

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

James Teal

Plaintiff,

v.

Edwards Telecommunication, Inc. and
Leroy Smith, Director of Dep't of Public
Safety,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-28-00583

**ORDER GRANTING DEFENDANT
LEROY SMITH'S MOTION TO
DISMISS**

FILED FOR RECORD
2017 NOV 16 3:11 PM
JANET C. EASTMAN
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the Court on October 24, 2017, for a hearing on the motions filed by the Defendant Leroy Smith, Director of the Department of Public Safety.

PROCEDURAL BACKGROUND AND HISTORY

Plaintiff James Teal filed a Summons and Complaint on June 29, 2016. In this pleading, Plaintiff named as the sole defendant Selective Insurance Company of America. The Complaint asserted that a vehicle operated by Selective's insured, Edwards Telecommunication, Inc., was illegally parked, with its bumper projecting into Plaintiff's lane. Plaintiff's vehicle collided with the vehicle of Edwards Telecommunications, Inc. Plaintiff asserted he was in possession of video from the S.C. Highway Department which would detail his claims. Plaintiff alleged that he sustained property damage and personal injury.

Plaintiff filed an Amended Complaint on January 23, 2017, in which he named Edwards Telecommunications, Inc., (hereinafter "Defendant Edwards") as the sole defendant. Plaintiff alleged that on September 11, 2014, at approximately 9:05 a.m., his

vehicle collided with Defendant Edward's vehicle which was parked in the northbound lane of SC 47. Plaintiff alleges he suffered injuries as a proximate result of Defendant Edward's negligence in obstructing traffic and not providing signs or warnings of the road hazard.

Thereafter, on August 7, 2017, Plaintiff filed a pleading entitled "Amended Service Complaint for 2nd & 3rd Party." This pleading named Leroy Smith, Director of Department of Public Safety, (hereinafter "Defendant Smith") as a defendant.

On September 21, 2017, this Court entered a consent order granting leave for Plaintiff to amend his Complaint. Plaintiff was the moving party and counsel for Defendant Edwards consented. Defendant Smith had not appeared in the action and did not consent to Plaintiff's motion to amend.

Also on September 21, 2017, Plaintiff filed his "2nd Amended Service Complaint." This pleading also named Defendant Smith as a defendant.

Defendant Smith filed a Motion to Strike, Motion to Dismiss, and Motion for Summary Judgment on October 2, 2017. This motion addressed Plaintiff's "Amended Service Complaint for 2nd & 3rd Party" and among other things asserted that Plaintiff's pleading should be stricken because Plaintiff had not obtained leave of court to file the pleading.

Defendant Smith also filed a Motion to Dismiss on October 4, 2017. This motion addressed Plaintiff's "2nd Amended Service Complaint."

This Court heard both of Defendant Smith's motions on October 24, 2017.

LAW/ANALYSIS

A. Defendant Smith's Motion to Strike, Motion to Dismiss, and Motion for Summary Judgment

Defendant Smith argued that Plaintiff's "Amended Service Complaint for 2nd & 3rd Party" should be stricken because Plaintiff had not obtained leave of court prior to filing the pleading.

Rule 15(a), SCRC, provides that a party may amend his pleading as of right at any time before or within 30 days after a responsive pleading is served. However, after this 30-day period, a party may amend his pleading only by leave of court or by written consent of the adverse party. Plaintiff had not obtained either leave of court or consent prior to filing the "Amended Service Complaint for 2nd & 3rd Party." Therefore, this Court grants Defendant Smith's motion to strike, and dismisses Plaintiff's "Amended Service Complaint for 2nd & 3rd Party" with prejudice.

However, as explained below, this does not end the matter since Plaintiff obtained leave of court on September 21, 2017, to file an amended complaint.

B. Defendant Smith's Motion to Dismiss

Plaintiff filed his "2nd Amended Service Complaint" on September 21, 2017. This pleading alleged a cause of action for "contributory negligence" against Defendant Smith. Plaintiff alleged that Defendant Smith arrived late to the work zone where the accident occurred on September 11, 2014, and that Defendant Smith negligently failed to report the accident to OSHA in violation of S.C. Code Ann. Regs. 71-339(a). Plaintiff also alleged that Defendant Smith negligently investigated the accident, and prepared an inaccurate accident report.

Defendant Smith moves to dismiss this action against him on the grounds that Plaintiff did not properly commence this action against Defendant Smith within the statute of limitations. The statute of limitations for tort claims against a governmental entity is two years. See S.C. Code Ann. § 15-78-110 (stating that any action brought pursuant to the Tort Claims Act is forever barred unless the action is commenced within two years after the date the loss was or should have been discovered). This accident occurred on September 11, 2014. Therefore, Plaintiff was required to commence this action against Defendant Smith on or before September 11, 2016. Plaintiff did not attempt to assert any claim against Defendant Smith until August 7, 2017, the date of filing of the “Amended Service Complaint for 2nd & 3rd Party.”

Plaintiff did not raise any argument at the hearing that the statute of limitations should have been tolled for any reason. Plaintiff filed a written response to Defendant Smith’s motion stating that he was asserting S.C. Code Ann. § 15-3-60. This section addresses tolling of the statute of limitations for reasons of disability. Plaintiff has not demonstrated to the Court that he was under any disability entitling him to tolling of the statute of limitations. Physical injuries suffered in an automobile accident do not toll the statute of limitations. Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). Likewise, there is no question about the discovery of Plaintiff’s claim against Defendant Smith. Plaintiff asserted at the hearing on this motion that he wrote to the Department of Public Safety seven months after the accident to obtain information about the accident. In any event, in an action for personal injury, the “focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer.” Id., 314 S.C. at 128, 442 S.E.2d at

170. Thus, Plaintiff was required to commence any tort claim against Defendant Smith no later than September 11, 2016.

In addition, to the extent Plaintiff has attempted to state a claim for a violation of the Freedom of Information Act, this claim also was not commenced within the statute of limitations.¹ An application to enforce any provisions of the Freedom of Information Act must be made no later than one year after the date of the alleged violation. S.C. Code Ann. § 30-4-100. This Court has been provided with undisputed evidence that the alleged FOIA violations occurred no later than April 12, 2015. (See Affidavit of Captain R.K. Hughes, filed October 2, 2017) Therefore, Plaintiff was required to commence any action against the Department for a violation of the Freedom of Information Act no later than April 12, 2016.

Therefore, this action should be dismissed for Plaintiff's failure to commence this action against Defendant Smith within the statute of limitations.

In addition to the statute of limitations, Defendant Smith argued that the action should be dismissed because the pleading fails to state facts sufficient to constitute a cause of action.

Plaintiff's action simply alleges that Defendant Smith arrived to the work zone after the accident had occurred, negligently investigated the accident, and failed to report the accident to OSHA.² Plaintiff is suing for injuries suffered in a wreck with Defendant Edwards' vehicle. The facts asserted by Plaintiff do not constitute a cause of action for

¹ Plaintiff alleged that Defendant Smith was negligent due to "Vidio [sic] by FOIA, details the after-effect of accident"

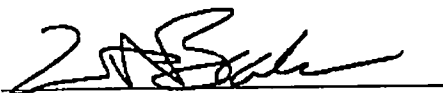
² The accident-reporting regulation relied on by Plaintiff, S.C. Code Ann. Regs 71-339, does not apply to Defendant Smith. This regulation requires employers to make certain reports concerning work-related injuries. See S.C. Code Ann. Regs 71-300 (stating the purpose of this subarticle is to require employers to record and report work-related injuries). Defendant Smith is not the employer of any persons or parties involved in the alleged automobile collision.

negligence against Defendant Smith for the injuries allegedly suffered by Plaintiff in the collision with Defendant Edwards' vehicle. There are no allegations in Plaintiff's pleading that Defendant Smith negligently contributed to Plaintiff's injuries.

Moreover, numerous exceptions to the waiver of immunity as found in the Tort Claims Act require dismissal of this action against Defendant Smith. Plaintiff's action alleges a failure to comply with or enforce laws (§ 15-78-60(4)), a failure to provide police protection (§ 15-78-60(6)), and a failure to inspect or make an adequate inspection or investigation (§ 15-78-60(13)). These provisions are to be liberally construed in favor of limiting the liability of a governmental entity. S.C. Code Ann. § 15-78-200. Based on these provisions, Defendant Smith is immune from liability for the Plaintiff's allegations.

Therefore, Defendant's Motion to Dismiss is granted and Plaintiff's "2nd Amended Service Complaint" is hereby dismissed with prejudice.

IT IS SO ORDERED.


William H. Seals, Jr.
Circuit Court Judge

11/8/2017

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

James Teal,

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Edwards Telecommunications, Inc. and
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Defendants.

(Our File No.: 5021.01117)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-28-00583

CERTIFICATE OF SERVICE

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.


2017 NOV 16 AM 9:55

FILED FOR RECORD

This is to certify that I, Kimberly R. Bickford, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the below-named persons the attached **ORDER GRANTING DEFENDANT LEROY SMITH'S MOTION TO DISMISS** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

James Teal
2832 Tee Pee Trail
Elgin, South Carolina 29045-9758
Plaintiff, *Pro Se*

Rogers E. Harrell, III, Esquire
MURPHY & GRANTLAND, P.A.
Post Office Box 6648
Columbia, South Carolina 29260-6648
Attorney for Defendant Edwards Telecommunications, Inc.



Kimberly R. Bickford
Paralegal

November 13, 2017
Columbia, South Carolina