

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Lisa Randolph and George Randolph,

Plaintiffs,

vs.

Dolgencorp, LLC, d/b/a Dollar General Store
#76751, a/k/a Dollar General,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-11-0052

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RECEIVED
SEP 06 2016
SC Court of Appeals

Plaintiff's Attorney:

Lisa Randolph and George Randolph, *pro se*
Address: 203 W Carolina St., Blacksburg, SC 29702
Phone: (864) 425-0207 Fax ()
E-mail: _____ Other: _____

Defendant's Attorney:

Lee Ellen Bagley, SC Bar No. 77672
Address: 3700 Forest Dr., Ste 400, Columbia, SC
29204
Phone: 803-790-8838 Fax: 803-790-8841
E-mail: rlewis@glelawfirm.com Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

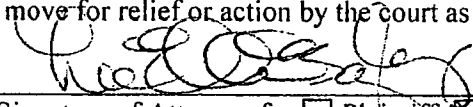
Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order: Order for Motion for Summary Judgement

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff/☒ Defendant

July 21, 2016

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)
☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Lisa Randolph and George Randolph,

Plaintiffs,

vs.

Dolgencorp, LLC, d/b/a Dollar General Store
#76751, a/k/a Dollar General,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-11-0052

ORDER

RECEIVED

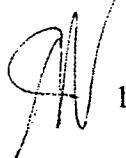
SEP 06 2016

SC Court of Appeals

This matter is before the Court upon the Motion for Summary Judgment of Dolgencorp, LLC, d/b/a Dollar General Store #76751, a/k/a, Dollar General (hereinafter "Dollar General"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for which a hearing was held on June 20, 2016. Randi Lynn Roberts, Esquire appeared on behalf of Dollar General. Plaintiffs Lisa Randolph and George Randolph appeared *pro se*. For the reasons set forth herein, the Court finds that in viewing the facts and inferences arising therefrom in the light most favorable to Plaintiffs, Plaintiffs failed to establish any genuine issues of material fact as to any of their causes of action; therefore, summary disposition is appropriate. Specifically, this Court finds as follows:

FACTS

On or about December 7, 2013, Mrs. Randolph entered the Dollar General store located at 500 West Cherokee Street in Blacksburg, South Carolina. Following her selection of items in the store, including three boxes of cat litter, Mrs. Randolph attempted to complete her transaction at a cash register. Plaintiffs allege that during the checkout process, the store charged a higher price at the register than the price that was advertised for the product, thereby unlawfully taking

 1

money from Plaintiff Lisa Randolph. Following a discussion with store employees regarding the pricing of the bags of cat litter, Mrs. Randolph called law enforcement and asked them to report to the subject store. During Mrs. Randolph's telephone call, the store manager also called law enforcement dispatch to report Mrs. Randolph's irate behavior. Following an on-scene investigation by Blacksburg Police Department during which no evidence of improper conduct was found, the store issued a notice of trespass to Mrs. Randolph. She was then asked to leave the premises.

Plaintiffs filed their Complaint on January 24, 2014. They asserted the following causes of action: (1) larceny; (2) breach of trust with fraudulent intent; (3) official misconduct, abuse of authority, breach of duty (hereinafter collectively referred to as "official misconduct"); (4) conspiracy to commit larceny; (5) violations of civil rights, consumer rights, and due process; (6) violations of the South Carolina Victims' Bill of Rights; (8) abuse of process; (9) libel and slander; and (11) loss of society.¹ Dollar General filed this Motion for Summary Judgment and in support thereof, shows as follows.

STANDARD OF REVIEW

The purpose of summary judgment is "to expedite the disposition of cases which do not require the services of a factfinder." *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (citing *George v. Fabri*, 345 S.C. 440, 452, 458 S.E.2d 868, 874 (2001)). "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Gist v. Berkeley Cnty. Sheriff's Dep't*, 336 S.C. 611, 615, 521 S.E.2d 163, 165 (Ct. App. 1999) (citing *Etheredge v. Richland Sch. Dist. 1*, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998); Rule 56(c), SCRPC).

¹ This Court consolidates Plaintiffs' causes of action and lists them in the same order as it will address them in subsequent paragraphs for ease of reference and clarification.

“When determining whether any triable issue of fact exists, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmoving party.” *Id.* (citing *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997)). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant.” *Id.* (citing *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998)). However, “[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-358, 650 S.E.2d 68, 71 (2007) (quoting *Baughman v. Amer. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)).

After viewing all the facts in the record in the light most favorable to Plaintiffs and drawing all reasonable inferences in their favor, this Court grants Dollar General's Motion for Summary Judgment because Plaintiffs cannot establish that a genuine issue of material fact exists as to any of their causes of action.²

LAW/ANALYSIS

I. Statutory criminal charges

Plaintiffs' causes of action of larceny, breach of trust with fraudulent intent, conspiracy to commit larceny, and official misconduct are dismissed as a matter of law because these statutory criminal offenses do not provide for private, civil causes of action. *See* S.C. Code Ann § 8-1-80 (Supp. 2015) (codifying the crime of official misconduct); S.C. Code Ann. § 16-14-410 (2015) (codifying the crime of conspiracy); S.C. Code Ann. § 16-13-30 (2015) (codifying the crimes of

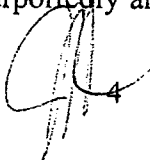
² While holding no precedential value as an unpublished opinion, this Court acknowledges the South Carolina Court of Appeals decision in *Randolph v. Dolgencorp, LLC et al.*, 2014-000981 (Ct. App. March 30, 2016), in which the appellate court affirmed the dismissal of all of Plaintiffs' claims against Dollar General's prior co-defendants in this case, Cherokee County and Blacksburg Police Department.

petit larceny and grand larceny); S.C. Code Ann. § 16-13-230 (2015) (codifying the crime of breach of trust with fraudulent intent).

“The primary consideration in deciding whether a private cause of action should be implied under a criminal statute is legislative intent.” *Adkins v. S.C. Dep’t of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). “[T]he general rule is that a statute which does not purport to establish a civil liability but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.” *Id.* (quoting *Whitworth v. Fast Fare Mkts. of S.C., Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). The criminal statutes that Plaintiffs argue give rise to their causes of action are primarily for the protection of the public and not for the protection of private rights. *See Whitworth v. Fast Fare Markets, Inc.*, 289 S.C. 418, 420-21, 338 S.E.2d 155, 156 (1985) (finding that statute under “Offenses Against Public Policy” specifically providing for criminal enforcement does not provide for a private cause of action as it was primarily for the protection of the public). A review of the language of the above-referenced criminal statutes establishes that they do not provide for any private, civil liability; thus, Plaintiffs cannot show any genuine issue of material fact that would preclude summary disposition. Accordingly, this Court grants Defendant Dollar General’s Motion for Summary Judgment as to Plaintiffs’ claims of larceny, breach of trust with fraudulent intent, conspiracy to commit larceny, and official misconduct.

II. Violations of the United States Constitution and the South Carolina Victims’ Bill of Rights

Plaintiffs’ allege numerous causes of action that are based on alleged violations of the United States Constitution, which are relevant only to injury resulting from a governmental policy or custom that amounted to a deliberate indifference to Plaintiffs’ constitutional rights. Similarly, Plaintiffs’ cause of action purportedly arising under Article I, section 24 of the South



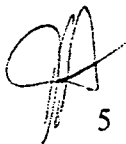
Carolina Constitution, also known as the South Carolina Victims' Bill of Rights, applies only to governmental entities. Thus, this Court grants Defendant Dollar General's Motion for Summary Judgment to as the foregoing causes of action are not viable against it.

As to Plaintiffs' claims purportedly arising under the United States Constitution, 42 U.S.C.A. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Supreme Court of the United States holds that local governing bodies, such as a city municipality, can be liable under § 1983 for constitutional violations arising from the government's implementation of policy or custom. *Monell v. Dept. of Soc. Serv. of City of N.Y.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). In order to succeed on such a claim, Plaintiffs must show that the subject policy or custom amounted to a "deliberate indifference" to their constitutional rights. *Pembaur v. Cincinnati*, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986); *Todd v. Smith*, 305 S.C. 227, 407 S.E.2d 644 (1991).

As a private corporate entity, Dollar General's actions on the date of the alleged incident cannot be characterized as governmental action or action taken pursuant to governmental policy. Plaintiffs do not allege that Dollar General acted under the color of state or federal law in any manner. Indeed, Plaintiffs explicitly allege that Mrs. Randolph initiated the telephone call to law enforcement to request its presence at the subject store. Accordingly, as Plaintiffs fail to present any genuine issues of material fact as to these causes of action, this Court grants Defendant Dollar General's Motion for Summary Judgment as to these causes of action in favor of Dollar General.



5

As to Plaintiffs' causes of action arising under the Victims' Bill of Rights, the terms of the Victims' Bill of Rights only apply to victims of crime and do not create,

a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

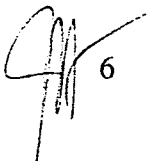
S.C. Const. Ann. Art. I, § 24. Thus, according to its terms, the Victims' Bill of Rights applies only to public employees, public agencies, the State, or an agency responsible for the enforcement of the rights and provisions of its terms. Dollar General, as a private business entity in a civil action, is not subject to its terms. Accordingly, any purported claim under the Victims' Bill of Rights is not viable against Dollar General and this Court grants summary judgment in its favor.

Based upon the foregoing, Plaintiffs fail to present any genuine issues of material fact as to their causes of action purportedly arising from violations of the United States Constitution and the South Carolina Victims' Bill of Rights, and the Court grants Defendant's Motion for Summary Judgment pursuant to Rule 56, SCRPC.

III. Abuse of process

Plaintiffs fail to present any genuine issue of material fact as to their cause of action for abuse of process; thus, the Court grants Defendant's Motion for Summary Judgment on that claim.

"The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure." *Food Lion, Inc. v. United Food*



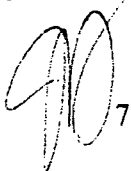
6

& *Commer. Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002). "To sustain a claim for abuse of process, it is axiomatic that the judicial process must in some manner be involved." *Id.* at 70, 567 S.E.2d at 253. "A plaintiff alleging abuse of process in South Carolina must assert two essential elements: 1) an "ulterior purpose," and 2) a "willful act in the use of the process not proper in the conduct of the proceeding." *Id.* at 71, 567 S.E.2d at 253 (Ct. App. 2002) (quoting *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997)). "An allegation of an ulterior purpose or 'bad motive,' standing alone, is insufficient to assert a claim for abuse of process." *Id.* at 74, 567 S.E.2d at 255 (citing *Hainer*, 328 S.C. at 136, 492 S.E.2d at 107 (explaining that no liability for the tort exists "where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions"))).

Here, Plaintiffs fail to allege that Dollar General used a judicial process and further fail to present any evidence that Dollar General acted in a manner in which it was not authorized. Plaintiffs were not arrested and Dollar General did not institute any legal proceedings against them. Plaintiffs' claim hinges solely on their dissatisfaction with the outcome of law enforcement's investigation at the store. As alleged in Plaintiffs' Complaint, Dollar General and Mrs. Randolph discussed the incident with law enforcement, and law enforcement determined that, based on the facts, no official action was warranted. Accordingly, Plaintiff can show no evidence whatsoever that Dollar General used a judicial process or instituted any unauthorized action. Thus, the Court grants Defendant Dollar General's Motion for Summary Judgment as to Plaintiffs' abuse of process claim.

IV. Libel and slander

Plaintiffs fail to show that any genuine issue of material fact exists as to any element of

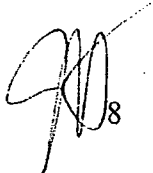


their causes of action for libel and slander. Accordingly, this Court grants Defendant's Motion for Summary Judgment on those claims.

"The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff." *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 133-134 (S.C. 1999). "Defamatory communications take two forms: libel and slander." *Id.* "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Id.* "If a communication is libelous, then the law presumes the defendant acted with common law malice." *Id.*

To recover for defamation, a plaintiff must prove: (1) a false and defamatory statement made by the defendant concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault on the part of the defendant in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Parrish v. Allison*, 376 S.C. 308, 320, 656 S.E.2d 382, 388 (Ct. App. 2007). A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. *Id.* at 321, 656 S.E.2d at 389.

Plaintiffs attempt to support their claim of libel by asserting that law enforcement's Incident Report misrepresented statements made by Mrs. Randolph. However, Plaintiffs fail to allege any misrepresented statements in the Incident Report that were defamatory in nature. To the extent Plaintiffs contend the issuance of a trespass notice was defamatory, both the Incident Report and Plaintiffs acknowledge the store requested the trespass notice as a result of the verbal dispute between the parties, an occurrence which Plaintiffs admit. Thus, the issuance of the



8

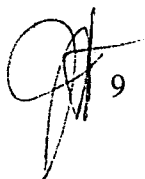
trespass notice was based on truthful statements and cannot give rise to a claim of libel. As to Plaintiffs' claim of slander, to the extent Plaintiffs argue that Dollar General published defamatory statements regarding the pricing of the cat litter, the Incident Report notes that the store posted the correct price in law enforcement's presence. Thus, employees' statements as to the current price of the product were correct and cannot be the basis for any claim of slander. Based on the foregoing, Plaintiffs present no genuine issue of material fact as to their causes action for slander and libel; thus, this Court grants Defendant Dollar General's Motion for Summary Judgment as to these causes of action.

V. Loss of society

To the extent Plaintiffs' claim of loss of society is the equivalent of a claim of loss of consortium on behalf of Plaintiff George Randolph, Plaintiffs cannot show any intentional or tortious conduct by Dollar General against Mrs. Randolph; thus, this Court grants summary judgment in favor of Dollar General.

"Our supreme court has recognized that a loss of consortium claim is not derivative, but is a distinct, independent cause of action." *Williams v. Lancaster County Sch. Dist.*, 369 S.C. 293, 307, 631 S.E.2d 286, 294 (Ct. App. 2006) (citing *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 595 n.4, 586 S.E.2d 572, 576 n.4 (2003)). "However, there must be some intentional or tortious conduct for a loss of consortium claim to stand." *Id.*; see also S.C. Code Ann. § 15-75-20 (2005) (providing "[a]ny person may maintain an action for damages arising from an intentional or tortious violation of the right to companionship, aid, society, and services of his or her spouse").

Plaintiffs' claim for loss of consortium fails as they identify no specific action by Dollar General amounting to an intentional or tortious violation of Mr. Randolph's right to Mrs.



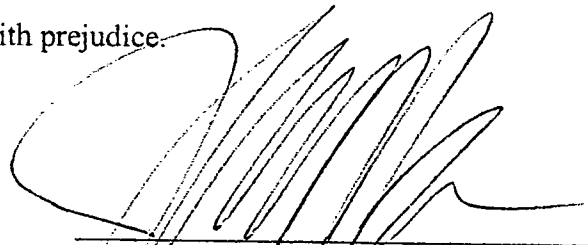
9

Randolph's companionship, aid, society or services, as Plaintiffs fail to show that any genuine issue of material fact exists as to any of the other causes of action alleged in their Complaint. Thus, this Court grants Defendant Dollar General's Motion for Summary Judgment as to this claim.

CONCLUSION

Plaintiffs fail to establish that any genuine issue of material fact exists as to any element of any of the various causes of action in their Complaint. Therefore, this Court grants Defendant Dollar General's Motion for Summary Judgment as to all of Plaintiffs' claims, thereby dismissing Plaintiffs' claims and Complaint with prejudice.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Lisa Randolph and George Randolph,

Plaintiffs,

vs.

Dolgencorp, LLC, d/b/a Dollar General Store
#76751, a/k/a Dollar General,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-11-0052

CERTIFICATE OF SERVICE

RECEIVED
SEP 06 2016
SC Court of Appeals

I do hereby certify, on this 21 day of July, 2016, that a copy of the foregoing **Defendant's Order for Motion for Summary Judgment** was served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, and Certified Mail Return Receipt Requested, addressed to Plaintiffs *pro se* of record as follows:

Plaintiffs, pro se

Lisa Randolph, *pro se*
George Randolph, *pro se*
203 W. Carolina Street
Blacksburg, SC 29702


Ashley Cashdollar, Legal Assistant

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Lisa Randolph)

Plaintiff,)

VS.)

Dolgencorp, LLC, d/b/a Dollar General Store)
#76751, a/k/a Dollar General)

Defendant.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No.: 2016-001751

RECEIVED
SEP 06 2016
SC Court of Appeals

I certify that on this date, I served a copy of the Order and copy of Correspondence to and from Susan W
Hudgins in this action, dated

July 21, 2016 and dated August 27, 2016 and dated September 2, 2016, on by

☐ Delivering it to him/her personally;

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S.

Mail, in an envelope with sufficient postage affixed, addressed as follows:

The Honorable Jenny Abbott Kitching
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Ms. Rosalyn W. Frierson
Office of Court Administration
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, SC 29201-3739

Lee Ellen Bagley
3700 Forest Drive, Suite 400
Columbia, SC 29204

☐ Delivering it by commercial delivery service in accordance with Rule 4(d)(9),

SCRCP, addressed as follows: ; or,

☐ Other:

Sept 2, 2016

Date

[Signature]

Signature