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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,.....Respondents.

FINAL BRIEF OF RESPONDENT TONY DENNY

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I. THE TRIAL COURT PROPERLY DISMISSED MR. DAVIS’ CLAIMS AGAINST MR. DENNY BECAUSE MR. DAVIS VIOLATED THE TRIAL COURT’S AMENDED ORDER BY FAILING TO SERVE THE AMENDED COMPLAINT ON MR. DENNY WITHIN THE TIME FRAME REQUIRED BY THE TRIAL COURT’S PRIOR ORDER AND BY FAILING TO SERVE MR. DENNY AT ALL PURSUANT TO RULE 12(B)(5), SCRCP. 3

II. THE DISMISSAL OF MR. DAVIS’ CLAIMS AGAINST MR. DENNY IS FURTHER SUPPORTED BY THE ADDITIONAL SUSTAINING GROUND THAT THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE THE AMENDED COMPLAINT FAILS TO ASSERT ANY FACTUAL ALLEGATIONS CAPABLE OF SUPPORTING SUCH CLAIMS..... 4

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TABLE OF AUTHORITIES

In the interests of judicial economy and the prevention of redundant briefing, Mr. Denny incorporates by reference all applicable authorities cited in the Table of Authorities section of the Brief of co-Respondents Cato Institute and Howard S. Rich. Additional authorities cited in this brief are listed below.

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against Mr. Denny because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint within the time frame required by the trial court's prior order?
2. Was the dismissal of Mr. Davis' claims against Mr. Denny further supported by the additional sustaining ground that the Amended Complaint fails to state a claim upon which relief can be granted because the Amended Complaint fails to assert factual allegations capable of supporting such claims?

STATEMENT OF THE CASE

In the interest of economy and efficiency, Mr. Denny adopts and incorporates by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich pursuant to Rule 208(b)(6), SCACR. To that Statement, Mr. Denny adds that he filed his own Motion to Dismiss on February 15, 2019, arguing dismissal was warranted because the Amended Complaint failed to state facts sufficient to support any cause of action against Mr. Denny and because Appellant Davis failed to comply with a prior court order that he amend his Complaint and serve the Amended Complaint within a specified period of time. *See* R. pp. 368-69. The Amended Complaint mentions Tony Denny only in the caption and when identifying who he is in the factual background section of the Amended Complaint. At no time does the Amended Complaint assert any specific facts or allegations with regard to Mr. Denny. The Amended Complaint lacks a single mention of any wrongdoing on behalf of Mr. Denny.

STATEMENT OF THE FACTS

In the interests of judicial economy and the prevention of redundant briefing, Mr. Denny adopts and incorporates by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich.

STANDARD OF REVIEW

Mr. Denny hereby adopts and incorporates by reference the Standard of review found in the brief of co-Respondents Cato Institute and Howard S. Rich.

ARGUMENT

Mr. Denny hereby incorporates by reference the Arguments found in the Brief of co-Respondents Cato Institute and Howard S. Rich, which are applicable to Mr. Denny as well, and any other applicable arguments asserted by other co-Respondents. In addition, Mr. Denny asserts two additional sustaining grounds upon which this Honorable Court should affirm the decision of the Circuit Court.

- I. **The trial court properly dismissed Mr. Davis' claims against Mr. Denny because Mr. Davis violated the trial court's Amended Order by failing to serve the Amended Complaint on Mr. Denny within the time frame required by the trial court's prior order and by failing to serve Mr. Denny at all pursuant to Rule 12(b)(5), SCRPC.**

The Circuit Court's order dismissing the claims against Mr. Denny should be affirmed because Appellant Davis failed to serve his Amended Complaint upon Mr. Denny within the time frame required by the Circuit Court's October 30, 2018 order. Specifically, and in addition, as of the date of this Initial Brief of Respondent, Mr. Denny still has not been properly served with the Amended Complaint. The public index for the case does not even show a Proof of Service as to Mr. Denny. Mr. Denny's Answer to the Amended Complaint, filed on February 15, 2019, asserts as a defense that he has not been served and moved the Court to dismiss the claim based on Rules 12(b)(1), 12(b)(2), 12(b)(4), and 12(b)(5) of the South Carolina Rules of Civil Procedure. As it stands, nearly one year has passed since Appellant filed his Amended Complaint, Mr. Denny still has not been properly served. Based on Appellant's failure to comply with the Circuit Court's October 30, 2018, and by virtue of Appellant's failure to ever serve Mr. Denny, the decision below should be affirmed.

II. The dismissal of Mr. Davis' claims against Mr. Denny is further supported by the additional sustaining ground that the Amended Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), SCRCP because the Amended Complaint fails to assert any factual allegations capable of supporting such claims.

The Amended Complaint contains a staggering dearth of factual support needed to sustain any causes of action against Mr. Denny, and the dismissal of the case against Mr. Denny should therefore be affirmed. The sum total of factual allegations against Mr. Denny is found in Paragraph 27 of the Amended Complaint, which merely states (1) where he lives; (2) his position on the board of one co-Respondent; and, (3) his alleged position as a lobbyist for a different co-Respondent. Otherwise, the Amended Complaint neither alleges nor even hints at any acts on the part of Mr. Denny that could give rise to an actionable claim. In fact, there are more specific allegations against John Does in the Amended Complaint than there are against Mr. Denny, whom Appellant chose to name specifically in the suit. The Amended Complaint is therefore fatally deficient and the judgment below should be affirmed. *See generally* R. pp. 210-14, 304-12, 412-19, 435-44.

CONCLUSION

Appellant Mr. Davis failed to comply with the Circuit Court's Order requiring Amendment and Service of the Amended Complaint within 15 days in regard to Mr. Denny. Further, Appellant Mr. Davis failed entirely to serve Mr. Denny with the Amended Complaint at all. Even if Mr. Davis could show that Mr. Denny was properly served, the Amended Complaint is fatally deficient with regard to Mr. Denny because it alleges no facts whatsoever that would sustain any cause of action, much less the litany of causes of action found in the Amended Complaint. For this reason, Mr. Denny

respectfully requests that this Honorable Court affirm the judgment below and dismiss Mr. Denny from the case with prejudice.

Respectfully submitted,

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RULE 211(b) CERTIFICATION

The undersigned counsel for Respondent Tony Denny certifies that this Final Respondent's Brief complies with Rule 211(b), SCACR.

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