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FINAL BRIEF

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
Appellate Case No. 2015-002367

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya Gee, Circuit Court Judge

Orlando I. Brown,

Appellant,

v.

State Of South Carolina,

Respondent.

Final Brief

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REFERENCES TO THE RECORD

1. **12(b)(6):** (R. p. 27, lines 8-16)(R. p. 4, lines 9-10)(R. p. 43, lines 3-6, lines 13-14)(R. p. 44, lines 3-6, lines 19-20)(R. p. 45, lines 5-6, line 20)(R. p. 4, line 11)(R. p. 46, lines 14-16)(R. p. 5, lines 1-2)(R. p. 47, line 4)(R. p. 5, lines 3-5)(R. p. 44, lines 7-8)(R. p. 45, lines 7-8)(R. p. 5, lines 6-20).
2. **Improper Defendant:** (R. p. 28, lines 1-5)(R. p. 29, lines 15-29)
3. **S.C. Tort Immunity:** (R. p. 29, lines 19-29)

STATEMENT OF THE CASE

Plaintiff filed an Amended Complaint on July 10, 2015. The Amended Complaint listed the State of South Carolina as sole defendant and not the Richland County Probate Court. The State answered the complaint claiming several immunities and 12 (b) (6). Plaintiff's reply defeated all defenses' answers, and it appeared as though Plaintiff would prevail with being granted an Amended Motion For Summary Judgment that was filed with the initial pleadings.

On October 13, 2015, the Honorable Tanya A. Gee signed the defenses' Proposed Order For Dismissal.

FACTS

This case is as a matter of law. If Arguments 1, 2, & 3 in this Appeal reflected Plaintiff's reply to Defendant's Answer, the Trial Court would have been directed to Plaintiff's Amended Motion For Summary Judgment. All the supporting facts in this case are filed in Exhibits: A, B, D, E, & F pointed to in the Amended Motion For Summary Judgment.

ARGUMENTS

- I. **12(b)(6):** Because Respondent could have found sufficient evidence to support a claim upon which relief could be granted in the Amended Motion For Summary Judgment, the Trial Court erred by adopting the defense's Proposed Order For Dismissal. S.C.R.C.P. 8 (a) (1) instructs that pleadings should be written as "short and plain statement of the grounds . . .," eluding that material facts could be supplied in other areas of the complaint, such as in this case, the Amended Motion For Summary Judgment, which was filed with the initial pleadings.
- II. **IMPROPER DEFENDANT:** Because Respondent failed to acknowledge Tennessee V. Lane, which held that state governments may be sued for violating Title II of the Americans with Disabilities Act as it applies to claims involving the fundamental right of access, and because of failure to acknowledge 42 U.S.C. § 2000 d-7 which waives State's immunities, and because of failure to acknowledge S.C. R.C.P. 17 (a) which is quoted, "benefit of another shall be brought in the name of the state,"

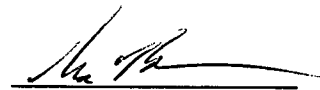
which does not call for dismissal for improper party, the Trial Court erred by adopting defense's Proposed Order For Dismissal.

- III. **S.C. TORT LAW IMMUNITY:** Because Respondent failed to give federal statute 42 U.S.C. § 2000 d-7 precedence over state tort laws, the Trial Court erred by adopting defense's Proposed Order For Dismissal. 42 U.S.C. § 2000 d-7 is an unambiguous waiver of all state immunities for claimants who are recipients of federal aid. I am a recipient of Federal aid as evidenced in (R. p. 46, lines 5-6). Had any evidence in the Amended Motion For Summary Judgment been upheld, Plaintiff would have prevailed, being that eleventh amendment immunity is waived also.

CONCLUSION

Federal laws are to be upheld, where they precede, regardless of if in State or Federal court. It is my prayer that 42 U.S.C. § 2000 d-7 will be upheld, waiving State immunities, therefore making the State liable for the relief sought for violating the Americans with Disabilities Act. Being that all 3 arguments for dismissal of this action are pursuant to S.C. Tort Law Immunity, and that this immunity is waived, even to the admission of the Respondent's lawyer, moreover because of 42 U.S.C. § 2000 d-7, I hereby move the court to reverse the lower court decision, and grant Plaintiff the relief sought of fifteen million U.S. dollars, as this case is fully merited, and, " as a matter of law".

Respectfully submitted,



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2-24-2016
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CERTIFICATE OF COUNSEL

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Certificate of Counsel for Final Brief

I certify that this Final Brief complies with RULE 211(b). It is identical to Initial Brief except that issues in the Record are references to the Record.

2-24-2016


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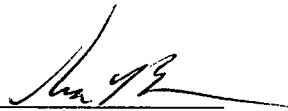
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Proof of Service of Record On Appeal and Final Brief

I hereby certify that on 2-29-2016, I hand delivered a copy of the foregoing Record On Appeal and Final Brief to Respondent's lawyers Mr. Richard E. Marsh, III, and Mr. Temus C. Miles, Jr. at their mutual place of employment address of 1303 Blanding Street, Columbia, S.C. 29201.



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