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May 5, 2017

The Honorable J.C. Nicholson, Judge
Ninth Judicial Circuit
Charleston County Judicial Center
100 Broad Street, Suite 341
Charleston, South Carolina 29401

RECEIVED

MAY 19 2017

SC Court of Appeals

Re: *Glynndeavin von Fox v. Charleston Place Hotel (Belmond)*, Case No. 16-CP-10-6077,
Court of Common Pleas, Charleston County

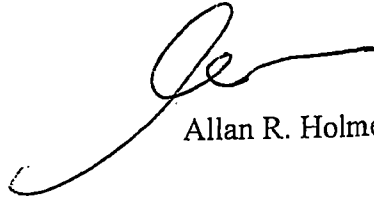
Dear Judge Nicholson:

Attached is a proposed order of dismissal in the above-referenced matter. Please let me know if any modifications are needed.

I also want to clarify an issue that arose near the end of the hearing. Mr. von Fox is being copied. I was correct in stating that S.C. Code Ann. § 45-2-10, *et seq.*, the Lodging Establishment Act, does not provide a private cause of action for any violation of it. Moreover, contrary to my thinking at the end of the hearing, that statute does not provide any cause of action for the S.C. Attorney General. However, there is another statute – not referenced by Mr. von Fox - S.C. Code Ann. § 45-9-10, *et seq.*, which prohibits a denial of accommodations on account of race, color, religion, or national origin. The S.C. Attorney General can initiate an action under that statute. An individual is also entitled to bring an action under § 45-9-10, *et seq.*, but he must first file a charge with the S.C. Human Affairs Commission, seek conciliation, and exhaust administrative remedies. *See* S.C. Code Ann. § 45-9-110. The proposed order addresses these things while setting out my understanding of the basic foundation for your ruling: there is no authority which would support a contention that a person has an unconditional absolute right to require a place of accommodation to provide that person a spa treatment on demand.

With kind regards, I am

Respectfully yours,

A handwritten signature in black ink, appearing to be 'A. Holmes', with a long horizontal flourish extending to the right.

Allan R. Holmes

Enclosure as stated.

cc (w/enclosure): Mr. Glynndeavin von Fox
64 Market Street, Suite 117
Charleston SC 29401

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
)
 Glynndeavin von Fox,)
)
 Plaintiff,)
)
 vs.)
)
 Charleston Place Hotel (Belmond),)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 16-CP-10-6077

ORDER

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SC Court of Appeals

This matter came before this Court on Thursday, April 27, at 11:30 a.m., for hearing on the Defendant’s Motion to Dismiss. At the hearing, the *pro se* Plaintiff Glynndeavin von Fox appeared on his own behalf, and Allan R. Holmes, Esq., of the firm Gibbs & Holmes appeared on behalf of the Defendant.

All of Plaintiff’s factual allegations are set out in his Complaint as follows:

On the date of the 19th of July, 2016, I was refused the ability of a service [*sic*] at the Belmond Charleston Place Hotel. The treatment at the Charleston Place Spa was to treat a diabetic condition that was caused from medicine taken by MUSC, and is in a current medical malpractice lawsuit with the state and federal government. The issue as stated for the refusal of the spa treatment was based on the falling asleep of the guest, Glynndeavin von Fox, in the relaxation room, and the pre-approved use of the locker storage until returning from a lease visit.[*sic*] The movement [*sic*] by the corporate entity of Belmond shows a clear violation of the Title 45- Hotels, Motels, Restaurants and Bordinghouses,[*sic*] Chapter 2, The Lodging Establishment Act, Section 45-2-10.¹ I do also believe that this issue occurred because of my national origin name, and my racial status as a local Santee (Sante) Indian. However, I look to this honorable court to make that determination. I am also under a political asylum request with the United Nations in Geneva (UNOG).

November 14, 2016, Complaint of Plaintiff.

¹ This footnote of the Complaint contains an online citation to S.C. Code Ann. Section 45-2-10, *et seq.*, the Lodging Establishment Act.

In his claim for relief, Plaintiff states:

I would like the court, if found in my favor [*sic*] to award the amount of 50,000.00 USD to me in a wealth management account at the Bank of South Carolina, or an account creation [*sic*] with the Belmond Corporation for future stays at Belmond properties around the world, given the stance of the Belmond Corporation in the given testimony from the Belmond Corporation as owners of the Charleston Place Hotel.

Id.

For purposes of a motion to dismiss, the Plaintiff's allegations of facts must be accepted as true and construed in the light most favorable to the Plaintiff. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137 (1999). However, the Court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556 (Ct. App. 2004). Plaintiff alleges only a few facts: that he was denied "spa treatment" because he fell asleep "in the relaxation room and the pre-approved use of the locker storage until returning from a lease visit." November 14, 2016, Complaint of Plaintiff. Plaintiff contends that these facts - if proved - would violate the Lodging Establishment Act. However, there is nothing in the Lodging Establishment Act, or in any related statutes, which would provide a cause of action to someone who is not provided a spa treatment because he falls asleep. *See* S.C. Code Ann. § 45-2-10 *et seq.*

Moreover, S.C. Code Ann. § 45-2-80 of the Lodging Establishment Act specifically provides that: "Nothing in this chapter prohibits an innkeeper from denying accommodations to a guest or ejecting a guest for any valid nondiscriminatory reason not otherwise provided in this chapter", and the Lodging Establishment Act does not contain any provision for a private cause of action. This Court is unaware of any authority which would support a contention that any

person has an unconditional legal right to require a place of accommodation to provide that person a spa treatment on demand.

While Plaintiff claims to "*believe* that this issue occurred because of [his] national origin name, and [his] racial status as a local Santee (Sante) Indian" (emphasis added), he alleges no facts whatsoever to support this belief, or which would support a cause of action related to it. We are given not a clue as to how his "national origin name" (whatever that means), or his status as a "local Santee (Sante) Indian," or even his status as someone seeking asylum from the United Nations in Geneva has even a theoretical connection to his falling asleep and not being provided a spa treatment².

Plaintiff's Complaint must comply with Rule 8(a), SCRPC ("A pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . ."); *Clark v. Clark*, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987) (holding Rule 8(a), SCRPC, "requires a litigant to plead the ultimate facts which will be proved at trial"); *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (providing conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings). Even though he is proceeding *pro se*, Plaintiff is not excused from complying with the basic requirements of pleading. *See State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law."); *Spring Champion v.*

² A separate South Carolina statute does prohibit a denial of accommodations on account of race, color, religion, or national origin, S.C. Code Ann. § 45-9-10, *et seq.*, but that is not the statute upon which the Plaintiff relies, and his Complaint contains no allegations which would causally link a denial of accommodations to any of these characteristics. Moreover, no individual may bring an action under § 45-9-10, *et seq.*, without first filing a charge with the S.C. Human Affairs Commission, seeking conciliation, and exhausting administrative remedies. *See* S.C. Code Ann. § 45-9-110.

S.C. DMV, No. 2016-UP-009, 2016 S.C. App. Unpub. LEXIS 11, 2016 WL 192037 (Ct. App. Jan. 13, 2016) (applying *State v. Burton* to civil *pro se* litigant).

Because Plaintiff's Complaint fails to allege facts showing that he is entitled to relief, it must be dismissed. For the foregoing reasons, the Complaint of Plaintiff is hereby ORDERED dismissed.

AND IT IS SO ORDERED.

J. C. NICHOLSON, JR.
PRESIDING JUDGE

May , 2017
Charleston, South Carolina