

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal From Greenville County  
Daniel D. Hall Circuit Judge

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Appellate Case No. 2015-002057  
2013-CP-23-2017

Isiah James, Jr, et, al, of Whom  
George Lee Tomlin is Appellant,

Vs.

South Carolina Department of  
Corrections (SCDC), Respondent.

INITIAL BRIEF OF APPELLATE

TO. RUSSELL W. HARTER, JR  
141 LAVINIA AVENUE  
POB 10224 (29603)  
GREENVILLE, S.C. 29601

George Lee Tomlin, 166361  
RCI, CA-22 POB 2039  
Ridgeland, S.C. 29936

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SC Court of Appeals  
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to appellant*

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TABLE OF AUTHORITIES

Alkins v. Wilson, 2016 WL 912671 (S.C. App. 2016)

Auto-Owner Ins. Co. v Rhode,  
748 SE2d 781, 787 (2013)

BunKum v. Manor Properties  
467 SE2d 758 (S.C. App. 1996)

Byrd v. Irmo High School  
468 SE2d 861 (1996)

Doe v. Bishop of Charleston  
754 SE2d 494 (2014)

Ducker v. Standard Supply Co.,  
311 SE2d 728 (1984)

Gatewood v. SCDC  
2016 W.L. 912672 (S.C. App. 2016)

Judy v. Martin,  
674 SE2d 861 (2009)

Linda McCo, Inc v. Shore,  
703 SE2d 499 (2010)

Rooseboro v. SCDC,  
2005-ALJ-04-0776 (1-12-07)

SCDC v. Tomlin,  
694 SE2d 25 (S.C. App. (2010)

State v. Slocumb,  
770 SE2d (S.C. App. (2015)

Thompson v. State  
2016 WL 806159 (2016)

West v. Gladney,  
533 SE2d 334, 337 S.C. App. 2000)

STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court err holding there was no damages or element(s) "justiciable controversy" on Tomlin's declaratory judgment claim(s)

II. Did the lower court err, denying Tomlin's motion for partial summary judgment liability?

STATEMENT OF THE CASE

George Lee Tomlin and Isiah James, Jr., brought this action against respondent by filing in the Court of Common Pleas for Greenville County. SCDC petitioned the United States District Court of South Carolina for removal according to title 28 United States Code Ann, (U.S.C.A.) sections 1446 (a) or 1332 on or about 7-15-13. The Magistrate Judge issued a scheduling order (pre-trial procedure). There was discovery request(s) by appellant after SCDC'S, 7-17-13 answer (R. pp. ) to complaint or amended complaint; James filed an initial motion to remand as Federal Court(s) lacked subject matter jurisdiction. Respondent opposed James's motion.

After further proceeding Judge Wooten "REMANDED to state Court pursuant to 28 U.S.C. § 1441 (c)(2) and ruled "Plaintiffs' ninth cause of action is DISMISSED." (R. p. ) State v. Slocumb, 770 SE2d 436, 438-439 (S.C. App. 2015). There were various motion and proceedings in the circuit court after remand and the court granted James, motion to supplement complaint in December 2014, SCDC filed a State motion for Summary Judgement 3 June 2015; appellant filed motion for summary judgment in part liability.

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CERTIFICATE OF SERVICE

## ARGUMENT

### I. THE CIRCUIT COURT ERRED HOLDING THERE WAS NO DAMAGES OR ELEMENT(S) [JUSTICIABLE CONTROVERSY ON TOMLIN'S DECLARATORY JUDGMENT(S) CLAIMS

The circuit court erred holding there was no damage(s) due or element(s) justifiable controversy' on Tomlin's declaratory judgment(s) claim(s). Appellant referenced the Court to SCDC v. Tomlin, 694 SE2d 25 (S.C. App. (2010) decision which dictated:

Consequently, the circuit court erred in denying Tomlin time-and-a-half pay for overtime work without first determining whether non-inmate workers performing the same work in the same locality received time-and-a-half pay for overtime. Id at 28

Tomlin appealed from The Administrative Law Court [ALC] the Court of Common Pleas in Jasper County where appellant(s) appeal(s) were consolidated for oral argument(s) and etc. (R. p. ) more importantly, the circuit court judge indicated, "you all have made the same claim" (R. p. 11-18-19

When he filed the complaint (R. p. ); he presented the 2010 decision of South Carolina Court of Appeals Doe v. Bishop of Charleston, 754 SE2d 494, 498 (2014) more, he presented the cost judgement "in the amount of \$304.88" which there was accord and satisfaction. BunKum v. Manor Properties, 467 SE2d 758 (S.C. App. 1996). Moreover, there is SCDC attorney at the 7-24-15 hearing, mentioning, "I found that there was an award by the Court of Appeals of cost to Mr. Tomlin at some \$300 or something like that" (R. p. 11-12-14) See also Linda Mc Co., Inc v. Shore 703 SE2d 499, 504 (2010). The 8-21-15 Order set forth, "Tomlin has come forward with no evidence SCDC and the lower Court has failed to acknowledge, view the "occupational Employment And Wage Estimate Low Country for Team Assemblers which is what Kwalu made furniture (R. p. )

Tomlin was employed at Kwalu furniture from 2002 thur 2008, (R. p. ); he worked in the bending' department or section which the job consisted of heating pipe which is a plastic material) and placing the hot pipe into a mold, blow with air or cool with water to make chair arm(s), insert(s), back(s) seat ring(s) and etc. Kwalu made all different type(s) and style(s) or chairs, all color(so which utilized the outer color pipe for appearance so his job was that of 'team assemble' for there was a production line of making and/or producing the relevant furniture, chair, table etc.

He did not have training hourly wage or salary so he was paid:

YEAR	WAGE/HOURLY	WAGES HE SHOULD HAVE BEEN PAID
2002	\$5.15	\$13.31
2003	5.15	13.05
9/2004	5.25	13.24
8/2005	5.30	13.22
8/2006	5.35	12.47
8/2007	5.85	12.32
8/2008	6.55	

The 5-28-2010 Order stated, "the circuit court found \$5.25 was not the prevailing wage and remanded that issue to the ALC" Id at \_\_\_\_\_ and on 7-24-2015 counsel for respondent stressed, "To my knowledge, they've never been back to the Administrative Low Court to address that" (R. p. \_\_\_ ll. 6-8) When Tomlin's co-appellant Roseboro obtained a ruling from the remand order; Judge Anderson "ORDERED that this case be REMANDED to hold a hearing, allow appellant the opportunity to present his viewpoints" (R. p. ) even more, SCDC appealed Roseboro decision which would represent all appellant(s) to this court; it held "appeal is dismissed as interlocutory" (R. p. ) See Atkins v. Wilson, 2016 WL 912671 (S.C. App. 2016) So justiciable controversy exist. Bird v. Irmo High School, 468 SE2d 861 (1996); Judy v. Martin, 674 SE2d 861 (2009) and Auto-Owner Ins. Co. v. Rhode, 748 SE2d, 781, 787 (2013) and Thompson v. State, 2016 WL 806159 (2016)

II THE LOWER COURT ERRED, DENYING  
TOMLIN'S MOTION FOR PARTIAL  
SUMMARY JUDGEMENT LIABILITY

The lower court erred, denying Tomlin's motion for the partial summary judgment liability; it was in 28 June, 2015 where plaintiffs (Tomlin & James) submitted motion for partial summary judgement liability under Rule 56(c) OF South Carolina Rules of Civil Procedure (SCRCP). West v. Gladney, 533 SE2d 334, 337 9S.C. App. 2000) The 8-21-15 order pointed, "Plaintiffs' Motion for Partial Summary Judgment relates specifically to the Fourth cause of Action in the amended complaint and I find as a matter of law that the plaintiffs motion for partial summary judgement should be denied for the reasons stated above" (R. p. ) It is important to note that Affidavit of Debra Long of 12-3-2014 related, "it does not appear that there are any additional monies and/or payment due to George Lee Tomlin" (paragraph 7, R. p. )

The affidavit set forth "the payment of \$304.88 to Inmate Tomlin on or about November 13, 2014 was made to satisfy in full the judgement in favor of Tomlin" (R.p. ) Cf. Ducker v. Standard Supply Co., Inc, 311 SE2d 728, 729 (1984) surely, the circuit court committed clear error when it promoted an Order in opposition to prior order(s) of The ALC, Circuit Court and South Carolina Court of Appeals. "however, the question of the prevailing wage to which Tomlin is entitled has been remanded to the ALC for further proceedings" Id at 29. Where Court of Appeals affirmed the 2006 Order of the Circuit Court of Jasper County.

The agency demanded that right to trial by Jury and SCDC is liable by prior orders of the court(s) and if issue(s) of fact(s) (actual prevailing wage) are in dispute, case needed to be set before jury to determine, judge the fact(s). moreover, Rule 56(c) of SCRCP provides: a summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. (R. p. 11.-22-24).

The order of the circuit court must be reversed and court should use formula and evidence to calculate declaratory judgment award of damages the court can remand for jury determination of overtime pay. Gatewood v. SCDC, 2016 WL 912672 (S.C. App. 2016)

This 30 Day of March 2016

s/ George Lee Tomlin  
George Lee Tomlin 166361  
RCI, CA-22 POB 2039  
Ridgeland, S.C. 29936

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused the "Designation of Matter, and, Initial Brief", to be mailed postage prepaid, to respondents attorney who is set forth above herein this 30 day of March, 2016

s/ George Lee Tomlin  
George Lee Tomlin 166361

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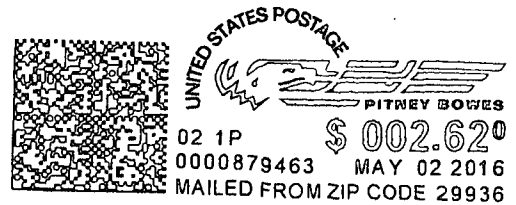
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