

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital; Greenville Health System; Upstate Affiliate Organization; Kevin Docyk, MD; Mary Beth Hendricks,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2018-CP-37-00762, 2019-CP-37-0271, and 2018-NI-37-00010

*Order Granting Defendants' Motion to Dismiss*

**RECEIVED**

DEC 06 2019

SC Court of Appeals

This matter came before the Court upon Defendants Greenville Health System (“GHS”)<sup>1</sup>, Upstate Affiliate Organization (“UAO”), Kevin Docyk, MD, and Mary Beth Hendricks’s motions to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. After careful reconsideration of all the issues, for the reasons more fully set forth below, I hereby grant Defendants’ motions as to all tort causes of action with prejudice.

**PROCEDURAL HISTORY**

The above referenced actions are Plaintiff’s second attempt to assert claims related to the handling of a sexual assault forensic examination kit at Oconee Memorial Hospital (“OMH”) on December 5, 2015. In the instant actions, Plaintiff makes essentially the same factual allegations as she did in her prior civil action filed on December 5, 2017 (C.A. No.: 2017-CP-37-00700). In that action, she alleged the facts amounted to: (1) negligence – failure to properly collect and protect evidence; (2) negligence – failure to order necessary tests; (3) gross negligence – failure

<sup>1</sup> Plaintiff identifies Oconee Memorial Hospital as a named defendant in her pleadings; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, at all times relevant to these actions, it was a facility owned and operated by GHS.

to properly collect and protect evidence; (4) gross negligence – failure to order necessary tests; (5) negligent supervision; and (6) intentional infliction of emotional distress (hereinafter “Negligence Action”).

GHS filed a motion to dismiss the Negligence Action on January 10, 2018. A hearing on the motion to dismiss was held on June 4, 2018. Just prior to the start of the hearing, Plaintiff filed a motion to amend her complaint. Plaintiff’s motion did not include a proposed amended complaint, but the motion stated she wished to amend to add defendants and to add two additional causes of action. Plaintiff’s motion did not specify the two new causes of action, but during the motion to dismiss hearing, Plaintiff’s counsel identified the two new causes of action as breach of contract and bailment.

Following the hearing and additional submissions from both parties, the Court issued an Order granting GHS’s motion to dismiss the Negligence Action on July 9, 2018. By way of the Order, the Court dismissed with prejudice the six causes of action set forth in the Negligence Action. However, the Court provided that its ruling was “without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action.” (July 9, 2018 Order, p. 1.) Plaintiff appealed the Order, and that appeal is still pending.

On December 5, 2018, Plaintiff filed the instant actions. In C.A. No. 2018-CP-37-00762, Plaintiff asserted Breach of Contract and Breach of Implied Contract causes of action against Defendants GHS and UAO, and she asserted Bailment and Implied Bailment causes of action against all Defendants (hereinafter “Contract Action”). In C.A. Nos. 2018-NI-37-00010 and 2019-CP-37-0271, Plaintiff asserted medical malpractice claims against all Defendants (hereinafter “Med Mal Action”).

Defendants filed the instant motions to dismiss on December 21, 2018. In their motions,

Defendants argued Plaintiff's medical malpractice claims and bailment claims were barred by the two year statute of limitations pursuant to the Tort Claims Act.<sup>2</sup> In addition, Defendants argued Plaintiff failed to state facts sufficient to support her contract causes of action.

The motions came before the Court on March 20, 2019. During the hearing, Plaintiff's counsel argued there were questions of fact about whether Defendants were subject to the Tort Claims Act. After taking the matter under advisement, the Court issued a Form 4 Order on April 11, 2019 denying the motions to dismiss on the basis Defendants arguments invoked matters outside of the pleadings. Defendants responded by timely filing a motion to reconsider. On May 8, 2019, the Court issued another Form 4 Order whereby it granted a *de novo* hearing on the statute of limitations issue which would be treated as a motion for summary judgment under Rule 12(c), SCRCPP; otherwise, the motion to reconsider was denied.

The *de novo* hearing was held on September 23, 2019. In support of their argument that Plaintiff's medical malpractice and bailment claims were subject to the Tort Claims Act, Defendants submitted a memorandum which included an affidavit from Cynthia Cambron. The affidavit established the following pertinent facts:

1. GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act.
2. In December 2015, and at all times relevant to this action, Oconee Memorial Hospital was one of numerous hospital facilities within the System operated by GHS.

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<sup>2</sup> Defendants also argued Plaintiff's claims were barred by the doctrines of *res judicata* and/or *collateral estoppel*, but since the statute of limitations issue is dispositive, the Court need not address that argument.

3. In December 2015, and at all times relevant to this action, Kevin Docyk, MD and Mary Beth Hendricks were employees of GHS pursuant to the Tort Claims.
4. UAO is a 501(c)(3) corporation, so it could not possibly “own” GHS as alleged by Plaintiff. Further, and more importantly, it had nothing to do with the care rendered to Plaintiff on December 5, 2015, as it did not exist as an entity at that time.

In response, Plaintiff did not submit any evidence to the contrary. Rather, Plaintiff filed a memorandum in opposition in which she argued dismissal was inappropriate, because she had not had adequate time to conduct discovery on the statute of limitations issue, and she believed her new claims should relate back to the filing of her Negligence Action. For the reasons stated below, the Court finds Plaintiff’s arguments unavailing.

#### LEGAL ANALYSIS

As noted above, GHS is a healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq.; therefore, it and its agents and employees, including, Defendants Docyk and Hendricks, are entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. *Murphy v. Richland Mem. Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995), and *Benton v Roger C Peace*, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-110, the applicable statute of limitations for all tort claims is 2 years.

Plaintiff’s alleged injuries occurred on December 5, 2015. Plaintiff filed the instant actions on December 5, 2018, a full year after the statute of limitations expired in regards to any tort claims. Therefore, all of her tort claims, including her bailment causes of action, are barred

by the applicable statute of limitations. *See Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (2000) (holding that, although contractual in nature, “an action for breach of the duty of care by a bailee sounds in tort”).

Plaintiff contends she did not have a reasonable opportunity to conduct discovery on the statute of limitations issue, but it would appear to the Court that Plaintiff made no attempt to conduct any such discovery. Plaintiff knew about the statute of limitations issue since Defendants filed their motions to dismiss in December 2018, yet Plaintiff never sent any discovery requests specific to the issue. On August 19, 2019, a full month before the hearing, Defendants actually offered to produce anything Plaintiff felt she needed for the statute of limitations issue, but Plaintiff chose to ignore Defendants’ offer. Plaintiff had an obligation to establish facts showing there was a genuine issue of material fact, but despite adequate time to discover if any such facts existed, she failed to do so. *See George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 593, 545 S.E.2d 500 (2001) ( party opposing a motion for summary judgment may not rest on the mere allegations or denials of her pleadings).

Next, Plaintiff argued her claims should relate back to the filing of her Negligence Action pursuant to Rule 15(c), SCRCP. However, Rule 15 is inapplicable to the instant actions, because Rule 15 applies to amended complaints. The instant actions are not amendments to the Negligence Action complaint; rather, they are distinct and separate actions, and the Court is not aware of any procedure whereby such actions can be converted into amendments of prior actions. Regardless, even if treated as amended complaints, the claims would still be barred by the statute of limitations. It is well established that a complaint cannot be amended to state a new or different cause of action after the statute of limitations has expired. *Scott v. McCain*, 272 S.C. 198, 202, 250 S.E.2d 118, 121 (1978); *Coral Gables v. Palmetto Brick Co.*, 183 S.C. 478,

191 S.E. 337 (1937) (“[A]n amendment which introduces a new or different cause of action and makes a new or different demand does not relate back to the beginning of the action, so as to stop the running of the statute of limitations, but is the equivalent of a fresh suit upon a new cause of action, and the statute continues to run until the amendment is filed.”)

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that C.A. Nos. 2019-CP-37-0271 and 2018-NI-37-00010 are both hereby dismissed with prejudice.

As to C.A. No.: 2018-CP-37-00762, Plaintiff’s Bailment and Implied Bailment causes of action are hereby dismissed with prejudice. Only Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action remain; however, since those causes of action are not asserted against Defendants Docyk and Hendricks, those defendants are hereby dismissed.

Further, the Court finds Defendant Upstate Affiliate Organization is not a proper party to this action; therefore it is also dismissed.

In sum, all causes of action are hereby dismissed except Plaintiff’s Breach of Contract and Breach of Implied Contract causes of action, which shall proceed against Defendant Greenville Health System only.

Finally, Defendant Greenville Health System’s motion to stay the Contract Action pending resolution of the appeal of the Negligence Action is hereby denied.

AND IT IS SO ORDERED.

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The Honorable Judge R. Scott Sprouse  
Tenth Judicial Circuit

October \_\_, 2019



Oconee Common Pleas

**Case Caption:** Jane Doe VS Oconee Memorial Hospital , defendant, et al  
**Case Number:** 2018NI3700010  
**Type:** Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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