

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) C/A No. 2015-CP-22-00483

Willie Singleton,)
)
Plaintiff,)

vs.)

City of Georgetown, Janet Grant,)
Individually and as an employee of the)
City, Ricky Martin, individually and as)
An employee of the City, Robert O'Donnell,)
Individually and as Magistrate for the)
City of Georgetown,)

Defendants.)

**ORDER GRANTING
SUMMARY JUDGMENT
TO DEFENDANTS**

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SC Court of Appeals

This matter is before the court upon motion of the Defendants for summary judgment. A hearing on this matter was held on June 1, 2017; present at the hearing were Bonnie Travaglio Hunt, attorney for the Plaintiff and Douglas Charles Baxter, attorney for the Defendants.

Procedural History

The Plaintiff filed a Complaint with this court on May 14, 2015 and the Defendants removed the action to Federal Court on July 6, 2015. On February 13, 2017, the United States District Court granted Defendants' Motion for Summary Judgment as to 42 U.S.C. 1983, selective enforcement, equal protection, procedural due process, and race discrimination claims. The Federal Court declined to retain supplemental jurisdiction as to any state law claims and the matter was remanded back to State Court. The Federal Court noted that it was difficult to ascertain if the Plaintiff was alleging state law causes of action in the Complaint; however, to the extent he was asserting state law causes of action, these causes of action were remanded.

Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988).

Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (emphasis added). A party cannot rest on the mere allegations in his complaint. Nor can a party escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).

Facts

Viewing the evidence and all reasonable inferences in a light most favorable to the Plaintiff, I make the following findings of fact:

The Plaintiff is the owner of a lot located on Merriman Road in Georgetown, South Carolina. Beginning in 2009, the City of Georgetown sent the Plaintiff several letters notifying him that his property was in violation of City Ordinance Section 11-26 and specifically that the lot was overgrown with a dilapidated structure. The Plaintiff testified that he received at least two of these letters. On September 17, 2010, the Plaintiff was issued a Citation for violation of

Section 11-26 and notifying him of the court date on October 21, 2010. The Plaintiff appeared on the court date and he requested a jury trial. The case was set for a jury trial on January 10, 2011; however, it appears that the trial was postponed due to inclement weather. The case was then set for trial on April 14, 2011; however, it was continued at the Plaintiff's request as he had filed a grievance against Janet Grant with the Department of Labor, Licensing and Regulation.

The case was called for trial on July 13, 2011 before Municipal Judge Robby O'Donnell; however, the Plaintiff did not appear on that date and he was tried in his absence. The Plaintiff was found guilty by the jury of violating Section 11-26, and he was assessed a fine of \$1,092. The amount consisted of the fine and assessed court costs. Upon receiving notification of the jury verdict, the Plaintiff contacted Municipal Judge Robby O'Donnell, and on or about July 29, 2011 the Plaintiff filed a Notice of Appeal in Circuit Court. A hearing on the appeal was held in Circuit Court on April 12, 2013 at which time the conviction was affirmed, and, thereafter, the Plaintiff filed an appeal to the Court of Appeals of South Carolina. On or about January 7, 2015, the Court of Appeals issued an unpublished opinion that the appeal to Circuit Court was untimely and that the Circuit Court erred in not dismissing the appeal for lack of appellate jurisdiction. Shortly thereafter the Plaintiff paid the fine of \$1,092.

The Plaintiff testified that the City had not initiated a condemnation action, and he had never been denied a permit allowing him to make repairs to the structure. During the pendency of the action, a portion of the house collapsed and the Plaintiff consented to the City pushing the debris off of the sidewalk back onto the Plaintiff's property. Furthermore, during the hearing in Federal Court, the Plaintiff conceded that he did not have a viable taking claim (District Court Order footnote no. 3), and there had been no condemnation of the structure (District Court Order footnote no. 4).

Findings

The first, second, third and fifth causes of action were all premised on the City requiring the condemnation/demolition of the structure and/or “taking”; however, the Plaintiff has conceded that no taking or condemnation occurred and the Plaintiff presented no evidence to support these claims. The fifth cause of action is pursuant to 42 U.S.C. 1983 and the seventh cause of action is for selective enforcement; and the Federal Court granted summary judgment as to both of these causes of action. The Defendants are, therefore, entitled to summary judgment as to the above-referenced causes of action. The Defendants contend that all of the causes of action had been dismissed by the Federal Court’s order; however, Plaintiff contends that there was a cause of action for gross negligence related to failure to give notice of the jury trial. This court questions whether such cause of action was pled and the Plaintiff has presented no evidence of gross negligence; however, even if Plaintiff asserted such a cause of action, it should be dismissed as set out below.

The Tort Claims Act § 15-78-10 *et. seq.* of the Code of Laws of South Carolina, as amended governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 584 S.E.2d 413 (Ct. App. 2003). Section 15-78-60 of the Code of Laws of South Carolina, as amended, contains the following exceptions to waiver of immunity and provides that the governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

Accordingly, even if the Plaintiff pled a gross negligence cause of action, such alleged actions are encompassed in § 15-78-60, and the Defendants are, therefore, immune from liability.

Additionally, Defendants, Janet Grant, Ricky Martin and Robert O'Donnell cannot be sued individually pursuant to § 15-78-70(a) of the Code of Laws of South Carolina, as amended.

The Defendants also assert that the claim is precluded by *res judicata*. The doctrine of *res judicata* provides “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.” Andrews v. Daw, 201 F.3d 521, 524 (4th Cir. 2000) (quoting Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979)). In order to establish *res judicata*, a defendant must prove the following three elements: (1) identity of the parties must be the same; (2) the same subject matter as the prior litigation; and (3) adjudication of the issue in the former suit. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). The Plaintiff's conviction in Municipal Court being a final order of the Court, the Plaintiff is precluded from bringing a negligence claim based upon the conviction.

Based upon the foregoing, it is therefore

ORDERED that Defendants' Motion for Summary Judgment is granted and this action is therefore dismissed with prejudice in its entirety.

The Honorable Steven H. John
Judge, 15th Judicial Circuit

June __, 2017



Georgetown Common Pleas

Case Caption: Willie Singleton VS Georgetown City of , defendant, et al

Case Number: 2015CP2200483

Type: Order/Summary Judgment

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

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Willie Singleton
501 N. Congdon St
Georgetown SC
29440



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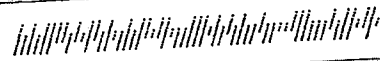
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