. *Id.*

In making its determination, the trial court does not have the "authority to decide credibility issues or to resolve conflicts in the testimony and evidence." *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998). The trial court looks only at the existence of evidence, not its weight. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). A motion for JNOV should only be granted where there exists no evidence to support the jury's verdict. *Reiland* at 634 (citing *Horry Cnty. v. Laychur,* 315 S.C. 364, 434 S.E.2d 259 (1993)).

The Supreme Court of South Carolina has held that a motion for directed verdict should only be granted in "rare cases." *Linnen v. Commercial Cas. Co.*, 152 S.C. 450, 150 S.E. 127, 128 (1929). "[U]nder the Scintilla rule which prevails in South Carolina, if there is a scintilla of evidence, which is any material evidence that if true would tend to establish the issue in the mind

of a reasonable juror the case should be submitted to the jury for its determination." *Woodle v. Brown*, 223 S.C. 204, 210, 74 S.E.2d 914, 917 (1953).

"A directed verdict on liability is properly denied where there is any evidence, direct or circumstantial, justifying submission of the issue to the jury." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 513, 506 S.E.2d 497, 503 (1998) (citing *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994). Direct evidence is evidence based on "actual knowledge of the situation and requires no inference by the jury." *State v. Salisbury*, 343 S.C. 520, 525, 541 S.E.2d 247, 249 (2001). On the other hand, circumstantial evidence, also known as indirect evidence, is evidence "based on inference and not on personal knowledge or observation." *Black's Law Dictionary*, Evidence (10th ed. 2014).

> *Indirect* evidence (called by the civilians, *oblique*, and more commonly known as *circumstantial* evidence) is that which is applied to the principal fact, indirectly, or through the medium of other facts, by establishing certain circumstances or minor facts, already described as evidentiary, from which the principal fact is extracted and gathered by a process of special inference . . . .

Alexander M. Burrill, *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* 4 (1868) (emphasis in original).

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). "Any fact in issue may be proved by circumstantial evidence as well as direct evidence, and circumstantial evidence is just as good as direct evidence if it is equally convincing to the trier of the facts." *St. Paul Fire & Marine Ins. Co. v. Am. Ins. Co.*, 251 S.C. 56, 59-60, 159 S.E.2d 921, 923 (1968).

Here, prior to the start of trial, Tuomey moved for summary judgment, arguing there was no evidence that: (1) Tuomey had actual or constructive knowledge of the dangerous condition (i.e., liquid on the floor) and failed to remedy it; or (2) the dangerous condition was created by one of Tuomey's employees. In response, Plaintiff stipulated that he would not argue that Tuomey had actual or constructive knowledge of the liquid on the floor and failed to correct the problem, but would proceed to trial solely to prove that the liquid on which Plaintiff slipped was, more likely than not, put on the floor by one of Tuomey's employees.[2] Further, Plaintiff argued that there was ample evidence to show that one of Tuomey's nurses spilled the liquid, and, therefore, summary judgment would be improper.

In a brief and at oral argument, Plaintiff pointed to numerous facts revealed in discovery that, when taken together, created strong circumstantial evidence showing that one of Tuomey's nurses or nurse technicians spilled water on the hospital's floor, thereby creating the dangerous condition that caused Plaintiff to fall and suffer injury. The principle facts revealed in discovery are as follows:

1. On July 6, 2011, at around 5:30 A.M., there was a clear liquid on the floor located adjacent to the same nurses' station where Plaintiff fell. (Depo. of Kathy Sapp, pp. 11-19).

2. The liquid was in a puddle about six to seven inches in diameter. (Depo. of Kathy Sapp, p. 22).

3. Visiting hours at the hospital end at 9:00 P.M. and do not resume until 6:00 A.M. (Depo. of William Whitehouse, p. 22).

4. An ice machine and sink are located in a room near the nurses' station. Visitors are not permitted to use the ice machine or sink, which are only to be used by Defendant's employees. (Depo. of William Whitehouse, p. 13).

[2] A defendant is liable if its employee creates a dangerous condition on its premises resulting in injuries. *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 491 S.E.2d 690 (Ct. App. 1997).

5. Nurses' duties include delivering ice and water to patients in their hospital rooms. It is the custom and practice of Defendant's nurses to fill cups of ice and water on a cart that is kept in the location where Plaintiff slipped and fell. (Depo. of William Whitehouse, p. 31).

6. It is the nurses' custom and practice to fill the cups of ice and water at around 4:00 A.M. (Depo. of William Whitehouse, p. 31).

7. On the morning of July 6, 2011, Plaintiff slipped and fell in a puddle of clear liquid that was located in the place where nurses had filled cups with ice and water an hour and a half earlier. (Depo. of Kathy Sapp, pp. 11-19, Depo. of William Whitehouse, p. 31).

Additional evidence was presented at trial, comprising a combination of direct and indirect evidence. The following evidence and testimony was presented to the jury:

1. Around 5:30 A.M. on the morning of July 6, 2011, Plaintiff slipped and fell directly beside the nursing station on Unit 3 South of the hospital.

2. Kathy Sapp, an officer working for the South Carolina Department of Corrections, testified that she witnessed Plaintiff's fall, and, thereafter, rushed to assist him.

3. Plaintiff testified that the slip and fall was due to a puddle of water directly beside the nursing station on Unit 3 South on the aforementioned date and time.

4. Following Plaintiff's fall, witnesses observed a puddle of clear liquid beside the nursing station in the exact location where he had slipped. While their testimony as to the size of the puddle differed slightly, both Officer Sapp and Marilyn Wilson (a CNA employed by Defendant) testified that they saw this puddle of clear liquid on the floor at this location.

5. The fall occurred after the close of the hospital's visiting hours, which had ended at 9:00 P.M. the previous evening and were not scheduled to resume again until 6:00 A.M. Thus, at the time when Plaintiff fell, visitors had not been permitted on Unit 3 South for more than eight hours.

6. Mary Yates, former safety director for Defendant, testified as to the hospital's visiting hours and, when shown a written copy of Defendant's hospital policies and procedures, confirmed that a section found on page 3 establishes the policy for visiting hours.

7. Although patients are sometimes allowed to have visitors stay overnight in their rooms, no witness recalled observing any visitors or other non-employees walking in the halls or around the nursing station of Unit 3 South during the early morning hours of July 6, 2011.

8. The only non-employee exceptions were Officer Sapp and her fellow corrections officer, Sergeant James Austin.

9. Officer Sapp testified that neither she nor Sergeant Austin spilled any liquids on the floor during the night/morning at issue, and, like all the other witnesses, testified that she did not recall seeing any visitors or patients on Unit 3 South that evening/morning.

10. Ms. Yates stated that her investigation of the incident did not uncover any evidence of visitors in the area in the hours preceding Plaintiff's fall.

11. Certified Nursing Assistant (CNA) Marilyn Wilson testified that during the night/morning at issue, there were seven hospital employees working on Unit 3 South: four RNs, two CNAs (one of which was her) and one student technician.

12. Nurse Whitehouse, CNA Wilson, and Ms. Yates all testified that per Defendant's policies and procedures, neither patients nor visitors are permitted to be at or around the nurse's station. Thus, by Defendant's own policy and the testimony of its employees, patients and visitors are not allowed to stand, walk, or otherwise be in the area where Plaintiff slipped and fell.

13. A photograph showed two large purple and white signs displayed prominently in the area where Plaintiff fell. These signs stated: "NO PATIENTS OR VISITORS ALLOWED AROUND OR THROUGH THE NURSING STATION."

14. Ms. Yates testified that, even though Defendant's policies and procedures do not allow nurses to have drinks at the nursing station, nurses have been known to violate this policy.

15. Nurse Whitehouse and CNA Wilson testified that the room containing the ice machine and sink is locked with a combination code on the door. Visitors are not permitted to use the ice machine or sink, which are only to be used by hospital employees. In fact, physicians are not even permitted to enter the small room and are not provided with the combination code to the door.

16. A photograph showed a large red and white sign that was prominently displayed on the door to the room with the sink and ice machine. This sign stated: "Stop! Staff Only."

17. Nurse Whitehouse and CNA Wilson testified that the sink and ice machine are the only sources of water that are located close to the location of the clear liquid on the floor.

18. Nurse Whitehouse and CNA Wilson testified that every morning between the hours of 4:00 A.M. and 5:00 A.M., Defendant's nurses and CNAs use the sink and the ice machine to fill pitchers. These pitchers are then placed on a small cart and wheeled around to the patients on Unit 3 South. Consistent with the staff's custom and practice, this activity took place during the hour immediately preceding Plaintiff's fall.

19. At the time Plaintiff slipped, the cart that Defendant's staff members used to deliver ice and water was located very close to the nursing station. CNA Wilson testified that the nurses' water delivery cart was only about an arm's length from where she saw Plaintiff sitting on the floor immediately following his fall.

20. Hospital employees admitted that water on the floor at that location constituted a dangerous condition.

21. Nurse Whitehouse, who has worked for Defendant since 2009, provided the lay opinion that an employee of the Defendant was the most likely source of the clear liquid.

Considering all the above evidence in the light most favorable to the Plaintiff, more than a scintilla of evidence was presented by which a reasonable jury could conclude that one of Tuomey's agents created a dangerous condition, i.e., that an employee of Tuomey was the most likely source of the liquid on the floor. The evidence, both direct and indirect, is enough for a jury to reasonably determine that, by a preponderance of the evidence, the clear liquid on which Plaintiff slipped and fell was spilled on the floor by an employee of Tuomey.

Tuomey is not entitled to a directed verdict or JNOV, as there was ample evidence to support submitting this case to the jury. Viewing the evidence in the light most favorable to the Plaintiff, as well as all inferences that reasonably can be drawn therefrom, the evidence yields at

least one inference that the source of the liquid was an employee of the Tuomey. Accordingly, Tuomey's Motions for Directed Verdict and JNOV are denied.

II. Motion to Reconsider Amendment

Rule 15 of the South Carolina Rules of Civil Procedure governs the amendments of pleadings, which provides in pertinent part:

> 15(a). Amendments. A party may amend his pleading once as a matter or course at any time before or within 30 days after a responsive pleading is served or, if the pleadings is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

SCRCP 15(a). It is well established that a motion to amend is addressed to the circuit court's sound discretion, and the party opposing the motion has the burden of establishing prejudice. *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. *Id.*

Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and "freely given when justice so requires and does not prejudice any other party." SCRCP 15(a). The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 22-23, 431 S.E.2d 587, 590 (1993). "This rule strongly favors amendments and the court is encouraged to freely grant leave

to amend." *Parker* at 286, 607 S.E.2d at 717 (citing *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)).

A charitable corporation is defined as "a nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code." *Black's Law Dictionary*, Corporation (10th ed. 2014).

Here, in his complaint dated October 12, 2012, Plaintiff alleged Tuomey "is an eleemosynary corporation." Complaint, p.1. In the amended complaint dated November 2, 2012, Plaintiff again alleged that Tuomey "is an eleemosynary corporation organized and existing under the laws of the State of South Carolina." Amended Complaint, p.1. Tuomey, answering the amended complaint of the Plaintiff, admitted to paragraph two of the amended complaint, which contained the allegation that it was an eleemosynary corporation. Answer, p.1.

In its motion to amend, Tuomey stated: "Upon information and belief, Plaintiff has at all times recognized that the charitable entity cap applied to his claim, including without limitation, through the time period in which he demanded $300,000 during a February 18, 2015 mediation." Motion to Amend Answer, p.3. Additionally, Tuomey filed an affidavit of David C. Holler, which stated the following information pertaining to the $300,000 cap:

1. The case was filed by attorney Robert B. (Sam) Phillips. Sam and I had numerous conversations about the $300,000 statutory limitation of Plaintiff's claim during our initial conversation as well as during conversations leading up to Plaintiff's discovery deposition.

2. The case initially appeared on the ADR roster with a mediation deadline of August 29, 2013. Sam Phillips and I agreed to place the case on a scheduling order with discovery deadlines. The statutory cap was discussed during these exchanges.

3. On May 9, 2014, I took Plaintiff's discovery deposition. At the conclusion of his discovery deposition, Sam Phillips and I discussed this case for nearly two (2) hours. We discussed the statutory cap of $300,000 and the fact that no physician has taken Plaintiff out of work. We discussed that

regardless of the outcome of this case, Plaintiff would have only a limited recovery that would not cover his losses.

4. On June 22, 2014, the case was placed on the docket pursuant to the scheduling order. At some point in time, Bill Padget contacted me indicating that Sam Phillips had left his law firm. Bill asked that the case be continued based upon his recent involvement. I agreed. During our initial conversation, and during several subsequent conversations, the statutory cap of $300,000 was discussed.

5. On September 10, 2014, Tuomey's discovery responses identified the liability insurance carrier and policy numbers "with limits of coverage sufficient to meet Tuomey's limits of liability as set forth in the South Carolina Solicitation of Charitable Funds Act (Section 33-56-180)."

6. On February 18, 2015, the case was mediated by Richard Hinson. The statutory cap was discussed extensively and Plaintiff's opening demand was the statutory cap of $300,000. The case was not settled.

7. On Friday, August 21, 2015, I reviewed the Answer in preparation for trial and immediately realized that I had failed to assert the statutory cap for charitable entities. I immediately called Plaintiff's counsel and asked for his consent to amend the answer. Bill Padget indicated that he was aware that the defense had not been pled but was not in a position to consent.

8. I immediately thereafter placed a conference call to the trial judge and Bill Padget indicating that I would be moving to amend the answer. The trial judge was advised generally of our respective positions regarding the motion to amend and how it may affect the trial of the case set for August 24, 2015. During this conversation with the trial judge, Bill Padget indicated that he was not aware that the statutory cap had not been pled until sometime after the mediation held on February 18, 2015.

9. At all times during my discussions with Plaintiff's counsel, it has been stated and understood that Tuomey was entitled to the statutory cap for charitable entities. At no time has anyone challenged my statements that the statutory cap would apply. In the absence of such a challenge, I did not have any reason to review the Answer prior to my trial preparations.

Affidavit of David C. Holler.

Thus, this Court cannot find that Plaintiff satisfied his burden of establishing prejudice. On the contrary, Plaintiff's complaint coupled with the affidavit of David C. Holler show that the Plaintiff was on notice of the statutory cap and had ample opportunity to refute it. Therefore,

this Court finds that justice was furthered by allowing Tuomey to amend its answer and that Plaintiff was not prejudiced as a result of the amendment.

III. Motion to Reconsider Reopening

"The decision whether to reopen a record for additional evidence is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion." *Brenco v. S.C. Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008). "A trial judge enjoys considerable latitude and discretion in these matters." *Brown v. La France Indus.*, 286 S.C. 319, 325, 333 S.E.2d 348, 351 (Ct. App. 1985). It is an abuse of discretion to reopen a case where reopening will prejudice the non-moving party. *See Perry v. Smalls*, 308 S.C. 259, 262, 417 S.E.2d 611, 613 (Ct. App. 1992) (noting that because there was no prejudice to the opposing party, it was not error to reopen the case).

Here, at the close of Tuomey's case on September 1, 2015, Plaintiff moved for a directed verdict based upon a lack of evidence that Defendant was a charitable organization entitled to protections under South Carolina Code Section 33-56-180. Tuomey immediately moved to reopen its case. On September 2, 2015, the Court granted Tuomey's motion to reopen its case and took the issue of Tuomey's 501(c)(3) status under advisement.

Throughout the trial, this Court was under the impression that the question of Tuomey's 501(c)(3) status was one to be decided by the court and not for the jury. Additionally, there was evidence presented in support of Tuomey's motion to amend its answer that lends further credence to the position that Plaintiff was not prejudiced by this Court's decision to allow Tuomey to reopen its case. Therefore, this Court finds that the Plaintiff was not prejudiced by the decision to reopen this case because the matter was a question for the court and Plaintiff had adequate notice of the issue.

IV. Solicitation of Charitable Funds Act

The South Carolina Solicitation of Charitable Funds Act (SCFA) caps tort liability of qualifying "charitable organizations" at the same liability limits imposed by South Carolina Code Section 15-78-120, also known as the South Carolina Tort Claims Act ($300,000.00 for a single occurrence of liability). S.C. Code Ann. § 33-56-180(A). The SCFA provides both general and specific definitions of a "charitable organization." The SCFA provides a general definition in Section 33-56-20: Subsection 33-56-20(1)(a)(I) provides that "charitable organization" means a person "determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code." The Charitable Funds Act provides a specific definition in Section 33-56-170(1): "Charitable organization" means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or (501)(d) of Title 26 of the United States Code, as amended."

"The construction of a statute is a judicial function and responsibility." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551 (Ct. App. 2013) (quoting *State v. Jacobs,* 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011)). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551 (Ct. App. 2013) (quoting *State v. Sweat,* 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010)). "When the meaning of words is so plain and obvious, the courts cannot speculate on the intention. To do so would be an

assumption of legislative power." *Indep. Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950).

In the instant case, the Defendant asserts the definitions of "charitable organization" in Section 33-56-20 and Section 33-56-170 are synonymous and consistent with each other. Defendant argues that the Internal Revenue Service is the sole determiner of 501(c)(3) tax status based on the plain and ordinary meaning of the two definitions. Plaintiff, on the other hand, asserts the removal of the term "determined" from Section 33-56-170 signals legislative intent that "charitable organization" not be synonymous with the definition found in Section 33-56-20. Plaintiff further asserts that in construing the provisions of Section 33-56-170, qualifying as a charitable organization eligible for protections of a cap on its liability is not wholly dependent on whether the organization has received an IRS determination of tax-exempt status. Rather, the proper inquiry is whether the organization meets the provisional requirements of an organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

Defendant urges the Court to defer to the IRS to make the determination as to whether it qualifies and continues to qualify for the protections of Section 33-56-170. In doing so, Defendant relies on tax assessment cases from the federal courts to support its position that only the IRS has the authority to revoke or rescind its tax exempt status. Conversely, Plaintiff maintains that the state statute requires the Court to conduct an analysis to determine whether the entity qualifies for the protections of the SCFA by reference and incorporation of Section 501(c)(3) of Title 26 of the U.S. Code. The plain language of the statue, Plaintiff argues, dictates that the qualification for the protections of the SCFA is a legal determination that must be made by this Court.

Plaintiff argues that even though this Court does not have the authority to revoke 501(c)(3) status, this Court does have the power to decline application of the statutory limit on liability if it finds that the Defendant has failed to meet the criteria necessary to qualify as a 501(c)(3) corporation. Specifically, Plaintiff asserts that the Defendant should not be allowed to derive the benefits of the statutory cap because Tuomey Regional Medical Center permitted its earnings or assets to inure to the benefit of a private individual.

Protections under the Charitable Funds Act are premised on an organization's eligibility as a 501(c)(3) under federal law. Unless operating exclusively for 501(c)(3) purposes, there is no longer a charitable purpose entitling that organization to the protections of the Charitable Funds Act. This Court agrees with the Plaintiff's contention that if an organization is acting in a manner inconsistent with its stated charitable purposes that would invalidate its 501(c)(3) status, this Court has the authority to not permit the organization to avail itself of the protections of the SCFA.

However, the Court finds nothing that would support a finding that Tuomey Regional Medical Center acted in a manner inconsistent with its stated charitable purpose. The Court is unaware of any evidence of a challenge by any citizen of Sumter County that citizens were declined medical care based on ability to pay. Further, the Court is not aware of any action taken by the IRS to revoke Tuomey's 501(c)(3) status as a result of earnings or assets inuring to the benefit of a private individual or any other activity that may be inconsistent with 501(c)(3) status. Tom Moran, tax counsel for Tuomey Regional Medical Center, testified that at the date of the injury—July 6, 2011—and at the date of the final hearing in this matter—March 8, 2016—Tuomey met both the general and specific definitions of "charitable organization" found in

Section 33-56-20 and Section 33-56-170. The Court finds nothing that would refute Mr. Moran's testimony.

Defendant was allowed to reopen its case to determine whether it was, at the time of the injury, a 501(c)(3) corporation as determined by the Internal Revenue Service. The Court finds that Tuomey was a 501(c)(3) corporation exempt from taxation at the time of the Plaintiff's injury. The Court finds that Tuomey's 501(c)(3) status qualifies it as a "charitable organization" under the SCFA to which the statutory limit on liability applies. Therefore, the Court applies the statutory cap to the jury verdict in this case, thereby reducing the verdict from $2,500,000 to $300,000.

CONCLUSION

Based on the record and the argument presented, the Court denies Tuomey's Motions for Directed Verdict and for Judgment Notwithstanding the Verdict. The Court finds that the Defendant is entitled to protection under the SCFA, which caps tort liability of qualifying charitable organizations at the same liability limits imposed by the South Carolina Tort Claims Act. Thus, the jury verdict of $2,500,000 is reduced to $300,000. Further, the Court denies Plaintiff's Motions to Reconsider allowing Defendant to amend its answer and reopen its case.

AND IT IS SO ORDERED.

Honorable R. Ferrell Cothran, Jr.

April ____, 2016.

Sumter Common Pleas

Case Caption: Win Myat VS Tuomey Healthcare System

Case Number: 2012CP4302030

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144