

REQUEST FOR APPEAL

Dear Clerk of Court

I never received any thing from the Georgetown court notifying me of the request for monetary compensation. The city of Georgetown should have clocked in their request send me a copy so I could respond.

From my understanding this fee is only allowed when a person does not address the order of the court when the summary judgement is ordered.

I address the order given by the judge word for word in my **ISSUE NUMBER VI** the Appeal court chose not to address the issue I had no power over the appeal court decision to ignore my issues.

I would like to appeal the city of Georgetown request.

Thank you

Willie Singleton

11-7-2019

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NOV 12 2019
SC Court of Appeals

Willie Singleton, Appellant

v.

City of Georgetown, Janet Grant, Individually and as an employee of the City, Rick Martin, individually and as an employee of the City, Robert C'Donnell, Individually and as Magistrate for the City of Georgetown)

Respondents.

Appellate Case No. 2017-001364

The Honorable Steven H. John

Georgetown County

Trial Court Case No. 2015CP2200483

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)	C/A No. 2015-CP-22-00483
Willie Singleton,)	
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING
)	SUMMARY JUDGMENT
)	TO DEFENDANTS
City of Georgetown, Janet Grant.)	
Individually and as an employee of the)	
City, Ricky Martin, individually and as)	
An employee of the City, Robert O'Donnell,)	
Individually and as Magistrate for the)	
City of Georgetown,)	
)	
Defendants.)	

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 SC Court of Appeals

This matter is before the court upon motion of the Defendants for summary judgment. A hearing on this matter was held on June 1, 2017; present at the hearing were Bonnie Travaglio Hunt, attorney for the Plaintiff and Douglas Charles Baxter, attorney for the Defendants.

Procedural History

The Plaintiff filed a Complaint with this court on May 14, 2015 and the Defendants removed the action to Federal Court on July 6, 2015. On February 13, 2017, the United States District Court granted Defendants' Motion for Summary Judgment as to 42 U.S.C. 1983, selective enforcement, equal protection, procedural due process, and race discrimination claims. The Federal Court declined to retain supplemental jurisdiction as to any state law claims and the matter was remanded back to State Court. The Federal Court noted that it was difficult to ascertain if the Plaintiff was alleging state law causes of action in the Complaint; however, to the extent he was asserting state law causes of action, these causes of action were remanded.

ROA 123

Section 11-26 and notifying him of the court date on October 21, 2010. The Plaintiff appeared on the court date and he requested a jury trial. The case was set for a jury trial on January 10, 2011; however, it appears that the trial was postponed due to inclement weather. The case was then set for trial on April 14, 2011; however, it was continued at the Plaintiff's request as he had filed a grievance against Janet Grant with the Department of Labor, Licensing and Regulation.

The case was called for trial on July 13, 2011 before Municipal Judge Robby O'Donnell; however, the Plaintiff did not appear on that date and he was tried in his absence. The Plaintiff was found guilty by the jury of violating Section 11-26, and he was assessed a fine of \$1,092. The amount consisted of the fine and assessed court costs. Upon receiving notification of the jury verdict, the Plaintiff contacted Municipal Judge Robby O'Donnell, and on or about July 29, 2011 the Plaintiff filed a Notice of Appeal in Circuit Court. A hearing on the appeal was held in Circuit Court on April 12, 2013 at which time the conviction was affirmed, and, thereafter, the Plaintiff filed an appeal to the Court of Appeals of South Carolina. On or about January 7, 2015, the Court of Appeals issued an unpublished opinion that the appeal to Circuit Court was untimely and that the Circuit Court erred in not dismissing the appeal for lack of appellate jurisdiction. Shortly thereafter the Plaintiff paid the fine of \$1,092.

The Plaintiff testified that the City had not initiated a condemnation action, and he had never been denied a permit allowing him to make repairs to the structure. During the pendency of the action, a portion of the house collapsed and the Plaintiff consented to the City pushing the debris off of the sidewalk back onto the Plaintiff's property. Furthermore, during the hearing in Federal Court, the Plaintiff conceded that he did not have a viable taking claim (District Court Order footnote no. 3), and there had been no condemnation of the structure (District Court Order footnote no. 4).

ROA

ROA 125

Findings

The first, second, third and fifth causes of action were all premised on the City requiring the condemnation/demolition of the structure and/or "taking"; however, the Plaintiff has conceded that no taking or condemnation occurred and the Plaintiff presented no evidence to support these claims. The fifth cause of action is pursuant to 42 U.S.C. 1983 and the seventh cause of action is for selective enforcement; and the Federal Court granted summary judgment as to both of these causes of action. The Defendants are, therefore, entitled to summary judgment as to the above-referenced causes of action. The Defendants contend that all of the causes of action had been dismissed by the Federal Court's order; however, Plaintiff contends that there was a cause of action for gross negligence related to failure to give notice of the jury trial. This court questions whether such cause of action was pled and the Plaintiff has presented no evidence of gross negligence; however, even if Plaintiff asserted such a cause of action, it should be dismissed as set out below.

The Tort Claims Act § 15-78-10 *et. seq.* of the Code of Laws of South Carolina, as amended 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, 584 S.E.2d 413 (Ct. App. 2003). Section 15-78-60 of the Code of Laws of South Carolina, as amended, contains the following exceptions to waiver of immunity and provides that the governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

Accordingly, even if the Plaintiff pled a gross negligence cause of action, such alleged actions are encompassed in § 15-78-60, and the Defendants are, therefore, immune from liability. Additionally, Defendants, Janet Grant, Ricky Martin and Robert O'Donnell cannot be sued individually pursuant to § 15-78-70(a) of the Code of Laws of South Carolina, as amended.

The Defendants also assert that the claim is precluded by *res judicata*. The doctrine of *res judicata* provides "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." Andrews v. Daw, 201 F.3d 521, 524 (4th Cir. 2000) (quoting Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979)). In order to establish *res judicata*, a defendant must prove the following three elements: (1) identity of the parties must be the same; (2) the same subject matter as the prior litigation; and (3) adjudication of the issue in the former suit. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). The Plaintiff's conviction in Municipal Court being a final order of the Court, the Plaintiff is precluded from bringing a negligence claim based upon the conviction.

Based upon the foregoing, it is therefore

ORDERED that Defendants' Motion for Summary Judgment is granted and this action is therefore dismissed with prejudice in its entirety.

The Honorable Steven H. John
Judge, 15th Judicial Circuit

June __, 2017

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ROA 127

acted willfully to violate the Appellant's property rights, constitutional rights, Failure to follow the procedures by law and failed and refuse to protect the Appellant. NO where in the Appellant seventh cause of action ROA [page 57 & 58] did the Appellant charge the Defendants with selective enforcement The Appellant believe the actions of the Respondents to be grossly negligent.

V DID THE JUDGE ERR GRANTING SUMMARY JUDGEMENT TO THE RESPONDENTS.WHEN THE FEDERAL COURT REMANDED THE EIGHTH CAUSE OF ACTION TO THE STATE COURT? The Appellant did not charge the Respondents in the eighth cause of action under the United State Code Section 1983. The Appellant eighth cause of action in the complaint states. ROA [page 58] That the Respondents violated Appellant rights of equal protection under the law using selective enforcement, the Appellant ROA [page 58] lot TMS # 05-00-22-026 is adjoining TMS# 05-00-22-027 without a physical separation such as fencing or natural boundary and both are naturalized lots for over twenty years, yet the Respondents wrote a citation on one lot and not the other ROA [page 58] . There are countless lots located within the city of Georgetown that were not the subject of this type of enforcement ROA [page 58] . The Appellant charge such conduct was outside the scope of the official duties of such officials employed, agents, and servants. Lost of freedom far excess of what is prescribe and allowed by the city of Georgetown code of ordinance and S.C. codes of law (1976, as amended) for non- compliance to the bogus order to demolish the house ROA [page 58 & 50] .The fines were more than double those allowed by law. That Respondents engaging in issuing bogus and inflated fines ROA [page 59] with the possibility of loss of Freedom far excess of what is prescribe.

VI DID THE JUDGE ERR GRANTING SUMMARY JUDGEMENT TO THE RESPONDENTS? STATING AS A FINDING OF FACT AS TO; ACCORDINGLY, EVEN IF THE APPELLANT PLED A GROSS NEGLIGENCE CAUSE OF ACTION, SUCH ALLEDGED ACTIONS ARE ENCÓMPASSED IN S.C. Code Ann. § 15-78-60 AND RESONDENTS ARE, THEREFORE, IMMUNE FROM LIABILITY. ADDITIONALLY, RESPONDENTS, JANET GRANT, RICKY MARTIN AND ROBERT O DONNEL CANNOT BE SUED INDIVIDUALLY PURSUANT TO 15-78- 70 (a) OF

THE CODES OF LAWS OF SOUTH CAROLINA AS AMENDED? In this case the lower court ruled that the Defendant's were immune from suit and did not give a reason or there immunity other than the fact that they were government employees. In the pasts the courts have used the Virginia, law and determine that the governmental action were in furtherance of the masters business. However in this case no such determination was made. Case law is very clear as to how and when a defense of immunity can be used.

State law is also very that state employees do not have blanket immunity based solely on the fact that they are governmental employees. If this ruling is allowed to stand it would away with South Carolina Tort Claims Act and bring back sovereign immunity. The Appellant in his eighth cause of action ROA [page 58-59] the Appellant charge the Respondents with going outside the scope of their official duties. 15-78-60 and 15-78-78 (a) of the codes of laws of South Carolina does not protect the Respondents once they go outside the scope of their official duties in concert with exceptions to waiver of immunity. S.C. Code Ann. § 15-78-60 (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*; you must conclude that not every action that a governmental entity does falls within the scope of the "Tort Clams Act" but only those actions of an "employees, while acting within the scope of official duty The Trial Court improperly granted summary judgment to Respondents stating that Respondents are immune from liability pursuant to the exception to waiver of governmental immunity under the South Carolina Tort Claims Act ROA [page 125 & 126]. The immunity provided by the Act is an affirmative defense. *Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004). Generally, an affirmative defense may not be asserted in a motion to dismiss unless the allegations of the complaint demonstrate the existence of the affirmative defense. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). However, [m]ost courts allow such defenses to be raised in a motion to dismiss when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense.

"A trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *McEachern v. Black*, 329 S.C. 642, 647, 496 S.E.2d 659, 661 (Ct. App. 1998). *Doe v. Marion*, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004), cert. granted, Apr. 19, 2006.

The facts are disputed and the individual named defendants did not established its entitlement to immunity as a matter of law.

The circuit court judge erred in finding as a matter of law that the defendants' actions are "protected by immunities." Because immunity under the TCA is an affirmative defense. The

Respondent on the whole of the record failed to prove as a matter of law that it was entitled to this immunity. The TCA "is the exclusive civil remedy available for any tort committed

Governmental Immunity

In *Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004). *Badger* argues that he is immune from tort actions stemming from conduct within the scope of his official duties pursuant to South Carolina Code Ann. section 15-78-70 (Supp. 2005), but that section specifically provides that government employees may be liable in tort actions:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

In this case the lower court simply said all defendants were immune. Immunity under the statute is an affirmative defense that must be proved by the defendant at trial. *Tanner v. Florence City-County Bldg. Comm'n*, 333 S.C. 549, 552, 511 S.E.2d 369, 371 (Ct. App. 1999).

I recognize that whether an act is within the "scope of employment" may be determined by implication from the circumstances of a particular case. *Hamilton v. Miller*, 301 S.C. 45, 48, 389 S.E.2d 652, 653 (1990); *Wade v. Berkeley County*, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App. 1998). In *Prince*, the court held that the course of someone's employment requires some "act in furtherance of the employer's business." 304 S.C. at 246, 403 S.E.2d at 647. But that was not the case here.

VII DID THE JUDGE ERR GRANTING SUMMARY JUDGEMENT TO THE RESPONDENTS AS TO THE DEFENDANTS SETTING FORTH AN ARGUMENT BASED ON THE PERCEPTION OF THE CASE? Summary Judgement is the means by

Willie Singleton
501 N. Congdon St
Georgetown, SC 29446

CHARLESTON SC 294

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SiC Court of Appeals
Jenny ABBOTT Kitchings clerk
P.O. Box 11629
Columbia SC 29211

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