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SC Court of Appeals

The State of South Carolina
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas

Judge Michael Nettles
Trial Case No. 2019-CP-21-03521

Edward Spears


Appellant,

v.

Mike Hopewell

Respondent.

RECORD OF APPEALS
(Amended)



Edward Spears
503 Roughfork Street
Florence, SC 29501
843-496-3711

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Record of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Edward Spears
503 W Roughfork St
Florence, SC 29501-0000
(843) 496-3711

2019CV2110105972
CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
COMPLAINT

PLAINTIFF(S)
Vs

Michael S Hopewell
470 W. Evans St
Florence, SC 29501

DEFENDANT(S)

I, Edward Spears, the Plaintiff in this civil action do make the following claims:

1. I believe that the defendant(s),
Michael S Hopewell

is/are a resident(s) of Florence County, and resides within the jurisdiction of the Florence Magistrate Court or this Complaint is properly filed in Florence County.

2. I make this complaint on the following:

Plaintiff is filing for obstruction of justice.

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$7,580.00 and/or relief as below requested:

Plaintiff is requesting 7,500 plus \$80.00 in court fees.
including any costs resulting in this action.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE STATED FACTS ARE TRUE EXCEPT THOSE BASED ON MY BEST INFORMATION THAT I BELIEVE TO BE TRUE.

August 28, 2019


SIGNATURE OF PLAINTIFF/ATTORNEY

P2

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE MAGISTRATE'S COURT
TWELFTH JUDICIAL CIRCUIT
CIVIL CASE #2019CV2110105972

Edward Spears)
503 W. Roughfork Street)
Florence, SC 29501-0000)
(843) 496-3711)

Plaintiff,)

vs.)

ANSWER OF DEFENDANT

Michael S. Hopewell)
470 W. Evans Street)
Florence, SC 29501)

Defendant.)

The Defendant, answering the Plaintiff's Complaint, would allege and show unto the Court as follows:

FOR A FIRST DEFENSE

*no counter claim
Jurisdiction same*

- 1. The allegations contained within paragraph 1 are admitted.
- 2. The allegations contained within paragraph 2 are denied.
- 3. The allegations contained within paragraph 3 are denied.

FOR A SECOND DEFENSE

- 4. Each and every allegation contained within the Complaint not hereinabove admitted, qualified or explained is denied and strict proof is demanded thereof.

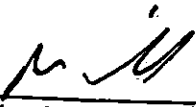
FOR A THIRD DEFENSE
(Motion to Dismiss)

- 5. The allegations of the Complaint fail to state facts sufficient to constitute a cause of action, therefore, the Defendant prays that the Complaint be dismissed pursuant to Rule 12(b)(6), SCRCP.

P 2-3

Respectfully submitted,

Florence, SC
September 27, 2019



Michael S. Hopewell (S.C. Bar #65335)
Attorney for Defendant

ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mhopewell@amhattorneys.com

P 2-3

Tort Laws in S.C.
15-78-40 215-78-50

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Edward Spears
503 W. Roughfork Street
Florence, SC 29501

Plaintiff,

vs.

Michael S. Hopewell
470 W. Evans Street
Florence, SC 29501

Defendant.

IN THE MAGISTRATE'S COURT
CIVIL CASE #2019CV2110105972

Edward Spears
MEMORANDUM IN SUPPORT
OF DEFENDANT'S
MOTION TO DISMISS

A Motion to Dismiss was included within the Answer of Defendant that was filed on September 27, 2017. This Memorandum is in support of that Motion to Dismiss which is scheduled to be heard on November 25, 2019.

Rule 5(a) of the Magistrate's Court rules provides that:

"A suit is commenced by filing with the Magistrate's Court a short and plain written statement of the facts showing what the Plaintiff claims and why the claim is made."

The Complaint in the present action states only that "Plaintiff is filing for obstruction of justice." The Complaint goes on to state that the Plaintiff believes he is entitled to and does request a judgment for \$7,580.00. No factual basis or recitation of events is listed as the basis for this allegation. No date, occurrence, or even timeframe is listed to substantiate the allegations of the Complaint.

In addition to the fact that Plaintiff did not follow Rule 5(a) by providing a written statement of the facts leading to his allegation, obstruction of justice is not a tort in South Carolina, therefore, a civil cause of action for obstruction of justice does not exist in South Carolina.

P4-5

Further, obstruction of justice is a crime rather than a civil cause of action. In South Carolina, it is codified in Section 16-9-340. A copy of South Carolina Code Section 16-9-340 is enclosed. It is contained in Title 16 of the South Carolina Code which is titled "Crimes and Offenses".

For the reasons stated herein and in Defendant's Answer, the Defendant respectfully requests that the Plaintiff's Complaint be dismissed, with prejudice.

Respectfully submitted,



Michael S. Hopewell
Defendant

Florence, SC
November 19, 2019

ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mhopewell@amhattorneys.com

P. 4-5

F. of d.

FILED

2019 CP 21 3571

Exhibit

2019 DEC 13 AM 10:22

EDR'S PAVLOS STARA
CCCP & CS
FLORENCE COUNTY, SC

2019CV211010597
CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA

COUNTY OF Florence
Edward Speare
PLAINTIFF(S)

IN THE MAGISTRATE'S COURT

F I L E D
NOV 13 2019

VS.

Mike Hoppewell
DEFENDANT(S)

AFFIDAVIT FOR
CHANGE OF VENUE

Edward Speare plaintiff/defendant (circle one), personally appearing before me, states that he believes that he is unable to have a fair trial before Florence Magistrate Judge(s) for the following reasons:

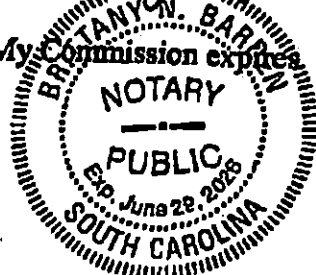
I had to file complaints on a number of Florence Magistrate Judges, Judge Becker, Judge Langley, Judge Rivers. Therefore these judges may want to retaliate in some way.
and, therefore, requests that a change of venue be granted.

Sworn to and Subscribed before me this 10th day of November, 2019.

Brian M. Barron
Magistrate or Notary Public for South Carolina

[Signature]
PLAINTIFF/DEFENDANT(or his attorney)

My Commission expires June 28, 2020



P 6



Lake City Magistrate Court

Dominic G. Owens, Judge

345 South Ron McNair Boulevard
P.O. Box 39
Lake City, South Carolina 29560
(843) 394-5461 Fax:(843) 394-3865



Exb ~~K~~

Edward Spears
503 W Roughfork St.
Florence, SC 29501

RE: Edward Spears vs Michael S Hopewell
Case Number: 2019CV2110105972
Date: November 21, 2019

Dear Mr. Spears:

Please be advised that the above referenced case has been transferred to Lake City Magistrate's Office as of today. Please direct any future filings associated with the case to the Lake City Magistrate Court.

If you have any questions, please feel free to call me at 843-394-5461.

Thanks,

Wittneyann
Civil Clerk

[Handwritten initials and scribbles]

20/19 CP 21 3021

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE MAGISTRATE'S COURT
CIVIL CASE #2019-CV-21-10105972

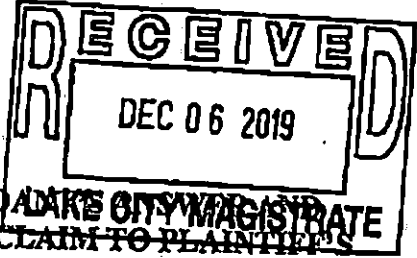
Edward Spears
503 Roughfork Street
Florence, SC 29501,

Plaintiff,

vs.

Michael S. Hopewell
470 W. Evans Street
Florence, SC 29503,

Defendant.



DEFENDANT'S COUNTERCLAIM TO PLAINTIFF'S
AMENDED COMPLAINT

The Defendant, answering the Plaintiff's Amended Complaint dated November 21, 2019, and counterclaiming thereto, would allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The allegations contained within Paragraph 1 are admitted.
2. The allegations contained within Paragraph 2 are denied.
3. The allegations contained within Paragraph 3 are denied.

2019 DEC 13 AM 10:36
BOBIS POLLOS GUYANA
CC CP & CS
FLORENCE COUNTY, SC

FILED

FOR A SECOND DEFENSE

4. Each and every allegation contained within the Complaint not hereinabove admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A THIRD DEFENSE

5. The allegations of the Complaint fail to state facts sufficient to constitute causes of action, therefore, the Complaint should be dismissed pursuant to Rule 5(a) of the *South Carolina Rules of Magistrate's Court* and Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

CERTIFIED A TRUE COPY

CLERK OF COURT
FLORENCE COUNTY, S.C.

Handwritten notes and signatures at the bottom of the page.

FOR A FOURTH DEFENSE

6. The allegations contained within Paragraph 2 specifically allege a cause of action based upon alleged actions by the Defendant which occurred on August 15, 2016. The alleged date is outside of the time period allowed by the applicable statute of limitations. Therefore, the Defendant pleads the statute of limitations as a complete bar.

FOR A FIFTH DEFENSE

7. The Defendant pleads the affirmative defense of laches as a complete and total bar to the allegations of the Complaint.

FOR A SIXTH DEFENSE
(And by Way of Counterclaim)
(Abuse of Process)

8. The Plaintiff has filed this cause of action, which he claims is for "obstruction of justice," which is not a civil cause of action in South Carolina, in an attempt to use the judicial process for the ulterior purpose of harassing the Defendant and extorting a settlement from the Defendant to avoid having to deal with this frivolous matter. By filing this frivolous case, after the expiration of the statute of limitations, the Plaintiff has committed a willful act not proper in the use of the process as it is intended.

9. The Defendant has been damaged by the Plaintiff's wrongful acts in that he has been forced to defend a frivolous cause of action and undergo harassment and attempted extortion of a settlement by the Plaintiff.

10. The Defendant is informed and believes that he is entitled to recover actual and punitive damages in an amount in excess of Seven Thousand Five Hundred (\$7,500.00) Dollars.

FOR A SEVENTH DEFENSE
(And by Way of Counterclaim)
(Defamation)

11. Over the course of the last three years, the Plaintiff has repeatedly defamed the Defendant by alleging that the Defendant lied and cheated him while defending a Magistrate's Court case originally filed in December of 2015. The Plaintiff has repeatedly stated that the Defendant is dishonest in his actions as an attorney, has misled or lied to the court, fabricated documents, and other defamatory statements. The Plaintiff has published these statements with actual malice, both in writing and orally.

12. The statements of the Plaintiff are false. The defamatory statements concern the Defendant.

13. The Defendant is informed and believes that he is entitled to damages for embarrassment, humiliation and mental suffering as a result of injury to reputation and is further informed and believes that he is entitled to recover punitive damages, all in an amount in excess of Seven Thousand Five Hundred (\$7,500.00) Dollars.

FOR AN EIGHTH DEFENSE
(And by Way of Counterclaim)
(S.C. Code §15-36-10, et. seq.)

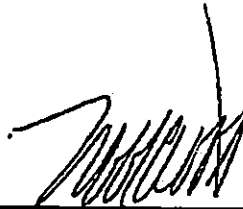
14. The Plaintiff's actions, as outlined above, are violative of S.C. Code Ann. §15-36-10, et seq., also known as the South Carolina Frivolous Proceedings Sanctions Act.

15. The Defendant is informed and believes that the court should examine the evidence before it and sanction the Plaintiff in an appropriate amount.

WHEREFORE, having fully answered the Plaintiff's Complaint and counterclaimed thereto, the Defendant prays for the following:

- a. That the Complaint of the Plaintiff be dismissed, with prejudice and with costs; and
- b. That the Defendant be awarded actual and punitive damages in an amount deemed just and proper by the court and in excess of Seven Thousand Five Hundred (\$7,500.00) Dollars;
- c. That this case be transferred to the Florence County Court of Common Pleas pursuant to Rule 9(b), *South Carolina Rules of Magistrate's Court*;
- d. For the costs of this action; and.
- e. For such other and further relief as the court deems just and proper.

Respectfully submitted,



MICHAEL C. ABBOTT
Attorney for Defendant

Florence, SC
December 5, 2019

ABBOTT, MCKISSICK & HOPEWELL, LLC
470 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mabbott@amhattorneys.com

Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) RELATION BACK OF AMENDMENTS.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

11/11/11 *P13*

Abbott, McKissick & Hopewell, LLC
Attorneys at Law

Michael C. Abbott
Robert D. McKissick
Michael S. Hopewell

P.O. Box 148
470 W. Evans St.
Florence, SC 29503
(843) 669-0089
(843) 669-0085 Fax
www.amhattorneys.com
mabbott@amhattorneys.com

December 5, 2019

Honorable Dominic G. Owens
Lake City Magistrate Court
Post Office Box 39
Lake City, SC 29560

Re: Edward Spears
vs. Michael S. Hopewell
Civil Case #2019CV2110105972
Our File #2016008

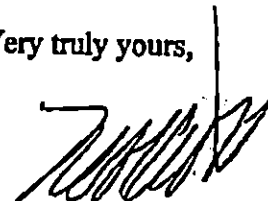
Dear Judge Owens:

Enclosed please find the original and one copy of the Defendant's Answer and Counterclaim to Plaintiff's Amended Complaint in the above matter, along with the Certificate of Service. Please note that the Counterclaim contains a request for damages in excess of the jurisdictional limit of the Magistrate's Court; therefore, the case must be transferred to circuit court.

Please file the original and return the clocked copy in the stamped, self-addressed envelope that is enclosed.

Thanking you and with kind regards, we are

Very truly yours,



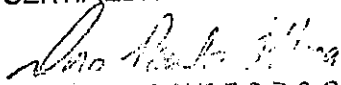
MICHAEL C. ABBOTT

MCA/kch
Enclosures

cc: Michael S. Hopewell, Esq.
Mr. Edward Spears

FILED
DEC 13 AM 10:36
PONS FOLLOWS SUKRA
CCCP & CS
FLORENCE COUNTY SC

RECEIVED
DEC 06 2019
LAKE CITY MAGISTRATE

CERTIFIED: A TRUE COPY

CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

P14

1 MR. SPEARS: Yeah. Well, it's in -- it's in that.

2 THE COURT: All right.

3 MR. SPEARS: Up there, yeah. If you look on page -- it
4 is on page 7, those was his answers when I first filed the
5 lawsuit. On there, you will see nothing about a counterclaim
6 on that. Look on page 7. Look on page 8. There's nothing
7 about a counterclaim.

8 He then turned around and wrote something in support,
9 some more answers and support of that counterclaim. Look on
10 page 9, please. Look on page 9 and page 10. If you notice,
11 there's nothing about a counterclaim on either one of those
12 pages. Therefore, he had 30 days plus another 30 days to
13 file a counterclaim.

14 If you look at the very page 2 on this right here, it
15 says that you -- you're allowed -- not page 2, page 1. It
16 says you've got 30 days to answer -- answer the complaint or
17 to present counterclaims. I just read you all 60 days and he
18 never filed a counterclaim.

19 Now, he's hollering. Since I got the jury trial, he
20 don't want to face the music of going to court with the jury
21 because he knows I will get it, but now he's hollering and
22 scared. Lord, no. I filed a counterclaim in excess of
23 \$7,500. That would mean that the jurisdiction would change.

24 Before it -- when you ask for a change of venue and if
25 you look on page -- back at -- let's see right here -- on

1 Okay.

2 On page 2, it shows a default hearing that wasn't heard,
3 but the thing is -- my thing is that after the pretrial
4 hearing December the 2nd, the judge gave me -- and I've got
5 it on tape here. I've got the entire court hearing on tape
6 where the judge gave me a jury trial. No trouble there.

7 ~~That was fine and dandy. We walked out of the court.~~

8 Seven or eight days later, I get a letter here or
9 something from the Court saying, oh, we're going to transfer
10 your court -- your case back to Common Pleas Court. and I'm
11 saying is this a sick joke or what. You already gave me a
12 jury trial. I'm home resting, thinking about the jury trial.
13 Now, you're sending me a letter saying that we're going back
14 to Common Pleas Court.

Counter Claim

15 Now, this is the reason they say it came back to Common
16 Pleas Court. They say the defendant filed a counterclaim.
17 Now, I didn't never heard of a counterclaim from him until I
18 think it was December the 5th. Okay. Which I filed the
19 lawsuit against him August the 28th.

20 Everybody in here knows you've got 30 days to answer a
21 complaint or counterclaim. So he defaulted on that. He
22 defaulted. He didn't -- he didn't answer. I've got an
23 answer here if you want to take a look at it, sir. Do you
24 want to take a look at it, sir?

25 THE COURT: Yeah. Sure.

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

PLAINTIFF)

STREET ADDRESS)

CITY, STATE ZIP)

TELEPHONE)

VS.)

DEFENDANT(S))

STREET ADDRESS)

CITY, STATE ZIP)

TELEPHONE)

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

COUNTERCLAIM

The defendant states he has a claim against the plaintiff in the amount of \$ _____. The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

The defendant states that the information contained in the counterclaim is true and correct to the best of his knowledge. Defendant understands that should he be successful in this action and obtain judgment, and if plaintiff does not appeal within thirty days, this judgment becomes final. The defendant cannot commence another action involving the same parties and issues.

I state under penalty of perjury that the above is correct and truthful.

Dated: _____

Signature of Defendant (or his attorney)

KEEP A COPY OF THIS COUNTERCLAIM AND BRING IT TO COURT

P LAY TR 7/10

(<https://lp.findlaw.com/>)

[Cases & Codes \(https://caselaw.findlaw.com/\)](https://caselaw.findlaw.com/) [Practice Management \(https://practice.findlaw.com/\)](https://practice.findlaw.com/) [Legal Technology \(https://legaltechnology.findlaw.com/\)](https://legaltechnology.findlaw.com/)

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18 U.S.C. § 1509 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 1509. Obstruction of court orders

Search U.S. Code

Search by Keyword or Citation

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SEARCH

[◀ Prev \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1508.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1508.html)

[Next ▶ \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1510.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1510.html)

Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.

No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime.

[◀ Prev \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1508.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1508.html)

[Next ▶ \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1510.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-1510.html)

[Read this complete 18 U.S.C. § 1509 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 1509. Obstruction of court orders on Westlaw \(https://1.next.westlaw.com/Document/I2384F69002C811E6AEE7E76FEE31CDCC/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)\)](https://1.next.westlaw.com/Document/I2384F69002C811E6AEE7E76FEE31CDCC/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)))

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Litigation and Appeals

Litigation and Appeals

Florence, SC

FIND YOUR LAWYER

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The Supremacy Clause and the Doctrine of Preemption

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What happens when state law conflicts with federal law? The answer relies on the doctrine known as federal preemption.

The [Supremacy Clause \(https://dictionary.findlaw.com/definition/supremacy-clause.html\)](https://dictionary.findlaw.com/definition/supremacy-clause.html) is a clause within [Article VI \(https://caselaw.lp.findlaw.com/data/constitution/article06/\)](https://caselaw.lp.findlaw.com/data/constitution/article06/) of the U.S. Constitution which dictates that federal law is the "supreme law of the land." This means that judges in every state must follow the Constitution, laws, and treaties of the federal government in matters which are directly or indirectly within the government's control. Under the doctrine of [preemption \(https://dictionary.findlaw.com/definition/preemption.html\)](https://dictionary.findlaw.com/definition/preemption.html), which is based on the Supremacy Clause, federal law preempts state law, even when the laws conflict. Thus, a federal court may require a state to stop certain behavior it believes interferes with, or is in conflict with, federal law.

But in the absence of federal law, or when a state law would provide more protections for consumers, employees, and other residents than what is available under existing federal law, state law holds. For instance, federal anti-discrimination law does not include LGBTQ individuals (<https://civilrights.findlaw.com/discrimination/gay-and-lesbian-rights-sexual-orientation-discrimination.html>) as a protected class. Therefore, an openly gay employee in Kansas can be lawfully

D-197

1 MR. SPEARS: That's all I'm asking for. I'm not trying
2 to be --

3 THE COURT: Mr. Spears, I'm going to --

4 MR. SPEARS: Sir?

5 THE COURT: You have an absolute -- you've obviously
6 have been through the appellate process and are very --

7 MR. SPEARS: Yes, sir.

8 THE COURT: -- very seasoned in that regard. And it
9 might be that the Court of Appeals or the Supreme Court find
10 that obstruction of justice is indeed a civil action. I
11 don't think it is, but guess what? That's what they pay them
12 to do is correct me when I'm wrong. I don't believe that I
13 am.

14 RULING

15 THE COURT: So I'm going to grant the 12(b)(6) with
16 regard to that civil action. I don't think that states a
17 cause for which relief can be granted.

18 Secondly --

19 MR. SPEARS: Could I bring you the rules --

20 THE COURT: I --

21 MR. SPEARS: -- that show the five years in civil court
22 and have you have a rethought on that?

23 THE COURT: All right. You -- I'm convinced that I have
24 a working knowledge of what the statute of limitation is --

25 MR. SPEARS: Well --

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Edward Spears,

Plaintiff,

vs.

Michael S. Hopewell,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #2019-CP-21-03521

ORDER

This matter is before the court pursuant to a Motion to Reinstate to Magistrate's Court filed by the Plaintiff and a Motion to Dismiss the Plaintiff's Complaint filed by the Defendant. Both motions were heard on February 12, 2020. The Plaintiff appeared *pro se* and the Defendant was represented by Michael C. Abbott, Esquire. For the reasons set out below, the Plaintiff's motion is denied and the Defendant's motion is granted.

This action was commenced by the filing of a Summons and Complaint in Florence County Magistrate's Court on August 28, 2019. In the original Complaint, the Plaintiff stated only that "Plaintiff is filing for obstruction of justice." No factual basis or recitation of events, dates, occurrences or even a timeframe was included.

Thereafter, in an Answer filed on September 27, 2019, the Defendant included a Motion to Dismiss based on Plaintiff's failure to allege any act, date, etc. in the original Complaint.

The Plaintiff filed an Amended Complaint on November 21, 2019 which alleged that, on August 15, 2016, the Defendant:

"deceive & deberlyaty brought false & untrue documents in an default hearing in violation of U.S. Codes 1505-1518." [Sic]

The Defendant, on December 5, 2019, filed an Answer and Counterclaim to Plaintiff's Amended Complaint. It included Motions to Dismiss for failure to state facts sufficient to constitute a cause of action and commencement beyond the statute of limitations. The Counterclaim contained causes of action for Abuse of Process, Defamation and violation of the South Carolina Frivolous Proceedings Sanctions Act. In the Counterclaim, the Defendant sought damages in excess of Seven Thousand Five Hundred and no/100 (\$7,500.00) Dollars and for punitive damages causing the Magistrate's Court to transfer the case to the Florence County Court of Common Pleas because the alleged damages exceeded its jurisdiction.

The damages sought in the counterclaim exceed the jurisdictional limit for Magistrate's Court. Therefore, the case is properly before this Court pursuant to Rule 9(b) of the Magistrate's Court rules. As such, the Plaintiff's Motion to Reinstate the case to Magistrate's Court is denied.

The Plaintiff filed this action seeking relief for a cause of action entitled "Obstruction of Justice." There is no such civil cause of action under South Carolina law. Therefore, the Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) is granted. Additionally, the Plaintiff alleges in his Amended Complaint the Defendant obstructed justice on August 15, 2016. The Plaintiff filed his Complaint on August 28, 2019, more than three years after the date upon which the alleged transgression occurred. Therefore, pursuant to S.C. Code §15-3-350, the general tort statute of limitations, the case must be dismissed as having been commenced beyond the allowed time.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion to Reinstate the Case to Magistrate's Court is DENIED.

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IT IS FURTHER ORDERED that the Defendant's Motion to Dismiss the Plaintiff's Complaint is hereby GRANTED and the Plaintiff's Complaint is hereby dismissed with prejudice.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #2019-CP-21-03521

Edward Spears,)
)
Plaintiff,)

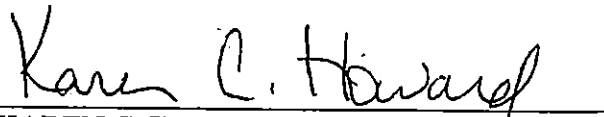
vs.)

Michael S. Hopewell,)
)
Defendant.)

**CERTIFICATE
OF SERVICE**

The undersigned, a Legal Assistant for Abbott, McKissick & Hopewell, LLC, does hereby certify that she deposited in the United States Mail the copy of the proposed Order, the same being addressed to those persons whose names and addresses appear below, this being done on February 14, 2020, and that sufficient postage was affixed thereto:

Mr. Edward Spears
503 Roughfork Street
Florence, SC 29501



KAREN C. HOWARD
Legal Assistant to Michael C. Abbott

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South Carolina Code 15-3-350. Action founded on title or for rents or services

Current as of: 2019 | [Check for updates](#) | [Other versions](#)

Terms Used In South Carolina Code 15-3-350

Grantor: The person who establishes a trust and places property into it.

Real property: Land, and all immovable structures erected on, growing on, or affixed to the land.

No cause of action or defense to an action founded upon a title to **real property** or to rents or services out of the same shall be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or **grantor** of such person, was seized or possessed of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made.

~

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18 U.S.C. § 3282 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 3282. Offenses not capital

Search U.S. Code

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[◀ Prev \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-3281.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-3281.html)

[Next ▶ \(https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-3283.html\)](https://codes.findlaw.com/us/title-18-crimes-and-criminal-procedure/18-usc-sect-3283.html)

(a) **In general.** –Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

(b) **DNA profile indictment.** –

(1) **In general.** –In any indictment for an offense under chapter 109A for which the identity of the accused is unknown, it shall be sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile.

(2) **Exception.** –Any indictment described under paragraph (1), which is found not later than 5 years after the offense under chapter 109A is committed, shall not be subject to–

(A) the limitations period described under subsection (a); and

(B) the provisions of chapter 208 until the individual is arrested or served with a summons in connection with the charges contained in the indictment.

(3) **Defined term.** –For purposes of this subsection, the term "DNA profile" means a set of DNA identification characteristics.

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1 THE COURT: All right. Mr. Hopewell, I'm going to ask
2 that -- Mr. Abbott, I'm going to ask that you prepare an
3 order to that effect and send a copy of it to Mr. Spears.

4 And, Mr. Spears, you have an absolute right to appeal my
5 decision and I wish you the best of luck.

6 MR. SPEARS: Well, what -- are you dismissing the case?

7 THE COURT: Yes, I am.

8 MR. SPEARS: On what circumstance, sir?

9 THE COURT: 12(b)(6) and statute of limitations.

10 MR. ABBOTT: And, Your Honor --

11 MR. SPEARS: The statute of limitations stands, sir.

12 MR. ABBOTT: Your Honor, would --

13 THE COURT: Well, I disagree with you and I've made the
14 ruling. That's the way it operates. You can make the
15 motion. I make the ruling.

16 MR. SPEARS: So even if I had the papers in here today
17 that showed you where it was five years federal, six years
18 state, you still would dismiss the case?

19 ✓ THE COURT: I have a good working knowledge of what the
20 statute of limitations is in this court, and you maintain
21 it's something different and I'm going to allow you the
22 opportunity to share that with the appellate entities.

23 MR. SPEARS: Well, could you give me 10 or 15 minutes to
24 run home and get the paper?

25 THE COURT: Well --

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Rule 502.1

Judges's Oath

All members of the Unified Judicial System in this state shall take the following oath of office:

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I pledge to uphold the integrity and independence of the judiciary;

I pledge, in the discharge of my duties, to treat all persons who enter the courtroom with civility, fairness, and respect;

I pledge to listen courteously, sit impartially, act promptly, and rule after careful and considerate deliberation;

I pledge to seek justice, and justice alone;

[So help me God.]

Adopted by Order dated September 22, 2004, and effective immediately. This new Rule contains the Judge's Oath previously adopted by the Court.

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SC Court of Appeals

CERTIFICATE OF COUNSEL
On Record of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

Judge George Nettles
Case No. 2019-CP-21-03521

Michael Hopewell.....Respondent,

v.

Edward Spears.....Appellant,
Case No. 2019-CP-21-03521
Certificate of Counsel

The certify all matters included in this Record of Appeals complies with S.C. Rule 210.



Edward Spears
503 Roughfork Street
Florence, SC 29501
(843) 496-3711

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