

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Appellate Case No. 2016-001239

Biafra Monique Curtis, **Appellant**

V.

South Carolina Department of Public Safety,
Warren Ganjehsani, Mike Oliver, Leroy Smith,
Kenneth Phelps, Anthony Grice, William Taylor,
Nicklous King, Willie McCauley, Jr., Ada Schmidt,
Aaron Canzater and Cherie Young, individually
and in their official capacities, et al., **Respondent(s)**

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SC Court of Appeals

APPELLANTS FINAL BRIEF

Biafra Monique Curtis, Pro Se Appellant
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STATEMENT OF ISSUES ON APPEAL

The *only* issues in this case are:

1. Whether the trial court's May 16/May 18, 2016 order dismissing the underlying action should stand and be enforced since there are valid and well documented remaining causes of action that are still so triable and were not addressed in the initial hearing so the Appellant asserts that the case should be remanded back to the trial court to move forward to be heard by a fair and unbiased jury?
2. Whether the trial court's order which was signed and dated on May 16, 2016, two days prior to the actual hearing date of May 18, 2016, further questions if the plaintiff ever had a true opportunity for due process and equal protection under the law?

STATEMENT OF THE CASE

What is it really all about?"

This appeal arises from an order from the SC Court of Common Pleas dismissing complaints of misconduct which were submitted to the courts in a Summons and Complaint filed in August 2015, regarding the agreement, in writing, dated June 5, 2015, by OPR (Office of Professional of Responsibility) Chief K.D. Phelps to conduct a thorough investigation into complaints of misconduct against multiple agents with the SC Department of Public Safety, hence, also the SC Highway Patrol. ***See Letter from Chief K.D. Phelps, dated June 5, 2015, PG. 55 in Record on Appeal/ H. 3158 Section 23-6-175, Lines 19-28/Section 1, Article 3, CH. 6, Title 23 of the 1976 Code H. 3158 Lines 19-20/CALEA Law Enforcement Standards PGS 3-36/ DPS Code of Ethics/ SC Constitution Article III Section 26 Oath of Office***

The action was initiated after the Appellant received a letter, dated June 10, 2015, from General Counsel and Ethics Officer for the SC Department of Public Safety, hence, also the SC Highway Patrol stating the IRF (SC Insurance Reserve Fund) is the agency assigned to investigate such complaints into officer misconduct and refusing to allow the OPR Department to conduct the already promised investigation. ***See Letter from General Counsel, Warren Ganjehsani, dated June 10, 2015, PG. 55 in Record on Appeal/ H. 3158 Section 23-6-175, Lines 19-28/Section 1, Article 3, CH. 6, Title 23 of the 1976 Code H. 3158 Lines 19-20/CALEA Law Enforcement Standards PGS 3-36/ DPS Code of Ethics/ SC Constitution Article III Section 26 Oath of Office***

These complaints submitted to OPR were with reference to acts and omissions of a trooper, trained in accident investigations, and acts and omissions that were committed and efforts of supervising officers to conceal these acts and omissions. It has been argued that certain elements of the complaint have surpassed certain statues, however, page 19, item #27 of the original complaint presents the still triable causes of action that occurred in 2015, well within the timeframe of statues and undisputable to this fact and are further supported by ***Transcript PG. 6 Lines 1-25 Accident Serious Injuries***, (See Transcript of Hearing held on May 18, 2016, Page 11 Lines 1-8 Curtis statement that Notice given 2014

(See EXHIBIT-5 NOTICE OF INTENT TO FILE LAWSUIT) *Transcript PG. 6 Lines 1-25. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) Cause of action for intentional infliction of emotional distress. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN SOUTH CAROLINA SEE EXHIBIT 6 in Record on Appeal- Emotional Distress*

By way of brief background, these issues arose after the trooper, Willie McCauley, Jr., assigned to investigate the accident never turned his camera on or activated his front lights which would have activated his camera, then discredited an alleged witness, "discarded" his name, contact information and statement, whom it was later to be determined to be the at fault truck driver. *See Transcript PG.5 Lines 23-25 PG. 13 Lines Lines 1-6.* There was a meeting held with myself, Trooper Willie McCauley, Sgt. Nicklous King, Lt. William Taylor and Captain Anthony Grice in which Trooper Mc Cauley admitted that he discarded this information. There was supposedly an investigation in the effort to retrieve this information and the accident report was revised 3 times, but after a year, it was unsuccessful and the (IRF) Insurance Reserve Fund insurance company for the highway patrol found no liability on the part of their officer even though they never interviewed the key witness from all 4 accident reports(the IRF is not the proper investigative authority when assigned with the task of officer misconduct, this is the sole responsibility of the Office of Professional Responsibility). *See Transcript PG. 12 Lines 13-25, PG. 13 Lines Lines 1-6* During this time, I contacted each and every person (Leroy Smith, Mike Oliver, Alan Wilson, Niki Haley & SLED SEE EXHIBIT-5 NOTICE OF INTENT TO FILE LAWSUIT, September 27,2014) that I could to get assistance from. *See Transcript PG. 13 Lines 1-6.* I received a response from SLED suggesting that I contact Chief KD Phelps at the Office of Professional Responsibility. **EXHIBIT 7-Memorandum in Response to Defendants Motion, FILED in Richland County C.C.P. October 20, 2017, PG 10, 2nd Paragraph-On September 27, 2014/PG. 12 2nd Paragraph-On June 5, 2015/3rd Paragraph-On June 10, 2015/PG. 15-Causes of Action. Fleming v. Rose, et al : In this tort action, Lt. J. A. Fleming, Jr., formerly of the South Carolina Highway Patrol, appeals from the trial court's order granting summary judgment to Boykin Rose of the South Carolina Department of Public Safety and James Caulder of the South Carolina Highway Patrol. At the conclusion of the investigation, Ivey submitted a summary report to Rose. A few days later, Ivey presented a**

memo to Rose which contained recommendations for disciplinary actions against the troopers involved in the accident. This memo included a recommendation that Lt. James Fleming, who was not involved in either the accident or any of the subsequent investigations, be suspended for five days for allegedly failing to thoroughly interview Trooper Jerry Cobb. Additionally, the memo contained the allegation that Fleming failed to pass on crucial details regarding the accident.

On May 29, 2015, I sent an email containing all 4 Accident Reports, Witness Statements and other correspondence Chief KD Phelps and after a brief phone call, I received a letter in the mail from him, dated June 5, 2015 (See ***Phelps Letter, dated June 5, 2015 PG.56 in Record on Appeal***), informing me that the department would conduct an investigation. However, on June 10, 2015, I received a letter from Warren Ganjehsani (See ***Ganjehsani Letter, dated June 10, 2015 PG.56 in Record on Appeal***), informing me that the IRF found no liability and the department declines to take further investigative efforts SC Code Ann. 15-78-50 and will not be commenting further SC Code Ann. 16-17-410 Conspiracy to defeat enforcement of the laws. Under the Doctrine of Acquiescence as well as the Maxim in Law which states that "silence shows consent" 6 Barb. [N.Y.] 2B, Qui non negat, fatetur and "He who does not deny, agrees," (Trayner, Maxim 503). Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof. On or around the end of December 2015, I received a document from Norma Jett, dated December 21, 2015, titled See ***document signed by Norma Jett, dated December 21, 2015, titled "RESPONSES AND OBJECTIONS TO PLAINTIFF'S DISCOVERY REQUESTS MISCHARACTERIZED AS MOTION FOR DISCOVERY"*** specifically on page 4, item# 7PG. ***57-62 in Record on Appeal***) where she states that "Defendants deny that defendant Ganjehsani can refuse of did refuse to allow an ethics investigation" SC Code Ann. 17-28-350. (See Transcript of Hearing held on May 18, 2016, Page 11 Lines 1-8 Curtis statement that Notice given 2014 (See EXHIBIT-5 NOTICE OF INTENT TO FILE LAWSUIT) SEE Transcript Lines 10-25 Reiterating notification of OPR which initiated causes of action. SEE ***Transcript PG. 13 Lines 23-25*** Curtis pointing out causes of action which led to complaint.

The remaining part of the case is the fact that originally, both the front judgement page and the FINAL ORDER were both signed and dated on May 16, 2016 (***See Exhibit 2 and final order pg.2-6 in Record on Appeal***) even though my hearings were not held until May 18, 2016, ***Notices to Appear to May 18, 2016 Hearing and EXHIBIT -1***), Later, I received a completely new copy of the front, judgement page with the date May 18, 2016 (***EXHIBIT 3***), however, the last page of the FINAL ORDER remained as signed and dated on May 16, 2016, two days prior to my hearing. A "final judgment" also traditionally requires that the ruling dispose of all the issues in the action. Link, 302 S.C. at 5 n. 3, 393 S.E.2d at 178 n. 3 (1990). and also " ***Bass v. Hoagland, 172 F.2d 205, 209 (1949); DeVecchio v. Illinois Dept. of Corrections, 8 F.3d 509, 514 (7th Cir. 1993). SC TITLE 23 Ch. 6 DPS Article 1 Sec. 23-6-30.*** In the Hearing, the Judge said that he would review the file, but his decision had already been made and his order to dismiss had already been signed and the order had been entered into the Richland County Public Index on May 16, 2016, two days before my hearing. ***See Transcript PG. 14 Lines 24-25 Judge said he would review file and PG. 15 Line 1 Judge let me know his decision in due course, but in all truth, he had already rendered his decision. Transcript Lines 5-18 Curtis attempting to clarify causes of action once again. Canon 3, Items 2,3,(7)5,7(ii),(b)(d)(C)(1)(2)***

ARGUMENT

The *only* issues in this case are . . .”

I. The trial court erred by prematurely dismissing the case because had the judge even read the complaint (See complaint, page 19, item#27) itself, there is enough information to support its own merit.

This court unwaveringly renounced reviewing any documents presented in this case other than those presented by the defense. This court’s unwillingness to stop the defense from manipulating all of the elements of the case into one and then claiming statute of limitations about all elements was uncompromising. How can one claim statute of limitations regarding occurrences which happened in May and June of 2015? In all fairness, the Judge could have reviewed the complaint and supporting documents a little closer to see that there are still issues that yet to be addressed. A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. The law presumes at least nominal damages at that point. The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose.” *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997)

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.* Further, the complaint should not be dismissed

merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

THE STATE OF SOUTH CAROLINA

In The Court of Appeals FACTS and Procedural Backgrounds

Fleming v. Rose, et al : In this tort action, Lt. J. A. Fleming, Jr., formerly of the South Carolina Highway Patrol, appeals from the trial court's order granting summary judgment to Boykin Rose of the South Carolina Department of Public Safety and James Caulder of the South Carolina Highway Patrol. *At the conclusion of the investigation, Ivey submitted a summary report to Rose. A few days later, Ivey presented a memo to Rose which contained recommendations for disciplinary actions against the troopers involved in the accident. This memo included a recommendation that Lt. James Fleming, who was not involved in either the accident or any of the subsequent investigations, be suspended for five days for allegedly failing to thoroughly interview Trooper Jerry Cobb. Additionally, the memo contained the allegation that Fleming failed to pass on crucial details regarding the accident.*

Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) as to his cause of action for intentional infliction of emotional distress.

- II. **The fact that my hearing wasn't until May 18, 2016, yet both the first page of the judgement and final page of the order were both signed and dated May 16, 2016 and then later, I received only the front page of the judgement May 18, 2016 confirms that the documents were signed on May 16, 2016 therefore removing any right of due process.**

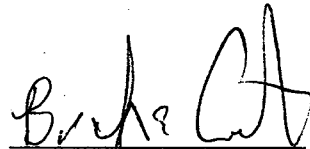
Rule 43 (K), provides in relevant part, no agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered into the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. This application presents the standard on review that Courts in this State will not enforce and order pursuant to Rule (43)k unless the terms of the settlement are set forth within the order. " *Bass v. Hoagland, 172 F.2d 205, 209 (1949); DeVecchio v. Illinois Dept. of Corrections, 8 F.3d 509, 514 (7th Cir. 1993).* **SC TITLE 23 Ch. 6 DPS Article 1 Sec. 23-6-30**

CONCLUSION

For the foregoing reasons, appellant request that that this Court finds that the May 16/May 18, 2016 order as dictated by the trial court unenforceable.

Further, appellant respectfully requests that this court review the three documents which the appellant has submitted previously, which have been overlooked by the trial court (EXHIBIT "I") *See June 5, 2015 Letter from Chief K.D. Phelps, June 10, 2015 Letter from Warren Ganjensani and (ITEM "J") document signed by Norma Jett, dated December 21, 2015, titled "RESPONSES AND OBJECTIONS TO PLAINTIFF'S DISCOVERY REQUESTS MISCHARACTERIZED AS MOTION FOR DISCOVERY" specifically on page 4, item# 7.* For the foregoing reasons, appellant request to charge that this Court finds that the May 16/May 18, 2016 order as dictated by the trial court unenforceable. Further, appellant respectfully requests, to remove the "with prejudice" from the FINAL ORDER and to move case back to trial court to address remaining Causes of Action still so triable and an Oral Argument since simply submitting documents and exhibits have proven to be fatal to this Appellant.

Respectfully submitted this 27th day of February 2017



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Judge L. Casey Manning, Fifth Judicial Circuit

- Appellate Case No. 2016-001239

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Respondent(s)

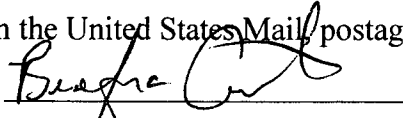
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CERTIFICATE OF SERVICE

I certify that I have served the Appellants Final Reply Brief to: Jeanette McBride-Clerk of Court
Richland County Court of Common Pleas Post Office Box 2766 Columbia, South Carolina
29202 and to the Respondent(s) by depositing a copy of it in the United States Mail postage
prepaid, on February 27, 2017


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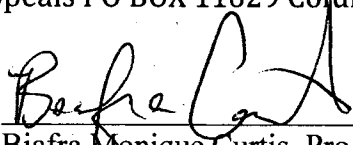
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CERTIFICATE OF SERVICE

I certify that I have served the Appellants Final Reply Brief to Respondents by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2017 and to The Honorable Jenny Abbott Kitchings, Clerk South Carolina Court of Appeals PO BOX 11629 Columbia, SC 29211


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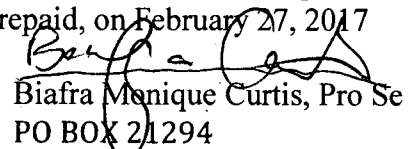
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