

- (3) Motion for Stay of Discovery and/or Motion for Protective Order by the Defendants SCDOT, de Holczer, and Moore filed December 17, 2018;
- (4) Motion for Rule 26(c) Protective Order to Stay Discovery by Defendant Quinn filed December 19, 2018;
- (5) Motion to Compel Discovery against the Defendants SCDOT, de Holczer, and Moore by the Plaintiff filed December 18, 2018; and
- (6) Motion to Compel Discovery against the Defendant Quinn by the Plaintiff filed December 20, 2018.

A hearing was held on April 16, 2019, with the *pro se* Plaintiff and counsel for the Defendants present.

Background and Procedural History

This litigation arises from a condemnation action that was commenced in 2002 by SCDOT and captioned *South Carolina Department of Transportation v. Buckles*, Civil Action Number 2002-CP-40-4800. That condemnation action was tried by former Circuit Court Judge Reginald I. Lloyd in October 2004. In the Order of Judgment filed March 11, 2005, Judge Lloyd directed the Clerk of Court to disburse \$2,450.00 to the Plaintiff Ronald Paul as the just compensation payable for his leasehold interest.¹ That Order was subsequently appealed by Paul, and the Court of Appeals affirmed on October 23, 2006. The South Carolina Supreme Court later denied a petition for writ of certiorari.

On February 20, 2008, the Plaintiff Ronald Paul filed a civil action bearing Civil Action Number 2008-CP-40-1259 in the Court of Common Pleas against most of the same Defendants as in this case, including SCDOT, de Holczer, and Quinn. That Complaint included causes of action for civil conspiracy in several particulars. By Order filed March 25, 2009, Special Circuit Court Judge Joseph M. Strickland granted the Defendants' motion to dismiss based on a statute

¹ The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Plaintiff have been previously submitted into the record.

of limitations defense and other defenses. The Plaintiff appealed to the Court of Appeals which affirmed the dismissal on November 19, 2010. On October 9, 2011, the Supreme Court denied a petition for writ of certiorari.

The Plaintiff thereafter filed several lawsuits in the United States District Court, including the following:

Paul v. South Carolina Department of Transportation, C/A No. 3:12-1036-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:13-367-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:13-1852-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:15-2178-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:16-1727-CMC-PGJ

In these federal lawsuits, the Plaintiff alleged causes of action under 42 U.S.C. § 1983 for civil conspiracy in which he sought both declaratory and monetary relief. In the 2012 action, which was brought against the same Defendants as in the present case, the United States District Judge Cameron Currie granted the Defendants' motions to dismiss without prejudice. The Plaintiff thereafter continued to file the identical or nearly identical Complaints in 2013, 2015, and 2016, and each of those lawsuits were dismissed by Judge Currie without prejudice and without issuance of service of process. In dismissing the 2016 action, Judge Currie imposed a pre-filing injunction on the Plaintiff. In those previous lawsuits, the Plaintiff alleged conspiracy claims under state and federal law against the current Defendants arising from the prosecution of the 2002 condemnation action, including a settlement reached with the Buckles parties as well as actions taken during the trial of that case in October 2004.

On October 26, 2018, the Plaintiff filed the current lawsuit in state court. This action, like the others, includes federal Section 1983 civil conspiracy claims against the same Defendants. In lieu of filing Answers, the Defendants SCDOT, de Holczer, Moore, and Quinn

filed motions to dismiss which were heard by another judge on February 11, 2019, and those motions remain pending at this time.

Legal Analysis

I. Default Motions

The Defendants named in this action include Oscar K. Rucker and Macie M. Gresham, both former SCDOT employees. The Plaintiff alleges that he effected service of the Complaint in the current lawsuit on Rucker and Gresham by certified mail sent to the SCDOT Offices located at 955 Park Street, Columbia South Carolina. The record reflects that the certified mail directed to Gresham was not sent restricted delivery but that the certified mail directed to Rucker was apparently sent restricted delivery.² However, neither certified letter was received or signed for by Rucker or Gresham. The record reflects that neither Rucker nor Gresham was still employed by SCDOT in 2018. The record includes the affidavit of Sherrie S. Morey, who is employed by SCDOT in the Rights of Way Director's Office. Ms. Morey testified that the return receipts were signed by an SCDOT postal employee, and the certified letters were provided to her. Ms. Morey further testified that that after consulting with the SCDOT legal office, she handwrote "Return to Sender" on both envelopes and placed them back in the U.S. Mail to be returned to the Plaintiff. Oscar Rucker also submitted an affidavit in which he attests that he never authorized SCDOT or anyone employed by SCDOT to accept service of any legal process

² Attached to his default motion, the Plaintiff has provided the Court with the U.S. Mail receipt for both certified letters. The receipt for the mailing to Rucker shows a charge of \$8.55 for "Certified Mail Restricted Delivery," while the receipt for the mailing to Gresham shows no charge was paid for "Certified Mail Restricted Delivery." The USPS Tracking information, as also provided by the Plaintiff, verifies this. For Rucker, the USPS Tracking shows the "features" as "Certified Mail Restricted Delivery," but for Gresham, the USPS Tracking shows the "features" as "Certified Mail."

on his behalf, including this 2018 lawsuit.³ The Plaintiff filed no counter affidavits to dispute the information contained in the Rucker and Morey affidavits.

Under South Carolina law, “[t]he plaintiff has the burden to establish that the court has personal jurisdiction over the defendant.” *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64, 66 (Ct. App. 1996). “The plaintiff need only show compliance with the rules.” *Id.* “When the civil rules on service are followed, there is a presumption of proper service.” *Id.* “Once the plaintiff has demonstrated compliance with the rules, the defendant can rebut an inference that service was effected only by showing that the return receipt was signed by an unauthorized person.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430, 433 (2012).

Rule 4(d)(8), SCRCF, allows for service of process on an individual by certified mail; however, the service must be made “by registered or certified mail, return receipt requested, and delivery restricted to the addressee.” Rule 4(d)(8), SCRCF, further provides:

Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.

Rule 4(d)(8), SCRCF. In *Graham Law Firm, supra*, the Supreme Court held that “[a] rule permitting certain persons to receive service of process on behalf of others does not imply that ‘anyone who happens to pick up the mail’ can stand in for the defendant. As with corporations, the class of persons who may receive service of process on behalf of an individual is limited.” 721 S.E.2d at 434. The Supreme Court further explained that “an individual is as competent as

³ At the hearing, the Court was advised by Defendants’ counsel that Macie Gresham did not provide a similar affidavit because she is in poor health and he wanted to avoid upsetting her unnecessarily. Because Gresham was not served by restricted delivery and thus Rule 4(d)(8) was not complied with, there is no need for any affidavit from her.

any other entity to confer authority on an agent. Rule 4(d)(1), SCRCF, itself contemplates service on the agent of an individual, permitting service “[u]pon an individual ... by delivering a copy to an agent authorized by appointment ... to receive service of process.” *Id.*

In applying this law to the facts presented in this case, the Court finds that the Plaintiff failed to comply with the requirements of Rule 4(d)(8), SCRCF, with respect to the purported service by certified mail on the Defendant Macie Gresham. The record clearly shows that the Plaintiff did not restrict delivery to Gresham. Thus, for Gresham, no further analysis is needed. The Plaintiff cannot show compliance with Rule 4(d)(8) and has not otherwise demonstrated that the Complaint was received by Gresham nor any person authorized by Gresham to receive service of process on her behalf. As for the Defendant Oscar Rucker, the Plaintiff did restrict delivery to the addressee, but the certified mail was sent to Rucker’s former place of employment and was signed for by an SCDOT employee. Rucker attests in his affidavit that he did not authorize SCDOT or any employee of SCDOT to accept service of process for him. The Plaintiff has presented no evidence to dispute that testimony. Thus, the Plaintiff has not shown that effective service was made on either Rucker or Gresham.

For these reasons, the Plaintiff’s Motion for Entry of Default and Default Judgment is denied. The Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham is granted, and the Complaint is dismissed without prejudice as to the Defendants Rucker and Gresham for lack of personal jurisdiction.⁴

⁴ The Court further recognizes that the Defendants Rucker and Gresham are being sued for their alleged conduct when they served as employees of SCDOT. However, Rule 55(e), SCRCF, does not permit a default judgment to be entered “against the State of South Carolina or an officer or agency thereof ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court.” The Plaintiff has made no such showing, and as a result, this is an additional basis for denying the Plaintiff’s request for a default judgment to be entered against Rucker and Gresham.

II. Discovery Motions

As indicated above, the Defendants SCDOT, de Holzcer, Moore, and Quinn all filed Motions to Dismiss in lieu of filing Answers to the Plaintiff's Complaint.⁵ The Motions to Dismiss raise numerous grounds including res judicata, statute of limitations, *Harlow* qualified immunity, quasi-judicial/prosecutorial immunity as well as immunity from suit by a third party arising from attorneys' professional activities in representing parties to the 2002 condemnation proceeding. Those Motions to Dismiss remaining pending for adjudication at this time.

After the Defendants filed their Motions to Dismiss, the Plaintiff served them with a set of requests for production seeking the production of the alleged settlement agreement between SCDOT and the Buckles in the 2002 condemnation action. The Defendants filed for a protective order thereby staying discovery until such time at their Motions to Dismiss made be adjudicated.

The Court recognizes that the Plaintiff's Complaint alleges only federal civil rights claims brought pursuant to 42 U.S.C. § 1983. As the Defendants have pointed out, federal courts, including the United States Supreme Court, have routinely recognized that discovery may be inappropriate while the issue of immunity is being resolved. *See, e.g., Siegert v. Gilley*, 500 U.S. 226, 231-32 (1991) (noting that immunity is a threshold issue and discovery should not be allowed while the issue is pending); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (same); *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) (same); *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (stay of discovery until immunity defense is decided furthers the goal of efficiency for the court and litigants). *See also, Behrens v. Pelletier*, 516 U.S. 299, 308-310 (1996) (noting that discovery can be particularly disruptive when a dispositive motion regarding immunity is pending).

⁵ The Defendant Charles Ormond has also filed a Motion to Dismiss which remains pending at this time.

In *Cuyler v. Dept. of the Army*, 2009 WL 1749604 (D.S.C. 2009), the United States District Court granted a similar motion and stayed discovery until the Court decided a motion to dismiss. The Court explained that "Defendant could and should have avoided the discovery-related concerns by filing a motion to stay deadlines and discovery at the same time it filed its motion to dismiss." 2009 WL 1749604, *8. The Court also cited *Harlow* recognizing that "discovery may be stayed to determine the dispositive issue of immunity of government officials." 2009 WL 1749604, *2. The Court further cited to the Fifth Circuit case of *Petrus v. Bowen*, 833 F.2d 581 (5th Cir. 1987), where the Court stayed discovery during the pendency of a Rule 12(b)(6) motion. The Fifth Circuit explained that "[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." 833 F.2d at 583.

Based upon the foregoing authorities, the Court finds that it is appropriate and within this Court's discretion to stay discovery until the pending Motions to Dismiss are heard. Nonetheless, during the hearing, the Court was advised that the Defendants had conducted a search of available records from the 2002 litigation and did not locate a written settlement agreement. Counsel, including Michael H. Quinn, who represented the Buckles in the 2002 litigation, advised the Court that, from his recollection, the agreement as to just compensation as reached between SCDOT and the Buckles was confirmed and memorialized in the Order issued by Judge James R. Barber, III in Civil Action Number 2002-CP-40-4800 on March 23, 2004 (a copy of which is in the record),⁶ and, to the best belief of both counsel, there is no separate written settlement agreement to that effect.

⁶ In the Order of Judgment filed March 11, 2005 in the 2002 condemnation action, Judge Reginald Lloyd also acknowledged the agreement as to the amount of just compensation by the parties and further wrote: "During trial, counsel for Landowners and Condemnor confirmed such agreement."

Based upon counsel's representation, the Court finds that the Plaintiff's Motions to Compel are moot. The Court nonetheless will stay any further discovery in this litigation until the pending Motions to Dismiss are decided by the Court.

IT IS, THEREFORE, ORDERED that, based on the reasons stated herein, the Plaintiff's Motion for Entry of Default and Default Judgment is denied. The Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham is granted, and the Complaint is dismissed without prejudice as to the Defendants Rucker and Gresham for lack of personal jurisdiction.

IT IS FURTHER ORDERED that the Plaintiff's two Motions to Compel Discovery are denied as moot.

IT IS FURTHER ORDERED that the Motions for Protective Order to Stay Discovery filed by the Defendants SCDOT, de Holczer, Moore, and Quinn are granted, and that any further discovery shall be stayed until such time as the Court has ruled on the Motions to Dismiss filed by the Defendants which are currently pending.

AND IT IS SO ORDERED.

L. CASEY MANNING
Presiding Circuit Court Judge
Fifth Judicial Circuit

June __, 2019



Richland Common Pleas

Case Caption: Ronald I Paul vs Sc Department Of Transportation , defendant, et al

Case Number: 2018CP4005641

Type: Order/Entry of Default

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2019-06-07 11:44:02 page 10 of 10