

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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MAR 20 2018

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APPEAL FROM HORRY COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENJAMIN H. CULBERTSON  
CIRCUIT COURT JUDGE

SC Court of Appeals

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APPELLATE CASE NO. 2017-001381  
CIVIL ACTION NO. 2017-CP-26-0489

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MAR 20 2018

SC Court of Appeals

Richard B. Lamb,

APPELLANT,

versus

State of South Carolina DMV,  
Office of General Counsel,

RESPONDENT.

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**SUPPLEMENTAL RECORD ON APPEAL**

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**LAMB V. STATE OF SOUTH CAROLINA DMV**  
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2017-CP-26-0489
 Richard B. Lamb,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>DEFENDANTS' NOTICE OF</b>
	)	<b>MOTION AND MOTION FOR</b>
State of South Carolina DMV,	)	<b>SUMMARY JUDGMENT</b>
Office of General Counsel,	)	
	)	
Defendants.	)	
	)	

TO: RICHARD B. LAMB, PLAINTIFF *PRO SE*:

YOU WILL PLEASE TAKE NOTICE that the Defendants, will move before this honorable Court, upon 10 days' notice or as soon thereafter as possible for an Order granting summary judgment. This Motion is brought pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* as there is no genuine issue of material fact and the Defendants are entitled to a judgment as a matter of law.

This motion is supported by the pleadings, Affidavit of William C. Wannamaker, the attached Memorandum in Support of Defendants' Motion for Summary Judgment, relevant law and such other documents and arguments as may be presented at the motion hearing.

Respectfully submitted,

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

s/ Douglas Charles Baxter

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March 27, 2017

Attorneys for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2017-CP-26-0489
 Richard B. Lamb,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF DEFENDANTS' MOTION FOR</b>
State of South Carolina DMV,	)	<b>SUMMARY JUDGMENT</b>
Office of General Counsel,	)	
	)	
Defendants.	)	
_____	)	

Defendants have moved for an Order pursuant to S.C.R.C.P. 56, granting summary judgment in their favor, upon the grounds that there are no disputed issues of material fact that would entitle the Plaintiff to any relief against the Defendants. Specifically, the Plaintiff's claims are barred by the South Carolina Tort Claims Act and the applicable statute of limitations. Pursuant to the arguments and legal authority as set forth below, Defendants respectfully submit that they are entitled to the entry of judgment in their favor as a matter of law.

**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).

### ARGUMENT

#### **I. Plaintiff's claims are barred by the South Carolina Tort Claims Act.**

The South Carolina Tort Claims Act (§15-78-10 et. seq.) 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, 384 S.E.2d 413, 416 (Ct. App. 2003). The South Carolina Tort Claims Act provides exceptions to the waiver of immunity and the exceptions limit the liability of governmental entities. Jinks v. Richland Cty., 585 S.E.2d 281, 283 (2003). Section 15-78-60 of the Code of Laws of South Carolina, as amended, provides in Subsection (12), that a governmental entity is not liable for a loss resulting from:

“licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner”.

The SCDMV falls into this exception and it is not liable for a loss. First, the SCDMV is a governmental entity under the definition of the South Carolina Tort Claims Act. S.C. Code Ann. § 56-1-5 provides the SCDMV is an agency of the state. Similarly, see also Joubert v. S.C. Dep't of Soc. Servs., 534 S.E.2d 1, 5-6 (Ct. App. 2000) (holding the South Carolina Department of Social Services is “without question” a governmental entity). Further Subsection (12) of Section

15-78-60 of the Code of Laws of South Carolina, as amended, applies to the SCDMV because it is the state agency that is authorized to register and license vehicles in South Carolina. S.C. Code Ann. § 56-1-5; S.C. Code Ann. § 56-3-190. When the SCDMV suspended Plaintiff's license for failure to provide proof of insurance, it was within the licensing function and powers of the agency. The Plaintiff makes no allegations that the suspension was done in a grossly negligent manner. Accordingly, under the allegations of the Complaint, the Defendants cannot be held liable per the provisions of S.C. Code Ann. §15-78-60.

**II. Plaintiff's claims are barred by the statute of limitations.**

Under the South Carolina Tort Claims Act (§15-78-10 et. seq.), generally, an action must be commenced within two years. S.C. Code Ann. §15-78-110 provides:

"Except as provided for in Section 15-3-40, 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."

Here, as evidenced by the Affidavit of William C. Wannamaker, which is attached hereto as "Exhibit A", Plaintiff surrendered his vehicle license plate tag on January 14, 2009. Approximately eight years later, on January 26, 2017, Plaintiff brought this action. If the Plaintiff suffered a loss, which Defendants expressly deny, the Plaintiff was required to bring an action within two years from the date of that loss. The Plaintiff did not commence this action for eight years from the date the Plaintiff turned his tag into the SCDMV, which clearly exceeds the time allowed under S.C. Code Ann. §15-78-110. Therefore, the Plaintiff's claims are barred by the statute of limitations.

**CONCLUSION**

Based upon the foregoing, the Defendants respectfully request that the Court deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

s/ Douglas Charles Baxter

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March 27, 2017

Attorneys for the Defendants

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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