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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2020-001232

Jeffery Wilder,

Appellant,

v.

Charleston County Bd. of Voter Registration & Elections, Charleston County Democratic Party, Dorchester County Bd. of Voter Registration & Elections, Dorchester County Democratic Party, SC Democratic Party, South Carolina Election Commission, Deon Tedder & Deon Tedder, LLC,

Respondents.

APPENDIX TO RECORD ON APPEAL

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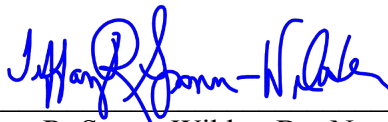
Charleston County Bd. of Voter Registration & Elections, Charleston County Democratic Party, Dorchester County Bd. of Voter Registration & Elections, Dorchester County Democratic Party, SC Democratic Party, South Carolina Election Commission, Deon Tedder & Deon Tedder, LLC

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the *Appendix to the Record on Appeal* contains all material proposed to be included by any of the parties and not any other material.

Dated: October 5, 2020

By: 
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JEFFERY WILDER,)
Plaintiff,)
v.)
CHARLESTON COUNTY BOARD)
OF VOTER REGISTRATION &)
ELECTIONS, CHARLESTON)
COUNTY DEMOCRATIC PARTY,)
DORCHESTER COUNTY BOARD)
OF VOTER REGISTRATION &)
ELECTIONS, DORCHESTER)
COUNTY DEMOCRATIC PARTY,)
S.C. DEMOCRATIC PARTY, SOUTH)
CAROLINA ELECTION)
COMMISSION, DEON TEDDER, and)
DEON TEDDER FOR SC HOUSE,)
LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-2678

**DEON TEDDER’S MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS**

Defendant Deon Tedder (“Tedder”) submits this memorandum in support of his Motion to Dismiss in lieu of Answer filed July 17, 2020.

Plaintiff filed this action on June 19, 2020. As it relates to Tedder, the relief requested therein was a declaration from this Court that Tedder was not domiciled in SC House District 109 on March 23, 2020 when he filed to run in the Democratic party primary scheduled for June 9, 2020. For the reasons stated herein, this matter should be dismissed.

FACTUAL BACKGROUND

Plaintiff filed this action on June 19, 2020 and filed an Affidavit of Service on June 26, 2020. As referenced in the Affidavit, service upon Mr. Tedder was made purportedly made by “delivering a filed copy of the Summons & Complaint in the above captioned action to Deon

Tedder as his principal place of business located at 3844 Leeds Avenue, North Charleston, SC 29405 and leaving the same with Naekeia Pinckney, the Office Manager at approximately 3:49pm.” Clearly, this is improper service pursuant to SCRPC Rule 4(d)(1). (Service upon an individual is made “by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode...”.) On this ground alone, this action should be dismissed pursuant to SCRPC Rule 12(b)(5).

Further, this matter should be dismissed pursuant to the doctrine of collateral estoppel by way of SCRPC Rule 12(b)(6). Plaintiff alleges in his complaint that Defendant Tedder was not “domiciled in the District at the time of filing”¹ and the relief requested was a declaration from this Court declaring same. The issue of Tedder’s domicile has been previously litigated and determined by this Court through a valid final judgment and the determination of his domicile was essential to the judgment, thereby making the determination of Tedder’s domicile conclusive in all subsequent actions between Plaintiff and Tedder.²

LAW AND ARGUMENT

In analyzing a motion to dismiss under Rule 12(b)(5), SCRPC, a court must determine whether the Plaintiff complied with the requirement of Rule 4(d)(1). *Brown v. Carolina Emergency Physicians*, 348 SC 569, 584, 560 S.E.2d 624,632 (Ct. App. 2001). Based on the above, this action must be dismissed.

Further, in analyzing a motion to dismiss under Rule 12(b)(6), SCRPC, a court must determine whether the complaint is legally and factually sufficient. *See* Rule 12(b)(6), SCRPC; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56

¹ *See* Complaint ¶ 26. Tedder filed his Statement of Intention of Candidacy to run for SC House District 109 on March 23, 2020.

² *See* Exhibit A – Order of R. Markley Dennis, Jr. dated July 2, 2020 finding that Tedder established his domicile in SC House District 109 on February 28, 2020, a month prior to filing for office.

(2007); *Coleman v. Md. Ct. of Appeals*, 626 F.3d 187, 190 (4th circ. 2010), *aff'd*, 132 S.Ct. 1327 (2012). Although a court assumes the facts alleged in the complaint are true and draws all reasonable factual inferences in plaintiff's favor, a court need not accept a complaint's legal conclusions couched as factual allegations. *Iqbal* at 678. Similarly, a court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Id.* Finally, a Court must determine whether the facts of the complaint have been previously litigated and determined through a prior final judgment, and if so, must dismiss pursuant to the doctrine of collateral estoppel.

"Collateral estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action." *S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E. 2d 625, 627 (1991). "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id.*

The issue of Tedder's domicile was decided by the CCBVRE decision of May 29, 2020. That order was properly appealed to the Circuit Court and a hearing was held on June 30, 2020. On July 2, 2020, this Court issued an Order naming Plaintiff as an intervenor and granting the appeal, in which the Court found that Tedder "established his domicile at 2629 Orchid Avenue, North Charleston, SC 29405." In its Findings of Fact, the Court found that "on February 28, 2020, Mr. Tedder established his domicile at 2629 Orchid Avenue, North Charleston, SC 29405, a property located within House District 109." The July 2, 2020 Order has not, and cannot, be appealed and is a final Order of this Court.

Plaintiff alleges in his complaint that Defendant Tedder was not "domiciled in the District

at the time of filing” and the relief requested was a declaration from this Court declaring same. The issue of Tedder’s domicile has been previously litigated and determined by this Court through a valid final judgment and the determination of his domicile was essential to the judgment, thereby making the determination of Tedder’s domicile conclusive in all subsequent actions between Plaintiff and Tedder

CONCLUSION

Based upon the foregoing, the Court should dismiss Plaintiff’s action with prejudice in its entirety on the basis that the Plaintiff has failed to state a cause of action upon which relief can be granted.

Respectfully submitted,

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Attorneys for Deon Tedder

August 21, 2020
Charleston, South Carolina

Orchid Avenue, North Charleston, SC,¹ a property located within SC House District 109, and properly updated his voter registration to reflect same on March 17, 2020. On March 19, 2020, Tedder filed Articles of Organization with the SC Secretary of State and established the LLC for purposes of opening a campaign account to accept campaign contributions. On March 23, 2020, Tedder filed a Statement of Intention of Candidacy for SC House District 109 with the Charleston County Board of Voter Registration and Elections (“CCBVRE”) and on April 5, 2020, Defendant Charleston County Democratic Party certified him to be a qualified candidate for the upcoming Democratic party primary for SC House District 109. On May 20, 2020, Tiffany Spann-Wilder² challenged the voter registration qualifications of her husband’s two opponents for SC House District 109, Tedder and James Johnson, alleging that neither candidate resided within District 109. The challenge to James Johnson was denied at a hearing before the CCBVRE on May 29, 2020 and the challenge to Tedder was granted. The parties were notified by counsel for CCBVRE that, since Tedder could only appeal a written notice of CCBVRE’s decision, a written order would be issued and served on the parties at a later date.

On June 9, 2020, Tedder and Johnson received the highest percentages of votes in the Democratic Primary for SC House District 109³ and proceeded to a primary run-off. On June 11, 2020, the CCBVRE served the written notice of its decision from the May 29, 2020 hearing on all parties. That same day, counsel for Defendant Tedder served CCBVRE with Tedder’s Notice of Intent to Appeal its decision to the Court of Common Pleas for the Ninth Judicial Circuit pursuant to SC Code Section 7-5-230(c).

¹ See Exhibit A – Order of R. Markley Dennis, Jr. dated July 2, 2020.

² Tiffany Spann-Wilder, the challenger in the CCBVRE matter, is Plaintiff’s wife and counsel of record in this action. At the time of the CCBVRE challenge, her husband, Jeffery Wilder, was a candidate for SC House – District 109.

³ Candidate Johnson received 39.17% of the votes; Tedder received 35.71% of the votes; and Wilder received 25.12% of the votes.

On June 19, 2020, while the appeal of the CCBVRE matter related to Mr. Tedder's residency remained pending before this Court, counsel for the Plaintiff filed the present action seeking a declaration from the Court that Tedder was not a resident of District 109 when he filed for office on March 23, 2020, which was the exact issue already pending before this Court in the CCBVRE appeal referenced above. The complaint further sought an injunction against all other Defendants, with the exception of Defendant LLC, preventing and enjoining them from certifying Tedder as a candidate for House District 109, preventing and enjoining the parties from placing Tedder's name on the upcoming primary run-off and subsequent general election, and preventing and enjoining the parties from holding any elections for House District 109. The complaint did not allege a cause of action against Defendant LLC nor state a single fact that could give rise to a cause of action against Defendant LLC.

On June 23, 2020, Tedder received the most votes and was declared the winner of the Democratic primary run-off for South Carolina House District 109. The SC State Election Commission certified Tedder as the party nominee on June 26, 2020.

On June 29, 2020, Johnson challenged the results of the election by filing a protest with the SC Democratic Party Executive Committee alleging that Tedder did not reside within SC House District 109. The protest was dismissed by the Executive Committee after debate.⁴

On June 30, 2020, a hearing was held on Tedder's appeal of the above-referenced CCBVRE decision regarding his residency. After hearing arguments from all parties and reviewing the record on appeal, the Hon. R. Markley Dennis, Jr. found Tedder to have established his domicile at 2629 Orchid Avenue, North Charleston, SC on February 28, 2020, a full month prior to filing his Statement of Intention of Candidacy for SC House District 109, and issued an

⁴ See Exhibit B – Order of the SCDP Executive Committee dated July 2, 2020. Of note, the protest was dismissed after Tedder presented the Committee with Judge Dennis' Order finding that Tedder resides in District 109.

Order granting Tedder's appeal.⁵ Plaintiff did not appeal the Order Granting Appeal and thus it became a final Order and ended the matter. As a result, Tedder has been certified by the SC Democratic Party as its official nominee for SC House District 109 in the November 3, 2020 general election.⁶

Despite the issue of residency having already been ruled upon by the Court with no additional remedies left to pursue, Plaintiff continued to litigate this action, thus Defendant LLC was forced to file this Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC, on July 17, 2020.

LAW AND ARGUMENT

In analyzing a motion to dismiss under Rule 12(b)(6), SCRPC, a court must determine whether the complaint is legally and factually sufficient. *See* Rule 12(b)(6), SCRPC; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550U.S. 544, 555-56 (2007); *Coleman v. Md. Ct. of Appeals*, 626 F.3d 187, 190 (4th circ. 2010), *aff'd*, 132 S.Ct. 1327 (2012). Although a court assumes the acts alleged in the complaint are true and draws all reasonable factual inferences in plaintiff's favor, a court need not accept a complaint's legal conclusions couched as factual allegations. *Iqbal* at 678. Similarly, a court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Id.*

While the LLC is listed as a Defendant in the caption and referred to as a Defendant in the "Parties, Jurisdiction, and Venue" portion of the Complaint, thereafter, the complaint is void of any mention of the LLC. Plaintiff has literally failed to allege a single fact related to the LLC, has plead no cause of action against the LLC, nor sought any relief from this Court related to the LLC.

⁵ *See* Exhibit A - Order of R. Markley Dennis, Jr. dated July 2, 2020. In addition to ruling on the residency issue and granting the appeal, the Court also granted Plaintiff Jeffrey Wilder's Motion to Intervene in the CCBEVR matter.

⁶ Upon information and belief, and pursuant to S.C. Code Ann. § 7-13-350, Tedder was certified as the Democratic Party's candidate for the November 3, 2020 general election for SC House District 109 on or about August 15, 2020.

CONCLUSION

Based upon the foregoing, Defendant LLC should be dismissed from this action pursuant to Rule 12(b)(6), SCRCF, on the basis that the complaint does not contain a single fact that would give rise to a cause of action against the LLC upon which relief can be granted.

Respectfully submitted,

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August 21, 2020
Charleston, SC

EXHIBIT B



BEFORE THE SOUTH CAROLINA DEMOCRATIC PARTY

**IN THE MATTER OF HOUSE DISTRICT 109
PROTEST BY JAMES JOHNSON &
COMMITTEE TO ELECT JAMES JOHNSON**

ORDER

This matter is before the State Executive Committee on a protest timely filed by candidate Johnson pursuant to SC Code 7-17-560 and 7-17-570. At the appropriate time, the Executive Committee of the South Carolina Democratic Party (SCDP) convened by electronic means from its headquarters in Columbia, SC.

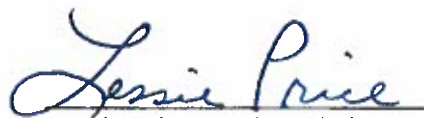
After a roll call to determine the voting members present, the Acting Chair, Lessie Price, the first vice chair of the SCDP, read a statement for the record informing the members of the committee that there are three cases in the Court of Common Pleas in Charleston County which deal with the same issues raised in this protest: the qualifications of Mr. Tedder to be a candidate for House District 109. None of those cases explicitly requests a special election as does this protest all of these cases deal with the issue of qualifications for candidacy as to Deon Tedder.

After determining who was present on behalf of the candidates from House District 109, the Chair accepted a motion from the Executive Committee member Beverly Frierson with a second from Stuart Sprague. This motion placed before the Committee the question of dismissal of the protest on two grounds: that the relief requested is not within the power of the state executive committee and that the cases in Charleston County courts will decide the matter with finality binding the SCDP to the results from the courts.

Representatives of the candidates were permitted time to argue the motion to dismiss. The committee was informed by counsel for Tedder that an order had been entered today in the matter of Tedder v. Charleston County Board of Voter Registration & Elections, finding Mr. Tedder properly registered as an elector in House District 109.

Members of the Committee were permitted time to debate the motion to dismiss. After debate was exhausted, the members of the Executive Committee voted to dismiss the protest.

IT IS SO ORDERED.


Lessie Price, Acting Chair
South Carolina Democratic Party

Columbia, SC

July 2, 2020