

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

v.)

South Carolina Department of)
Transportations; Paul D. de Holczer,)
individually and as a partner of the law)
firm of Moses, Koon & Brackett, PC;)
Michael H. Quinn, individually and as)
senior lawyer of Quinn Law Firm, LLC;)
J. Charles Ormond, Jr. individually and)
as partner of the Law Finn of Holler,)
Dennis, Corbett, Ormond, Plante &)
Garner; Oscar K. Rucker, in his individual)
capacity as Director, Rights of Way South)
Carolina Department of Transportation;)
Macie M. Gresham, in her individual)
capacity as Eastern Region Right of Way)
Program Manager South Carolina)
Department of Transportation;)
Natalie J. Moore, in her individual)
capacity as Assistant Chief Counsel,)
South Carolina Department of)
Transportation,)

ORDER GRANTING
MOTIONS TO DISMISS

Defendants.)
)
)

RECEIVED
DEC 20 2019
SC Court of Appeals

This matter is before this Court on the Motions to Dismiss filed by the Defendants South Carolina Department of Transportation ("SCDOT"), Paul D. de Holczer, Natalie J. Moore, Michael H. Quinn, Quinn Law Firm, LLC, and J. Charles Ormond, Jr. A hearing was held on August 8, 2019, with the *pro se* Plaintiff and counsel for these Defendants present. After a

review of the pleadings, the written submissions of the parties, and the oral arguments of the parties, this Court grants the Motions to Dismiss on the bases set forth below.

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. The Defendant Ormond was Ronald Paul's legal counsel in that 2002 condemnation action. The Defendant Quinn represented Keith Buckles and G.L. Buckles, who were the landowners in that action. The Defendants de Holczer and Moore represented SCDOT in that action. 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 of limitations defense and other defenses. The Plaintiff appealed to the Court of Appeals which

¹ The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Plaintiff have been submitted into the record, and this Court takes judicial notice of those pleadings and orders. *See, Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984) ("[a] court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records").

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 includes federal Section 1983 civil conspiracy claims against the same Defendants. In lieu of filing Answers, the Defendants SCDOT, de Holczer, Moore, Quinn, and Ormond filed the Motions to Dismiss currently before this Court asserting a number of separate and independent bases for dismissal as discussed below.

Legal Analysis

I. Statute of Limitations Defense

The applicable statute of limitations for the Plaintiff's federal conspiracy claims is three years. The Plaintiff contends, however, that the applicable statute of limitations is twenty years. He relies on S.C. Code Ann. § 15-3-520(b), which provides for a twenty year statute of limitations for an action upon a sealed instrument, and argues that his Section 1983 action is based upon a commercial lease with the Buckles that constitutes a sealed instrument. The Court finds the Plaintiff's position to be unpersuasive. In determining the proper statute of limitations in a Section 1983 claim, the United States Supreme Court has found that the federal court should adopt the state law statute of limitations for personal injury. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Under South Carolina law, the statute of limitations for a personal injury claim is three years. *See*, S.C. Code Ann. § 15-3-530(5). Consequently, it has been held that "[t]he statute of limitations for section 1983 causes of action arising in South Carolina is three years." *Hamilton v. Middleton*, 2003 WL 23851098 (D.S.C. 2003). *See also*, *Simmons v. South Carolina State Ports Authority*, 694 F.2d 64 (4th Cir. 1982). In the case at bar, the Plaintiff did not file his current Complaint until October 26, 2018. Thus, all claims arising prior to October 26, 2015 are time-barred.

The record, which includes orders and pleadings from the prior 2008, 2012, 2013, 2015, and 2016 lawsuits, demonstrates that the Plaintiff's alleged claims accrued and were known to the Plaintiff prior to October 26, 2015. During the hearing, the Plaintiff conceded that his current Section 1983 claims are the same as those previously brought in federal court and were known to him prior to 2015, and that the acts on which he is basing his claims occurred prior to that date. The Court further recognizes that the allegations of the current Complaint itself reflect

that the causes of action accrued during the course of the 2002 condemnation action which, including appeals, ended in October 2007. The Plaintiff's 2008 state court litigation raised the same facts and conspiracy claims as presently re-asserted in the 2018 action. That lawsuit was dismissed on the merits, and that dismissal was upheld on appeal. The 2008 action, including appeals, ended in October 2011. The series of federal court actions further demonstrate that the Plaintiff was well aware of the existence of his claims prior to October 26, 2015. As a result, this Court concludes that the Plaintiff's current Complaint is time-barred and is dismissed with prejudice.

II. Claim and Issue Preclusion

The Defendants have also asserted *res judicata* (claim preclusion) and collateral estoppel (issue preclusion) as additional bases requiring the dismissal of this action. The Court agrees with the Defendants' position. "Under the doctrine of *res judicata*, a final judgment on the merits in a prior action will preclude the parties from relitigating any issues actually litigated or those that might have been litigated in the first action." *Wright v. Marlboro County School District*, 317 S.C. 160, 452 S.E.2d 12, 14 (Ct. App. 1994). "The *res judicata* defense requires a showing of three essential elements: (1) the prior judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matters properly included in the first action." *Id.* Importantly, "[r]es judicata bars not only issues litigated in a prior action, but issues that could have been litigated." *Plum Creek Development Co. v. Conway*, 328 S.C. 347, 351, 491 S.E.2d 692 (Ct. App. 1997). *See also, Jimmy Martin Realty Group Inc. v. Fameco Dist.*, 300 S.C. 192, 386 S.E.2d 803 (Ct. App. 1989).

This Court finds that the Plaintiff's current Complaint is barred by *res judicata*. The Plaintiff has previously litigated the same claims in the 2008 action, which resulted in a dismissal on

the merits as issued by Judge Strickland. The three elements of res judicata are all satisfied. The 2008 action is final, valid, and on the merits. The parties in the 2008 action are identical, with the exception that Natalie Moore was not a party to that case. Lastly, the conspiracy claims asserted in both actions are the same. And certainly, even if not precisely the same, res judicata is a bar to any other claims that could have been brought as part of the 2008 action, which includes a Section 1983 claim for civil conspiracy.

Alternatively, the Defendants argue that the Plaintiff's current Complaint should be dismissed based on the doctrine of collateral estoppel. This Court agrees. Under South Carolina law, collateral estoppel "prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281, 285 (2003). "A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Crosby v. Prysmian Communications Cable and Systems USA, LLC*, 397 S.C. 101, 723 S.E.2d 813, 817 (Ct. App. 2012).

The record includes not only the 2008 dismissal order issued by Judge Strickland but also the federal court orders issued by Judge Currie, all of which address various defenses and insufficiencies applicable to the Plaintiff's repetitive Complaints. In fact, in her Order in the 2016 action, Judge Currie observed:

Paul is correct in noting that the prior dismissals were without prejudice and, consequently, do not preclude him from filing a new action against the previously named Defendants. That the dismissals were without prejudice does not, however, render them without meaning. The dismissal Orders (and incorporated Reports) in Paul I, Paul II, Paul III, and Paul IV stand as authority for the proposition that the allegations in each of those cases failed

for reasons explained in each of those Orders (and Reports). It follows that the prior decisions are on-point authority for dismissal of Paul's present complaint to the extent it merely repeats prior allegations and claims found in his prior complaints. This is particularly true as to Paul III and Paul IV, both of which the Fourth Circuit summarily affirmed "for the reasons stated by the district court." Paul III, *aff'd*, 599 F.App'x 108; Paul IV, *aff'd*, 631 F.App'x 197. Under these circumstances, the Report properly relied on prior rulings as to repetitive allegations and claims.

Therefore, in applying the defense of collateral estoppel, the Court also concludes that the current Complaint must be dismissed on the same bases that the prior Complaints have been dismissed.

III. Defendants Quinn and Ormond Not "State Actors"

As an additional basis for dismissal, the Defendants Quinn, Ormond, and their law firms argue that they are not "state actors" and were not acting under "color of state law" in their representation of the Plaintiff and the Buckles parties in the 2002 condemnation action. In order to state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a federal right, and (2) did so under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The Fourth Circuit has recently held that "private actors are not amenable to suit under § 1983. In addition, private attorneys do not act under color of state law and a § 1983 suit may not be maintained against an attorney based on his representation." *Marcantoni v. Bealefeld*, 734 Fed. Appx. 198, 199 (4th Cir. 2018). The Court, therefore, concludes that the Defendants Quinn, Ormond, and their law firms are not proper parties and are dismissed on this additional basis.

IV. Defendant SCDOT Not a "Person" Amenable to Suit under 42 U.S.C. § 1983.

As an additional basis for dismissal, the Defendant SCDOT argues that it is not a proper party in any action brought pursuant to 42 U.S.C. § 1983. This Court agrees. In *Will v. Michigan State Police*, 491 U.S. 58 (1989), the United States Supreme Court held that the state is

not a "person" amenable to suit under Section 1983. *See also, Alabama v. Pugh*, 438 U.S. 781 (1978); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). The same is true for a state agency such as SCDOT. The federal courts have consistently ruled that South Carolina state agencies such SCDOT are the arms or alter egos of the state and, therefore, do not qualify as "persons" amenable to suit under 42 U.S.C. § 1983. *See e.g., South Carolina Department of Disabilities and Special Needs v. Hoover Universal, Inc.*, 535 F.3d 300 (4th Cir. 2008) (SCDMH, as a state agency and "arm of the state," is not a "person" amenable to suit under 42 U.S.C. § 1983).

This Court concludes that the Defendant SCDOT is not a "person" or proper party not just for money damages claims but also for claims seeking injunctive or prospective relief. The United States Supreme Court has explained that "a State cannot be sued directly in its own name regardless of the relief sought." *Kentucky v. Graham*, 473 U.S. 159, 169, n.14 (1985). Similarly, in *Arizonians for Official English v. Arizona*, 520 U.S. 43 (1997), the Supreme Court held that "§ 1983 creates no remedy against a State." 520 U.S. at 69. Thus, the Defendant SCDOT is dismissed on this additional basis.²

IT IS, THEREFORE, ORDERED that, based on the reasons stated herein, the Defendants' Motions to Dismiss are granted and the Plaintiff's Complaint is dismissed with prejudice as to the Defendants South Carolina Department of Transportation, de Holczer, Moore,

² With respect to grounds that may be characterized as pleading deficiencies, a dismissal under Rule 12(b)(6), SCRPC, should generally be without prejudice, and "[t]he plaintiff in most cases should be given an opportunity to file and serve an amended complaint." *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 881 (2006). However, where the dismissal is premised on legal grounds which cannot be corrected by an opportunity to amend, the dismissal should properly be entered with prejudice and without an opportunity to replead or amend. *Id.* The Court notes that the Plaintiff's federal claims are dismissed on the merits and not because of any correctable pleading deficiency. *See, Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

Quinn, Ormond, and their law firms.

AND IT IS SO ORDERED.

JOCELYN NEWMAN
Presiding Circuit Court Judge,
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Ronald I Paul vs SC Department Of Transportation , defendant, et al
Case Number: 2018CP4005641
Type: Order/Dismissal

So Ordered

Jocelyn Newman

Electronically signed on 2019-11-13 16:01:04 page 10 of 10