

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

In The Court of Common Pleas

Judge Alford S. Lee, Circuit Court Judge

Case No. 2014-CP-39-0259

Appellate Case No. 2015-001361

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SC Court of Appeals

Mark Ostendorff,.....Appellant,

v.

School District of Pickens County, Board of Trustees,
Alex Saitta, Judy Edwards, Jimmy Gillespie,
Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew,
Henry Hunt, Robert Folkman,.....Respondents.

INITIAL BRIEF OF APPELLANT

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellant, pro se

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2. BECAUSE APPELLANT OSTENDORFF GAVE NOTICE OF THE FIVE YEARS MINIMUM OF GAURANTEED EMPLOYMENT ,WHICH IS CONTRACT, IN HIS COMPLAINT, THEN HE DOES NOT NEED TO BRING SEPARATE ACTION UNDER ANOTHER COMPLAINT.
3. BECAUSE THREE YEARS HAD NOT LAPSED WHEN OSTENDORFF FILED HIS COMPLAINT , OSTENDORFF STILL HAD TIME REMAINING TO FILE HIS COMPLAINT UNDER CONTRACT AND/OR TORT.

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TABLE OF AUTHORITIES

CASES

Anderson v. Liberty Lobby 477 U.S. 242 (1986)
TOLK v. Weinstein 265 S.C. 546 (1975) 220 S.E. 2d 239
Brown v. Leverette, 291 S.C. 364, 353 S.E. 2d 697 (1987)
Baird v. Charleston County, 333 S.C. 519, S.E. 2d 69 (1999)

STATUTES

CHAPTER 78 South Carolina Tort Claims Act
SECTION 15-78-110
SECTION 15-78-30
SECTION 15-3-13
SECTION 15-3-130
SECTION 15-3-530

RULES OF COURT

Rule 12 (b)(6) SCRPC

OTHER AUTHORITIES

South Carolina Civil Procedure , Flanagan
South Carolina Constitution, Article I , Section 2, ensuring free speech
Article I, Sction 3, ensuring due process
United States Constitution, First Amendment, ensuring free speech
Fourteenth Amendment, Section I, ensuring due process

STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERR IN GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN ITS DECISION THAT OSTENDORFF ONLY HAD TWO YEARS TO BRING ACTION ?
2. DID THE COURT ERR IN GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN ITS DECISION THAT IT WAS WITH PREJUDICE AND NOW CANNOT BRING ANY FURTHER ACTION INCLUDING BREACH OF CONTRACT ?
3. DID THE COURT ERR IN GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN ITS DECISION THAT CONTRACT WAS NOT PART OF OSTENDORFF'S COMPLAINT ?
4. DID THE COURT ERR IN GRANTING SUMMARY JUDGMENT WHEN DEFENDANT HAD REFUSED TO PROVIDE ANY DISCOVERY WHATSOEVER ?

STATEMENT OF CASE

On April 1, 2015, a hearing was held for Motion by Defendants for Summary Judgment. That decision by Circuit Court to Grant Summary Judgment is this appeal.

Nature of action or manner: Wrongful discharge of employment of plaintiff Mark Ostendorff by defendant School District of Pickens County, et al. Jury trial demanded by plaintiff Ostendorff.

Action of Court: Granting of Defendant's Motion For Summary Judgment.

Date of hearing: April 1, 2015

Mode of Trial: Circuit Court Judge, no jury.

Judgment appealed from: Circuit Court decision dated May 26, 2015

Date of service of notice of appeal: June 2, 2015

ARGUMENTS

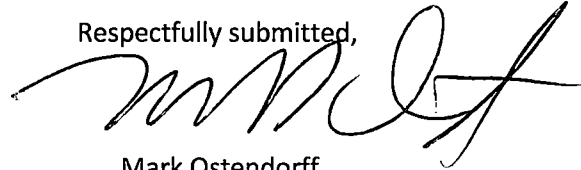
1. BECAUSE APPELLANT OSTENDORFF MET THE CRITERIA FOR A VERIFIED CLAIM, THE TIME TO BRING ACTION IS THREE YEARS. OSTENDORFF PROVIDED A VERIFIED CLAIM WITHIN TWO YEARS. UNDER SECTION 15-78-110, OSTENDORFF IS ALLOWED THREE YEARS TO BRING ACTION.
2. BECAUSE APPELLANT OSTENDORFF GAVE NOTICE OF THE FIVE YEARS MINIMUM OF GARANTEED EMPLOYMENT , WHICH IS CONTRACT, IN HIS COMPLAINT THEN HE DOES NOT NEED TO BRING SEPARATE ACTION UNDER ANOTHER COMPLAINT. In Ostendorff's Complaint, #'s 11, 12, 30, 33,34 addressed the issue of contract through June 2013. The next to last page, under Damages, states "...damages under breach...". Flanagan , in South Carolina Civil Procedure, states "The purpose of a pleading is fair notice to the opponent and the court." Ostendorff provided numerous notices of breach in his correspondence and in his Complaint
3. BECAUSE THREE YEARS HAD NOT LAPSED WHEN APPELLANT OSTENDORFF FILED HIS COMPLAINT, OSTENDORFF STILL HAD TIME REMAINING TO FILE HIS COMPLAINT UNDER CONTRACT AND/OR TORT. UNDER SECTION 15-3-530. Three years. Within three years: (1),"an action upon a contract,..." .Ostendorff still had time remaining to file a separate Complaint under contract, which he claims would only be a duplicate of what has already been submitted.
4. BECAUSE PLAINTIFF REFUSED TO PROVIDE DISCOVERY, THE COURT SHOULD NOT HAVE GRANTED SUMMARY JUDGMENT. Summary judgment must not be granted until the opposing party has a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, S.E. 2d 69 (1999). Summary Judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.

CONCLUSION

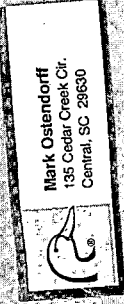
For the reasons stated, this Court should reverse the Order of the Circuit Court.

January 13, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written in a cursive style.

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