

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2014-CP-07-00943

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OCT 30 2017

SC Court of Appeals

JOSEPH C. SUN)

Plaintiff,)

vs.)

TOWN OF BLUFFTON, BLUFFTON)
POLICE DEPARTMENT, BRYAN)
NORBERG, ANGELA TUBBS,)
JOSEPH BABKIEWICZ, CLAUDIA)
HEBDA, JEFFREY DICKSON, AND)
CHRISTIAN GONZALES,)

Defendants.)

ORDER GRANTING MOTION TO
DISMISS

2014 DEC 10 AM 4:20
FRANK ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter came before me on the Motion of the Defendants, Town of Bluffton and Bluffton Police Department. Present at the hearing of this matter was Mary Lohr on behalf of the Town and Police Department, Kenneth Tootle on behalf of the Plaintiff and Allisa Collins on behalf of the remaining non-moving individual defendants.

First, the Town and Police Department moved to have the Police Department dismissed as it is not a legal entity subject to suit, but rather a department of the Town. I agree that the Police Department is not a separate legal entity, but rather a department of the Town of Bluffton and should be dismissed.

Next, as to the Town of Bluffton, the Plaintiff has alleged claims against the Town for false arrest, gross negligence, slander/liable per se, assault/ personal

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injury, and civil conspiracy. The Town asserts that these claims as pled by the Plaintiff in the Complaint are barred by the South Carolina Tort Claims Act.

The causes of action asserted by the Plaintiff against the Town are all torts under the law of the State of South Carolina. The South Carolina Tort Claims Act governs all tort claims against governmental entities, *see, e.g., Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994); *Searcy v. Dep't of Educ. Transp. Div.*, 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991). It is undisputed that the Town of Bluffton is a "governmental entity" as defined by the Tort Claims Act in S.C.Code Ann. § 15-78-30(d). Section 15-78-60(17) of the Tort Claims Act further provides: "The governmental entity is not liable for a loss resulting from ... (17) 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." (emphasis added).

A review of the Complaint shows that the Plaintiff has pled numerous times throughout the complaint that the town employees acted with actual malice and an intent to harm him. He specifically pleads that the actions of the employees were motivated by vengeance and a desire to harm him. As such, these causes of action as they are pled are barred by the provisions of Section 15-78-60(17) of the Tort Claims Act.

Additionally, the Town of Bluffton asserts that it cannot be held liable for civil conspiracy. "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." McMillan v.

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Oconee Memorial Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006);

Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct.App.2010).

"It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage." Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Id.*

A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." McMillan, 367 S.C. at 565, 626 S.E.2d at 887. As a result, "no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *Id.* However, although a corporation cannot conspire with itself, "the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties." Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct.App.1986).

I find that the rationale set forth above applies to the Town just as it would to a corporation. Additionally, I find that a cause of action for conspiracy cannot be asserted against an entity covered under the Tort Claims Act as an element of conspiracy is "for the purpose of injuring the Plaintiff" is tantamount to an intent to harm and is barred by Section 15-78-60(17) of the Tort Claims Act.

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Moreover, it is noted that the Plaintiff's allegations of conspiracy should fail because he does not plead all the necessary elements to assert a cause of action for conspiracy as set out above. The Plaintiff has failed to assert special damages as required above.

Lastly, the Town asserts the Plaintiff's claims should be barred against the Town as they are time barred by the Tort Claims Act's statute of limitations. The Act provides a strict statute of limitations period:

...any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

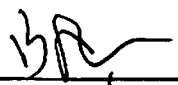
S.C. Code Ann. § 15-78-110.

The Plaintiff failed to file a verified claim, thus the two year statute applies. The incidents giving rise to the Plaintiff's cause of action all occurred outside this two year period. Based on the foregoing, I find these claims are barred by the statute of limitations.

IT IS SO ORDERED, ADJUGED AND DECREED.



Marvin H. Dikes, III
Beaufort County Master-In-Equity


_____, South Carolina

December 12/10, 2014

