

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

King Grant-Davis,

Plaintiff,

vs.

Wal-Mart Stores, Greg Ley, Jerome Burgess,
Scott Bliemeister, Shane Fortune, Unknown
Person #1, and Unknown Person #2, of
Charleston, South Carolina District Market, Et
Al.,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-10-2829

ORDER GRANTING DEFENDANTS
MOTION TO DISMISS

RECEIVED

OCT 02 2017

SC Court of Appeals

9.22.2017

FILED
2017 SEP 22
JULIE J. BARRISTROMG
CLERK OF COURT
AM 10:37

This matter comes before the Court on the Motion of Defendants Wal-Mart Stores, Greg Ley, Jerome Burgess, Scott Bliemeister, and Shane Fortun to Dismiss this case pursuant to Rule 12(b)(6), S.C.R.C.P. A hearing was held on this matter on June 29, 2017. For the reasons set forth below, the Motion to Dismiss is GRANTED.

BACKGROUND

This action arises out of an alleged incident that occurred at the Walmart store at West Ashley Circle in Charleston, South Carolina, on October 16, 2012. Plaintiff claims that he was injured and falsely arrested while shopping at the store. Plaintiff's Complaint does not specifically articulate distinct causes of action but appears to set forth causes of action for defamation, false imprisonment, and/or negligence. Plaintiff filed his Complaint on May 31, 2016, approximately three years and seven months after the alleged incident.

STATEMENT OF LAW

"Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action." *Doe v. Marion*, 361 S.C. 463, 468, 605 S.E.2d 556, 559 (Ct. App. 2004) (citing *Fleteau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003)). "A trial judge in the civil setting 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." *Id.* at 469, 605 S.E.2d at 559 (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Id.* (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995)).

FINDINGS OF FACT AND LAW

Defendants Wal-Mart Stores, Greg Ley, Jerome Burgess, Scott Bliemeister, and Shane Fortune argue that Plaintiff failed to file his Complaint within the applicable statute(s) of limitations and therefore the Complaint should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P. The Court agrees. To the extent that the Plaintiff's Complaint sets forth claims for defamation and false imprisonment, those claims are governed by section § 15-3-550 of the South Carolina Code, which requires Plaintiff to file those causes of action within two years of the date of the alleged incident. *Jones v. City of Folly Beach*, 326 S.C. 360, 368, 483 S.E.2d 770, 774 (Ct. App. 1997) ("A cause of action accrues at the moment when the plaintiff has a legal right to sue on it."). To the extent Plaintiff's Complaint sounds in negligence and/or intentional infliction of emotional distress and/or assault and battery, such claims are governed by § 15-3-530(5) and §15-3-535 of the South Carolina Code, which require that Plaintiff commence such claims within three years.

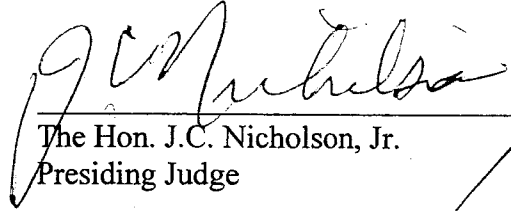
Based upon the allegations set forth in the Complaint, the alleged incident giving rise to the Plaintiff's Complaint occurred on October 16, 2012. As such, the statutory period for Plaintiff's defamation and false imprisonment claims ended on October 16, 2014. Further, the statutory period for Plaintiff's negligence and/or intentional infliction of emotional distress and/or assault and battery claims ended on October 16, 2015. As previously stated, Plaintiff did not file his Complaint until May 31, 2016, well after the expiration of all applicable statutory periods for the claims set forth in his Complaint. Therefore, Plaintiff did not file his Complaint within the applicable statute(s) of limitation.

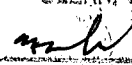
During the hearing on the Defendants' Motion to Dismiss, Plaintiff argued that the applicable statute(s) of limitations should be tolled because at the time of the incident giving rise to his Complaint, he had a disability within the meaning of S.C. Code Section 15-3-40. (If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, [...] is at the time the cause of action accrued either: (1) within the age of eighteen years; or (2) insane; the time of the disability is not a part of the time limited for the commencement of the action. S.C. Code Ann. Section 15-3-40). The Court gave Plaintiff 45 days (from July 5, 2017) to submit an affidavit of a treating physician attesting that Plaintiff was mentally incapacitated during the statutory period. Plaintiff did not submit any such affidavit within the allowed time. Accordingly, the Court finds that Plaintiff has failed to show that he is entitled to a tolling of the applicable statute(s) of limitations.

IT IS THEREFORE ORDERED, Plaintiff's Complaint was filed outside of the applicable statute(s) of limitations and Plaintiff has not shown that he is entitled to a tolling of those statutes. Therefore the Court finds that Plaintiff has failed to articulate facts sufficient to set forth a cause of action and that the Complaint should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P. For this reason, Defendants' Motion to Dismiss is GRANTED.

AND IT IS SO ORDERED.

September 20, 2017


The Hon. J.C. Nicholson, Jr.
Presiding Judge

COUNTY OF ...
ATTEST: A TRUE COPY
JULIE ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

DEPUTY CLERK