

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-01951

Marion E. Crocker, Jr.

South Carolina Department of Health and
 Environmental Control

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

The Plaintiff's motion to alter or amend is denied.

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)
		\$
		\$
		\$

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

ReHood
 Circuit Court Judge

2164
 Judge Code

12/8/16
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 13 day of Dec, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT *[Signature]*

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Marion E. Crocker, Jr.,

Plaintiff,

v.

South Carolina Department of Health and
Environmental Control,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-40-01951

**ORDER DENYING
PLAINTIFF'S MOTION TO
ALTER OR AMEND**

RICHLAND COUNTY
2016 DEC 13 PM 12:03
JEROME H. ...
C. ...

On November 16, 2016,¹ this Court granted the Motion for Summary Judgment of the Defendant South Carolina Department of Health and Environmental Control (“DHEC”), under Rule 56, SCRCP. Plaintiff brought his claim² under the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10 *et seq.*, and accused DHEC of age discrimination. The Court granted the motion and dismissed the case on the following grounds:

1. There is no private right of action under S.C. Code Ann. § 1-13-90(c).
2. To the extent Plaintiff sought to proceed under S.C. Code Ann. § 1-13-90(d), the claim was barred by the Statute of Limitations set forth in S.C. Code Ann. § 1-13-90(d)(6).
3. Plaintiff was not authorized to file a lawsuit under the South Carolina Human Affairs Law under the authority of the Notice of Right to Sue issued by the U.S. Equal Employment Opportunity Commission (EEOC).
4. DHEC did not enter into a “conciliation agreement” with the Plaintiff.

¹ Plaintiff stated in his Motion to Alter or Amend that he was served with the written notice of the Order on November 21, 2016. In any event, I find that Plaintiff’s Motion to Alter or Amend is timely under Rule 59(e), SCRCP, which provides that the motion “shall be served not later than 10 days after receipt of written notice of the entry of the order.”

² Plaintiff originally brought a second claim for “retaliation,” which he voluntarily dismissed with prejudice at oral argument.

5. Plaintiff's argument that a plain application of S.C. Code Ann. § 1-13-90(d)(6) led to "absurd" results was unavailing.
6. Plaintiff was not entitled to equitable tolling of the Statute of Limitations.
7. Plaintiff's claim was not "novel" in the sense that it could not be adequately addressed in a Motion for Summary Judgment.

PLAINTIFF'S MOTION TO ALTER OR AMEND

In Plaintiff's Motion to Alter or Amend, he appears to restate the arguments made in his original filings with the Court or at oral argument, summarized as follows:

1. The Statute of Limitations under S.C. Code Ann. § 1-13-90(d)(6) does not apply to claims brought under S.C. Code Ann. § 1-13-90(c). Plaintiff is bringing his claim under S.C. Code Ann. § 1-13-90(c).
2. DHEC cannot argue that there is no private right of action under S.C. Code Ann. § 1-13-90(c), since it addressed that issue at oral argument but did not do so in its original motion.
3. The issue raised by Plaintiff was novel and should not have been decided by dispositive motion.

As a legal matter, a motion under Rule 59(e), SCRPC, is essentially viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

DECISION

While Plaintiff is permitted to repeat arguments made in his briefs or at oral argument in his motion under Rule 59(e), SCRPC, he has raised no issue that the Court finds persuasive. For

the reasons stated in the Court's order granting DHEC's Motion for Summary Judgment, Plaintiff's Motion to Alter or Amend is denied.

Further, Plaintiff's argument that DHEC has waived its right to address the absence of a private right of action under S.C. Code Ann. § 1-13-90(c) has no basis in law or fact. The issue was clearly addressed, at length, in (1) Plaintiff's Response to DHEC initial motion, (2) DHEC's Reply Memorandum, and (3) at oral argument before this Court. Further, Plaintiff cites no authority to support this contention, nor can he, as Rule 56 provides that a "party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRCP (emphasis added).

CONCLUSION

For the reasons stated above, the Plaintiff's Motion to Alter or Amend under Rule 59(e), SCRCP, is DENIED, and Plaintiff's claims are dismissed with prejudice, with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

Re Hood

The Honorable Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

Dec 8, 2016
Columbia, South Carolina