

83634

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper Jr., Circuit Court Judge

Case No.# 2015-002356

RECEIVED

JUN 08 2017

SC Court of Appeals

Clarence B. Jenkins Jr.,

Appellant,

v.

South Carolina Department of Employment &
Workforce, South Carolina Budget and Control Board, and
Office of the Governor of South Carolina,

Respondents.

PETITION FOR REHEARING

Clarence B. Jenkins Jr.,
945 Wire Rd.
Neeses, South Carolina 29107
Telephone: (803) 263-4514
Email: upscale81@yahoo.com

Pro Se Appellant

Pursuant to Rule 221, SCACR , Appellant respectfully request a rehearing in this case on the following grounds:

1. The Court wrongly applied a single pleading to the entire Complaint.
2. Appellant properly listed agencies as Defendants not as individuals.
3. Appellant successfully pleaded acts of conspiracy by state agencies and their individual employee(s) as conspirators as a cause of action in Complaint..
4. The Court did not apply the standard with previous rulings.
5. Denying a right to work, eat, and employment opportunities by blackballed affect “out of the scope of their official duty” meet the standard of actual fraud, actual malice, intent to harm or a crime involving moral turpitude.
6. S.C. Code 15-78-70(b) does not give a government entity immunity from suit and liability
7. “Barred From Applying” was applied at South Carolina Department of Employment Workforce Human Resources Office using their computerized application software during normal working hours as an employee therefore override an act out of the scope of her employment in this Opinion.
8. The standard of an employee of a government entity acting within the scope of their official duty and out of the scope of their official duty was achieved in Plaintiff’s complaint.
9. The Justices of South Carolina Court of Appeals mis-characterization of facts pleaded in Appellant’s complaint suggesting separation in their Opinion.

Appellant's Complaint:

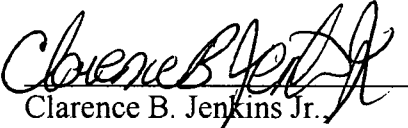
#58.

Defendant Adrienne Sorensen acting outside the scope of her employment at SCDEW, intentionally and recklessly published defamatory statement in her capacity at SCDEW as a mid-level employee therefore caused deprivation.

#59.

Defendant Adrienne Sorensen committed "Barred From Applying" with malicious intent. originate, utter, circulate or published any false statement therefore a violation pertaining to slander and libel in her capacity at SCDEW under the authority SCDEW, SCBCB and office of the Governor of South Carolina

The grounds for this Petition are more fully set forth in the accompanying Memorandum in Support of Petition for Rehearing.



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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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Pro Se Appellant

1. ARGUMENT

Appellants and Respondents have used South Carolina Court of Appeals' decision, *Flateau v. Harrelson*, 355 S.C 197, 584 S.E.2d 413 (S.C.Ct.App. 2003) to provide a defense. Appellant has never been separated the illegal action of Barred from Applying" by Adrienne Sorenson of South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of the Governor of South Carolina. Appellant as Pro Se and a witness testified under oath that Adrienne Sorenson met the standard within the scope of her employment and never separated her as a fact.

Transcript from September 15, 2015 Hearing:

P.13 lines 9-13

It was within the scope of her position because she was on the job when she did it. She may have been a midlevel employee. She may have acted or manipulated on the system, but I'm pretty sure she had her supervisor's approval.

P.15 lines 16-21

Furthermore, when this all happened, I had a written documentation that shows where the Budget and Control Board had gotten up a list of all agencies that I applied for and sent them notification asking them to ignore the bar from applying. It's too late then. I am damaged goods.

P.23 lines 7-10

Again though, I am not separating Adrienne Sorenson from all the governmental entities. She was their employee. She did her job. What she did at the time she was asked for.

P.23 lines 11-15

And based on all other communications, written communications, where Adrienne Sorenson sent me a rejection letter saying that, "You have been denied from applying for this position." it always went back to Kerry Paul.

Appellant's complaint successfully pleaded a conspiracy of state agencies and individual(s) and furthermore as Pro Se and a witness testified under oath to that fact.

Transcript from September 15, 2015 Hearing:

P.12 lines 16-24:

But yet they all --I sent them notification of what had happened, and everybody said, "Oh, it was a system problems." That's what DEW said, right? But then the Budget and Control Board said that DEW made a change in their system intentionally.

So you've got two agencies, both of them saying something that is totally different. DEW says it was system error. The Budget and Control Board said that DEW did it and know they did it.

P.14 lines 12-16:

I am trying to bring a civil complaint against all those who was involved, and that includes the South Carolina Department of Employment Workforce, South Carolina Budget and Control Board, and the Office of South Carolina Governor.

Honorable G. Thomas Cooper Jr. had acknowledged who the Defendants were and the intent of the lawsuit therefore the COURT's Opinion only conclusion of an act out of scope by an employee(s) from a government entity is not based on facts, pleadings and testimony.

Transcript from September 15, 2015 Hearing:

P.30 lines 8-13:

THE COURT: Who did he serve?

MR. MATTHEWS: To my knowledge he served the Department of Employment Workforce, the Budget and Control Board and the office of the Governor.

THE COURT: So he served these defendants?

MR. MATTHEWS: Yes, sir.

THE COURT: Okay

P.30 lines 21-22:

THE COURT: I think he is trying to sue the Department of Administration.

South Carolina Court of Appeals Affirmed in its Opinion by stating a government entity is not liable under S.C. Code Ann. § 15-78-60(17) (2005) ("The governmental entity is not liable for a loss resulting from . . . employee conduct outside the scope of his official duties, or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."). South Carolina Court of Appeals has focused its attention of a government employee conduct being outside scope of his official duties therefore government entity is not liable for damages under the TORT ACT for South Carolina which has not given due prudence to the entire complaint.

South Carolina Court of Appeals has AFFIRMED in their Opinion that S.C. Code Ann 15-78-60(17) (2005) upholding the lower court ruling and declared three(3) elements of abuse of process: (1).an ulterior purpose (2) a willful act in the process that is not proper in the regular conduct of the proceedings (3) nothing mentioned.

Transcript from September 15, 2015:

P.15 lines 22-23

I am damaged goods. My character has been damaged.

P.16 lines 14-18

That's what DEW did. That's what their job was. Their job was to assist me with job opportunity. And by you marking me as barred from applying then there is not a chance in hell - - no disrespect - - that I would get a job.

South Carolina Department of Employment Workforce is to assist job seekers with employment not denied job opportunities by blackballed affect which “Barred From Applying” did do to Appellant, that had a destructive impact on his life therefore met an ulterior purpose. Appellant as Pro Se and witness testified as to such.

Transcript from September 15, 2015 Hearing:

P.17 lines 13-17

That’s what happened to me because I would be unable to attain employment.

I’ve had to live on the sympathy of family members. I applied for food stamps.

As a matter of fact, I am still getting food stamps because of the way the system has barred me.

For South Carolina Department of Employment Workforce to apply “Barred from Applying” from July 19, 2013 to December 30, 2018 against Appellant is an established verifiable effort to deny employment that is not proper in the regular conduct of the proceedings therefore met the standard. The third essential element can not be address because of no information provided by the COURT but any illegal actions by a individual(s) or a group to disrupt a person ability to exist shall not be exempt by South Carolina Court of Appeals. Appellant as Pro Se and a witness testified as to such under oath.

The COURT with this OPINION has given employers ability to do a willful act for harm that is not proper and without jurisdictional prosecution.

The OPINIONS of South Carolina Court of Appeals in Moore by Moore vs. Berkeley County School District 326 S.C. 584, 486 S.E.2d 9,11 (S.C. App. 1997) removes the purview of waiver of immunity. Courts of this district has stated Moody v. Darnell, 2010 WL 297810, at 3 (D.S.C. January 21, 2010); Carthens v. Lewis , 2009 WL 394299, at 6 (D.S.C February 17, 2009); Harkness v. City of Anderson , S.C., 2005 WL 2777574, at 4 (D.S.C October 25, 2005) McCall v. Williams, 52.F Supp.2d 611, 615 (D.S.C. 1999) because of Defendants had civilly conspired against Plaintiff was sufficient to remove from the purview an intentional acts of a government employees as an exception to South Carolina's waiver of immunity, have all agreed.

South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of the Governor of South Carolina all conspired against Appellant which was successfully pleaded in the Complaint but ignored by Richland County Court of Common Pleas and South Carolina Court of Appeals. The Fourth Circuit, Anthony v. Ward, 336 Fed. Appx. 311, 316-17 (4th Cir. 2009) has agreed with stated previously Opinions.

Appellant was making the argument as to an act out of the scope of her employment only referring to a classification of a relationship to supervisor and mid-level employee such as Adrienne Sorensen not a separation away from office and duty. Appellant as Pro Se testified and a witness under oath as to such:

Transcript from September 15, 2015 Hearing:

P.23 lines 16-20:

So by Adrienne Sorenson being a mid-level employee, I do not believe that she did this on her own accord. And if she did, shame on her and shame on her supervisor at DEW for not having to do that, but I don't think she did that.

South Carolina Code Ann 15-78-70(b) nothing shall be construed to give government entity immunity from liability for act of an employee outside of the scope of their official duty when the conduct is malicious, intent, fraud with malice to harm. The actions of all Respondents as individual or individuals met the standard of South Carolina Ann 15-78-70(b).

As of January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015. Richland County Court of Common Pleas did not fulfill the Alternative Dispute Resolution Order as required by South Carolina Supreme Court therefore due prudence was not provided to Appellant.

South Carolina Court of Appeals has determined with previous rulings an employee(s) acting within the scope of their official duties or acting out of the scope of their official duties being grossly negligent of a government entity is liable under S.C. TORT ACT. The Appellant's complaint must be seen in the same light and received same standards as others when there is clear evidence to reverse and remanded to lower court. See all attachments.

II. CONCLUSION

Pursuant to Rule 221, SCACR, Appellant respectfully requests the Court rehear this matter, reconsider its ruling in this case, and reverse the Lower Court's Order.

June 6, 2017



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Honorable G. Thomas Cooper Jr., Circuit Court Judge

Case No.# 2015-002356

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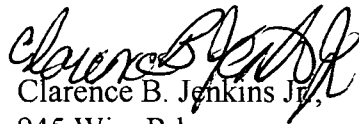
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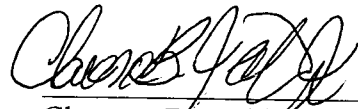
**PROOF OF SERVICE FOR APPELLANT'S PETITION FOR REHEARING AND
MEMORANDUM**

RECEIVED
JUN 08 2017
SC Court of Appeals


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Pro Se Appellant

I hereby certify that on June 5, 2017 served a copy of Appellant's Petition for Rehearing and Memorandum in Support of Petition by placing a copy of the said documents in U.S. Postal mail with sufficient postage thereon the following:

Atty. Eugene H. Matthews
PO Box 7788
Columbia, South Carolina 29
Attorneys for the Respondents


Clarence B. Jenkins Jr.,
Pro Se Appellant

Neeses, South Carolina
Date: June 6, 2017

1 today is because they got caught.

2 So that's the only reason why they have owned
3 up to it. If they would have never gotten caught, they
4 would have never owned up to it today. That's why they
5 are here.

6 So when you look at the law -- and the reason
7 why they intended to blackball me and did not notify me
8 because during that same week, I had applied for other
9 jobs with the State of South Carolina, even at DEW; and
10 DEW didn't send me notification saying that they
11 received this error. This was an error for application.

12 I had applied for at least seven other jobs
13 with the State of South Carolina. The Judicial Center
14 was the only one that contacted me with notification.
15 DEW did not. The Budget and Control Board did not.

16 But yet they all -- I sent them notification
17 of what had happened, and everybody said, "Oh, it was a
18 system problem." That's what DEW said, right? But then
19 the Budget and Control Board said that DEW made a change
20 in their system intentionally.

21 So you've got two agencies, both of them
22 saying something that is totally different. DEW says it
23 was a system error. The Budget and Control Board said
24 that DEW did it and know they did it.

25 So when you look at the laws that governs the

1 State of South Carolina, as far as the defamation
2 process, my character has been slandered. It has been
3 slandered because I have been unable to attain State
4 employment.

5 It's not because I did anything wrong, not
6 because I'm unfit, it's all because an employee,
7 Adrienne Sorenson, did something, marked me as a
8 candidate being barred.

9 It was within the scope of her position
10 because she was on the job when she did it. She may
11 have been a midlevel employee. She may have acted or
12 manipulated on the system, but I'm pretty sure she had
13 her supervisor's approval.

14 Because I have other documentation in the
15 folder as well that everything that Adrienne Sorenson
16 did, it referred me back to Kerry Paul, who was her
17 director at the time. So there's many documentation.

18 As far as the defamation, I have been for two
19 years defending a lawsuit against someone for slander,
20 marked for barred from applying took place in July of
21 2013. I filed my complaint here in Richland County on
22 May 21, 2015.

23 So that's within the two years time period.
24 So that qualifies that. When you think about the reason
25 why my complaint is civil and not criminal because .

1 Adrienne Sorenson, the State of South Carolina, was
2 notified.

3 I contact the Office of Inspector General. I
4 contacted the South Carolina Attorney General's Office.
5 I filed it with this documentation, and not one of those
6 agencies sought to make charges against Ms. Sorenson or
7 to held her accountable.

8 I want it made that relationship to show that
9 what she did according to the rules in the State of
10 South Carolina, it was criminal, but I'm not trying to
11 criminalize Adrienne Sorenson here today.

12 I am trying to bring a civil complaint against
13 all those who was involved, and that includes the South
14 Carolina Department of Employment Workforce, South
15 Carolina Budget and Control Board, and the Office of
16 South Carolina Governor.

17 Now, when you think about South Carolina Code
18 of Law 1-13-30, Section (M), which says a covered entity
19 means an employer, employment agency, labor
20 organization, or joint management committee. All those
21 fall in that category.

22 When you go down to Section 1-13-80 it says:
23 (A) It is an unlawful employment practice for the
24 employer to fail or refuse to hire, bar, discharge from
25 employment or otherwise discriminate against an

1 individual with respect to the individual's compensation
2 based on race, religion, color, sex, age, national
3 origin, or disability.

4 Section 2 of that same law, 1-13-80: To
5 limit, segregate, or classify employees or applicants
6 for employment in a way which would deprive or tend to
7 deprive an individual of employment opportunities or
8 otherwise adversely affect the individual's status as an
9 employee because of the individual's race, color,
10 religion, sex, age, national origin, or disability.

11 That is exactly what happened to me. I was
12 classified and therefore by being classified, it took
13 away in effect my employment opportunity. That's what
14 they have done. They have completely destroyed my
15 character.

16 Furthermore, when this all happened, I had a
17 written documentation that shows where the Budget and
18 Control Board had gotten up a list of all agencies that
19 I applied for and sent them notification asking them to
20 ignore the bar from applying. It's too late then. I am
21 damaged goods.

22 I am damaged goods. My character has been
23 damaged. I have always been told, a good name is more
24 than money because a good name carries you places where
25 other people and money can't do sometimes. In this case

1 my name has been destroyed, and those who knew about it
2 need to be held accountable.

3 Let me go a little bit further. Section
4 15-3-550 refers to slander, two years. An action for
5 libel, slander, or false imprisonment; and (2) an action
6 upon a statute for a forfeiture. Within two years you
7 can apply a slander libel lawsuit.

8 There is something else I would like to make
9 mention of as well if I could. Section 1-13-30, letter
10 (f): An employment agency means any person regularly
11 undertaking to procure employees for an employer or to
12 procure for employees opportunities to work for an
13 employer and includes an agent of such a person.

14 That's what DEW did. That's what their job
15 was. Their job was to assist me with job opportunity.
16 And by you marking me as barred from applying then there
17 is not a chance in hell -- no disrespect -- that I would
18 get a job.

19 If the State of South Carolina saw me okay to
20 work for them, there ain't no way that they would have
21 referred me out to private employees. Because you can't
22 have your cake and ice cream.

23 You can't say I can't work there and then say
24 I'm good on another end. That is not going happen. We
25 don't live in that society. We don't have a very

1 forgiving spirit.

2 Another argument I would like to make, this is
3 a declaration of policy. It says the General Assembly
4 declare the practice of discriminating against any
5 individual because of race, religion, color, sex, age,
6 national origin, or disability is a matter of State
7 concern and declares that discrimination is unlawful and
8 in conflict with the ideals of South Carolina and the
9 nation, as this discrimination interferes with
10 opportunities of the individual to receive employment
11 and to develop according to the individual's own ability
12 and is degrading to human dignity.

13 That's what happened to me because I would be
14 unable to attain employment. I've had to live on the
15 sympathy of family members. I applied for food stamps.
16 As a matter of fact, I am still getting food stamps
17 because of the way the system has barred me.

18 That's why I said I am damaged goods, not
19 because I did anything at DEW, not because I violated
20 anybody, not because I'm harassing. All I wanted was an
21 opportunity to work.

22 And DEW, somehow or another, they saw me and
23 treated me that way; and I can't think of why because I
24 don't even know any of those people there. I have done
25 nothing to them.

1 Then, furthermore, to go into that, as far as
2 job skills, each month I produced the highest level of
3 people who become employed because of the time that I
4 spend with them doing applications, working with them to
5 make sure in my job that they were out there so there is
6 enough to go around.

7 Again though, I am not separating Adrienne
8 Sorenson from all the governmental entities. She was
9 their employee. She did her job. What she did, she did
10 at the time she was asked for.

11 And based on all other communications, written
12 communications, where Adrienne Sorenson sent me a
13 rejection letter saying that, "You have been denied from
14 applying for this position," it always went back to
15 Kerry Paul.

16 So by Adrienne Sorenson being a mid-level
17 employee, I do not believe that she did this on her own
18 accord. And if she did, shame on her and shame on her
19 supervisor at DEW for not having to do that, but I don't
20 think she did that.

21 And then there is one other point I want to
22 make. When I actually applied and notified all of them,
23 you know the first time I heard from the Governor's
24 Office?

25 I tried for at least a year and a half, two

1 THE COURT: You mean he has not served the
2 individual?

3 MR. MATTHEWS: Correct.

4 THE COURT: He hasn't served any of the
5 individual defendants?

6 MR. MATTHEWS: There are no individuals who he
7 has listed in his complaint --

8 THE COURT: Who did he serve?

9 MR. MATTHEWS: To my knowledge he served the
10 Department of Employment Workforce, the Budget and
11 Control Board, and the Office of the Governor.

12 THE COURT: So he served these defendants?

13 MR. MATTHEWS: Yes, sir.

14 THE COURT: Okay.

15 MR. MATTHEWS: To the extent that you -- well,
16 the Budget and Control Board now is, as you are aware,
17 its functions have been split up between a number of
18 agencies, including the Department of Administration.
19 From his complaint frankly, I don't know who within
20 that, who he is trying to sue; therefore --

21 THE COURT: I think he is trying to sue the
22 Department of Administration.

23 MR. MATTHEWS: Well, if that's the case, Your
24 Honor, then if you are of a mind to grant his motion,
25 then you certainly have the power to do that. My only

Slip Opinion

Smith v. City of Greenwood,
2010 WL 2430952 (D.S.C. May 13, 2010)

The plaintiff has specifically alleged in her Amended Complaint that “[s]uch actions on the part of the named defendants in their *individual capacities* and all *acting outside the course and scope of their employment* amount to an unlawful conspiracy.” (Am. Compl. ¶ 29 (emphasis added).) Accordingly, the plaintiff has attempted to remove her conspiracy claim from the scope of the SCTA by alleging that the acts of the defendants were expressly outside of the scope and course of the defendants' employment.

*2 The defendant's contend that regardless of the averment, the SCTA is the exclusive statutory remedy for all torts against government employees and, therefore, its statute of limitations controls the timeliness of the conspiracy claim, even if it is ultimately proven that the defendants' actions exceeded the scope of their duties. The plaintiff, in contrast, contends that the averment itself, alleging acts outside of the course of the defendants' employment, exempts the claim from the SCTA. Both parties have relied on the South Carolina Court of Appeals' decision, in *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (S.C.Ct.App.2003), to fan their cause.

In *Flateau*, the South Carolina Court of Appeals considered whether the STCA applied to common law tort claims of outrage, invasion of privacy, and civil conspiracy brought against individual employees of the S.C. Commission for the Blind. Unlike the present case, the Complaint did not allege actions outside of the scope of the defendants' employment and, instead, expressly averred that “[a]t all time of the incident ..., the Defendants were members of the Board of the South Carolina Commission for the Blind.” *Id.* at 204, 584 S.E.2d 413. The court of appeals emphasized 6 separate averments that reinforced the express allegation in the Complaint that the defendants were acting pursuant to their official duties. *Id.* at 204–05, 584 S.E.2d 413. The Court of Appeals ultimately concluded that the “pleadings clearly and unequivocally” alleged acts taken in accord with the board members “official duties” about “the official business of the Commission.” *Id.* at 205, 584 S.E.2d 413. As a result of its determination that the SCTA “controls,” the court of appeals subsequently concluded that the Act's two-year statute of limitations, therefore, applied. *Id.* at 207, 584 S.E.2d 413.

The plaintiff, here, counters that *Flateau* is readily distinguishable from the present case, insofar as allegations of official conduct were pled there, and not here. The defendants have impressively reinforced their view of *Flateau* by citing

a difficult portion of it, which appears at the very end of that decision and which would tend to support the defendants' present position on the applicability of the SCTA statute of limitations. Namely, the court of appeals, stated, in its conclusion, “We rule the two-year statute of limitations applies *even if the Board members acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or a crime involving moral turpitude.*” *Id.* at 208, 584 S.E.2d 413 (emphasis added).

This statement has caused the undersigned some consternation and is, frankly, hard to understand. The court of appeals did not expound on its stray remark. The Court has tried to understand *Flateau* both in the context of its specific facts and holding and prior precedent.

First, courts have been generally consistent in concluding that intentional acts of a governmental employee, intended to do others harm, are deemed outside the scope of their employment and, therefore, constitute an exception to South Carolina's waiver of immunity under the Tort Claims Act. See S.C. Code § 15–78–60(17). The South Carolina Court of Appeals, *Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 486 S.E.2d 9, 11 (S.C.App.1997); the Fourth Circuit, *Anthony v. Ward*, 336 Fed. Appx. 311, 316–17 (4th Cir.2009) (“The jury's finding that Defendants had civilly conspired against Plaintiff was sufficient to remove from the purview of the SCTCA's protected class of government employees.”); and courts of this district, *Moody v. Darnell*, 2010 WL 297810, at *3 (D.S.C. January 21, 2010); *Carthens v. Lewis*, 2009 WL 394299, at *6 (D.S.C. February 17, 2009); *Harkness v. City of Anderson, S.C.*, 2005 WL 2777574, at *4 (D.S.C. October 25, 2005); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C.1999), have all agreed.

*3 Second, the court of appeals analysis, in *Flateau*, specifically turned on the way in which the Complaint had been pled. The court went to some length to explain how the averments implicated the SCTA, by virtue of their focus on official duty acts. It is a reasonable interpretation of the difficult conclusion in *Flateau*, that the court meant to say that the statute of limitations for the SCTA was applicable, even if it was later demonstrated that acts outside of the scope of the defendants' employment were committed, because the Complaint had rightly implicated the SCTA in the first instance. The Court is unaware of any other interpretation which would render *Flateau* and prior and controlling precedent comparably harmonious.

2010 WL 2430952

Only the Westlaw citation is currently available.
United States District Court,
D. South Carolina,
Anderson/Greenwood Division.

Julia B. SMITH, Plaintiff,

v.

CITY OF GREENWOOD; Mathis Plumbing
& Heating Company, Inc; James H. Mathis;
Steven J. Brown; Lawrence Ouzts; and Ronnie
Powell, in their individual capacities, Defendants.

Civil Action No. 8:09-2061-
HFF-BHH. | May 13, 2010.

Attorneys and Law Firms

James Lewis Cromer, Julius Wistar Babb, IV, Tandi D. Ross,
Cromer and Mabry, Columbia, SC, for Plaintiff.

Charles F. Thompson, Jr, Katherine Anne Phillips, Malone
Thompson and Summers, Columbia, SC, Roy R. Hemphill,
McDonald Patrick Tinsley Baggett Poston and Hemphill,
Greenwood, SC, for Defendants.

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

BRUCE HOWE HENDRICKS, United States Magistrate
Judge.

*1 This matter is before the Court on Defendant Brown's,
Ouzts' and Powell's motion to dismiss pursuant to Federal
Rule of Civil Procedure 12 [Doc. 33], requesting that the civil
conspiracy claim against them be dismissed. In her Amended
Complaint [Doc. 13], the plaintiff has pled claims for race
discrimination pursuant to Title VII of the Civil Rights Act of
1991, as amended, for interference with contractual relations,
and civil conspiracy.

Pursuant to the provisions of Title 28, United States Code,
Section 636(b)(1)(A), and Local Rule 73.02(B)(2)(g), D.S.C.,
all pretrial matters in employment discrimination cases are
referred to a United States Magistrate Judge for consideration.

APPLICABLE LAW

MOTION TO DISMISS STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a motion
to dismiss for failure to state a claim should not be granted
unless it appears certain that the plaintiff can prove no set
of facts which would support its claim and would entitle
it to relief. In considering a motion to dismiss, the court
should accept as true all well-pleaded allegations and should
view the complaint in a light most favorable to the plaintiff.
Mylan Laboratories, Inc. v. Matkari, 7 F.3d 1130, 1134 (4th
Cir.1993) (citations omitted).

DISCUSSION

The defendants Brown, Ouzts, and Powell contend that the
plaintiff's civil conspiracy claim should be dismissed because
it was not pled prior to the expiration of the two-year statute of
limitations period under the South Carolina Tort Claims Act
("SCTA"). See S.C. Code § 15-78-110. The plaintiff responds
that the SCTA does not apply to her claim of civil conspiracy
and, therefore, a three-year statute of limitations is applicable.
Specifically, the plaintiff argues that she has expressly sued
the defendants in their individual, as opposed to official,
capacities, which removes them from the ambit of the SCTA.

Section 15-78-70 of the Act provides:

(a) This chapter constitutes the exclusive remedy for any
tort committed by an employee of a governmental entity.
An employee of a governmental entity who commits a tort
while acting within the scope of his official duty is not liable
therefor except as expressly provided in subsection (b).

(b) Nothing in this chapter may be construed to give an
employee of a governmental entity immunity from suit and
liability *if it is proved that the employee's conduct was not
within the scope of his official duties or that it constituted
actual fraud, actual malice, intent to harm, or a crime
involving moral turpitude.*

S.C. Code § 15-78-70 (emphasis added). Under Section
15-78-30: " 'Scope of official duty' or 'scope of state
employment' means (1) acting in and about the official
business of a governmental entity and (2) performing official
duties." S.C. Code § 15-78-30(i).

SECTION 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

June 5, 2017

Terry Hitchings, Clerk of Court
PO Box 11629
Columbia, SC 29211

Clarence B. Ferto Jr
945 Wue Rd
Newry, SC 29107

REF: 2015-002356

Ms Hitchings:

Please find one (1) original and six (6) copies of
Petition for Rehearing. A copy has been sent to
Atty. Eugene H. Matthews.

Thanks,

Clarence Ferto Jr

RECEIVED

JUN 08 2017

SC Court of Appeals