STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO. 2020-CP-10-3999
PAULETTE LAWRENCE, Plaintiff, v. CITY OF NORTH CHARLESTON, Defendant.	**ORDER**

This matter came before the court upon Defendant's Motion for Summary Judgment on November 4, 2021. The Plaintiff was represented by Ashley Cornwell, and the Defendant was represented by Robin Jackson. After reviewing the briefs submitted by each party and hearing oral arguments, it is the decision of the court that this motion be granted for the reasons set forth below.

This case arises out of an investigation into forgery performed by the North Charleston Police Department in conjunction with Wells Fargo Bank and their security office. The plaintiff previously sued North Charleston and Wells Fargo, but plaintiff voluntarily dismissed that suit and in September, 2020, refiled only against North Charleston. The City of North Charleston asserts the statute of limitations and Tort Claims Act immunities and further denies that there was a false arrest or imprisonment, malicious prosecution, assault and battery or negligence and asserts that it is entitled to summary judgment.

FACTS

The underlying facts are undisputed. On February 7, 2018, the family of an elderly woman ("victim") reported to the North Charleston Police Department that they had been contacted by Wells Fargo about fraudulent banking activity on the victim's account. Three checks had been deposited into the ATM and immediately the money was withdrawn from the ATM. On February 9, 2018, the family came to the police department to meet with Detective Bousquet and reported that a fourth check for $400 was deposited and withdrawn as well. It appeared that a stranger had convinced the victim to deposit the checks at the ATM after they were refused inside due to the accounts being closed. The only information the victim had about the suspect was that she was a black female. The family had gone to the bank to obtain copies of the deposits and had a phone number that was used to authorize the deposits. The detective requested information on the times and locations where the checks were deposited. The detective called the number and spoke with a person who said that another person was responsible. The second person, Tanisha Simmons, called back a short time later and said that two other people were responsible. She offered to come in and speak with the detective, but never showed up. The detective was unable to reach her again.

On February 26, 2018, Detective Bousquet requested the video of the original incident and other deposits. On February 28, 2018, Danny Conyers from Wells Fargo sent what he identified as still shots of all of the transactions requested. On March 16, 2018, multiple photos from the still shots were sent to SLED for facial recognition. On March 20, 2018, SLED returned a hit for a possible second suspect, who deposited a check on January 29, 2018 – Paulette Lawrence. As of May 3, 2018, no hits were located by SLED for the first suspect. On June 28, 2018, Detective Bousquet sent out a "request for information" and was contacted by Narcotics with the name Tanisha Simmons.

Bousquet asked Conyers for the bank transactions showing how much money was taken out by the suspects. She received that information from Wells Fargo on July 11, 2018, and also discussed the three hour time difference on the video surveillance photos. On July 26, 2018, Det. Bousquet applied for three warrants for Tanisha Simmons and one warrant for Paulette Lawrence.

On August 10, 2018, uniformed officers went to the home of Paulette Lawrence and placed her under arrest. The warrant officers who made the arrest had no information about the underlying charge or the investigation. Lawrence immediately told officers that she had not committed any crimes. (Compl. ¶ 9). After receiving the warrant Ms. Lawrence informed officers that she did not know Ms. Pinckney and had not committed any crimes against her. (Compl. ¶ 12; Deposition of Lawrence, 10:1-8). At the detention center, Lawrence again told officers that there was a mistake and she had not forged any documents. (Compl. ¶ 17). Lawrence was then booked at the detention center. (Compl. ¶ 14). She received a bond hearing and was released from the detention center.

On October 17, 2018, the case was bound over at preliminary hearing. However, immediately after the hearing, Lawrence's attorney looked at the discovery she received from the solicitor's office during the hearing and found that the date on the photos was January 29, 2018. (Compl. ¶ 31). The deposit was actually made on January 26, 2018, but was credited to the account on the 29th. Therefore, the video should have been from the 26th, not the 29th. The bank pulled the video for the date the deposit was credited instead of the date the deposit was made. The detective did not notice the discrepancy. Lawrence's attorney contacted the detective and told her what she had found. The detective then saw it and immediately notified the solicitor who dismissed the charge.

The plaintiff filed a Complaint against several defendants on June 18, 2019. She voluntarily dismissed that Complaint on May 12, 2019 "in response to (NCPD) Defendant's

Motion to Dismiss and Motion to Strike" (Plaintiff's Brief, p. 2). The current matter was filed on September 10, 2020.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting Rule 56(c), SCRCP); *accord Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); *see also Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E. 2d 187, 191 (1997). Summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law," *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), and "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Further, the United States Supreme Court has held that:

> The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

Scott v. Harris, 550 U.S. 372, 380 (2007) (internal quotations and citations omitted) (emphasis in original).

Rule 56(e), SCRCP, further states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

See also Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Southeast Group, 413 S.C. 630, 640, 776 S.E.2d 434, 439–40 (Ct. App. 2015); *Lord v. D & J Enters., Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) ("Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App.2004) ("Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." (citing *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545)).

I. THE TWO YEAR STATUTE OF LIMITATIONS HAS EXPIRED.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the actin for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a "verified claim". *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. 197, 207(Ct. App. 2003); *see also Joubert v. South Carolina Dept' of Soc. Servs.*, 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). The South Carolina Court of Appeals, in *Searcy v. South Carolina Dept. of Educ., Transp. Div.*, 303 S.C. 544, 548, 402 S.E. 2d 486, 488 (1991), stated,

> Sections 15–78–90(b), 15–78–100(a) and 15–78–110 must be read with Section 15–78–80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time affording a governmental entity a measure of protection against fraudulent claims. *See* 73 Am.Jur.2d *Statutes* § 189 at 388 (1974) ("Statutes which are parts of the same general scheme or plan, or are aimed at the accomplishment of the same results and the suppression of the same evil, are ... considered as in pari materia."). When these statutes are so read, the "claim" mentioned in these code sections can only refer to the "verified claim" mentioned in Section 15–78–80. *(emphasis added)*

The Court of Appeals made clear that a prior lawsuit does not count to extend the statute of limitations. This was reiterated by the Court of Appeals in *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 534 S.E. 2d 1 (2000), when it relied on *Searcy* – "§ 15–78–80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period." The *Joubert* Court went on to say "[i]n order to trigger the three-year statute of limitations under § 15–78–110, a party must follow the procedure outlined in S.C. Code Ann. § 15–78–80". Finally, the *Joubert* Court clearly set out how important compliance with the verified claim requirements is to the extension of the statute.

> Most importantly, our courts have repeatedly held strict compliance with the verified claim statute is mandatory. *See, e.g., Vines v. Self Mem'l Hosp.*, 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994) ("A claim against a state entity under the Tort Claims Act must be verified to entitle a plaintiff to the three-year statute of limitations. Substantial compliance is not sufficient." The verified claim must set forth the extent and amount of the loss sustained); *Rink v. Richland Mem'l Hosp.*,

> 310 S.C. 193, 196–197, 422 S.E.2d 747, 748–749 (1992) ("[W]hen a plaintiff seeks to sue a political subdivision he 'must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required is an essential prerequisite to a right of action.'") (quoting *Cochran v. City of Sumter,* 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963), *overruled on other grounds by McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985)); *Pollard,* 314 S.C. at 400, 444 S.E.2d at 536 (substantial compliance with the statute is not enough; the "verified claim" procedure must be strictly complied with in order to trigger the three-year limitations period). Accordingly, because [Lawrence] did not comply fully with the statutory mandate, no verified claim was filed, and the statute of limitations on the underlying actions was two years, not three.

Here, it is undisputed that the plaintiff did not file a statutorily compliant verified claim. Instead, the plaintiff argues that her first Complaint qualifies as a verified claim. Although her first Complaint was verified, it did not contain the amount of damages or the extent of damages, which are both required for a verified claim. *Vines supra, Rink supra.* The Courts in both *Vines* and *Rink* dismissed cases where one or both of these elements were missing. Therefore, the first Complaint does not qualify as a verified claim and the statute is not extended to three years.

In the alternative, plaintiff has asserted that the two year statute of limitations did not begin to run until October 17, 2018, when the plaintiff's criminal attorney found the mistake on the photos. However, this is not the law. The arrest in this case occurred on August 10, 2018. The allegations relating to False Arrest, Assault and Battery and Negligence are all tied to the date of arrest, as the plaintiff has testified that she knew when the officers told her they had a warrant for her, that she had not committed any crimes, let alone the crime she was accused of committing. (Depo. Lawrence 9:17-10:8). The Complaint itself asserts that the plaintiff immediately knew that she had not committed the crime and that she went so far as to tell the arresting officers that she did not know the victim and had not committed any crimes against her. (Compl. 12).

The assault and battery claim, based on the plain language of the Complaint, is for the handcuffing and possibly the transport to the police station and detention center. Additionally, the

negligence claim specifically alleges that the investigation was negligent. (Compl. ¶27)[1] It is undisputed that all investigation was done before the warrant was executed and before the plaintiff was arrested.

Plaintiff's argument under *Young v. SC Dept. of Corrections,* 333 SC 714, 511 D.E. 2d 413 (S.C. App. 1999) that she did not "discover" her claim until her preliminary hearing is to no avail. This matter is clearly distinguishable from that case involving a degree or type of injury that required medical evaluation. Here, the information contained in the warrant affidavit provided Lawrence with facts and information related to the crime sufficient for her to know whether or not she committed that crime. Plaintiff acknowledges that she received the warrants at the detention center (Lawrence, 11:15-20; Compl., ¶ 15) and that she claims she told officers that she had not forged any documents (Compl., ¶ 17). This is clear evidence of notice. "Under the Tort Claims Act,{}, the statute of limitations begins to run when the plaintiff should know that [s]he might have a potential claim against another, not when [s]he develops a full-blown theory of liability." *Joubert*, 341 S.C. at 190.

The arrest in this case occurred on August 10, 2018, Ms. Lawrence was released from the Detention Center on August 11, 2018, and this Complaint was filed on September 10, 2020. Therefore, the claims for False Arrest, Assault and Battery and Negligence are all dismissed on the basis that the statute of limitations has expired.

II. SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. §15-78-10, *et. seq.*

The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against North Charleston, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994).

[1] In the Complaint there are two consecutive paragraphs numbered 27. Both contain similar information and therefore when paragraph 27 is referenced, the reference includes both paragraphs with this number.

See also S.C. Code Ann. 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

The Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state.**" S.C. Code Ann. § 15-78-20(f) (Emphasis added). Defendant asserts two subsections of the Act that are applicable. Both are absolute immunities to suit.

A. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE INSTITUTION OR PROSECUTION OF ANY JUDICIAL PROCEEDING.

"The governmental entity is not liable for a loss resulting from . . . .the institution or prosecution of any judicial or administrative proceeding[.]"§ 15-78-60 (23). For a state claim for malicious prosecution, "a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the insistence of the defendant; (3) termination of such proceedings in [the] plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Pallares v. Seinar*, 756 S.E. 2d 128, 131 (S.C. 2014); *see also Huffman v. Sunshine Recycling, LLC*, 826 S.E.2d 609, 615 (S.C. 2019).

South Carolina Courts have repeatedly dismissed the state malicious prosecution claim based upon SCTCA immunity. The first element of this claim requires "the institution or continuation of original judicial proceedings." *Pallares*, 756 S.E. 2d at 131. However, the SCTCA explicitly provides that a "governmental entity is not liable for a loss resulting from" the

"institution or prosecution of any judicial or administrative proceeding[.]" S.C. Code § 15-78-60(23). *See McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 567, N.10 (D.S.C. 2013) (finding the City of Columbia was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)); *Bellamy v. Horry Cty. Police Dep't*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2559544, at *5 (D.S.C. Apr. 30, 2020), *report and recommendation adopted*, No. 4:19-CV-03462-RBH-KDW, 2020 WL 2556953 (D.S.C. May 20, 2020) (finding Defendant Horry County Police Department was immune from a state malicious prosecution claim based upon S.C. Code § 15-78-60(23)). *Smith v. Lexington County Sheriff's Office*, 3:19-cv-02155-JMC, 2021 WL 1172692 (2021)(finding the Lexington County Sheriff's Office was immune from a state malicious prosecution claim based on S.C. Code § 15-78-60(23)). As a governmental entity, the City is therefore immune from this claim.

B. THE CITY IS NOT LIABLE FOR A LOSS RESULTING FROM THE ACT OR OMISSION OF A PERSON OTHER THAN AN EMPLOYEE.

"The governmental entity is not liable for a loss resulting from . . . . an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." § 15-78-60 (20). In this case, the person who is not an employee, whose act is important here – is Danny Conyers, the Bank Security employee. The language "including but not limited to" is specifically inclusive of the actions of the bank employee in pulling and providing the wrong video to the detective. The purpose of this section is to give immunity where the acts of non-employees result in loss. That is the situation in this case. The evidence shows that the detective contacted the bank to ask for the records and the "video of the original incident, and the other deposits made into the account." (Detective Notes). The notes go on to show that the bank provided records for the victim showing the activity in her account and provided the detective with still shots from the

video for the times, dates and locations of the deposits. The detective relied on these assertions from the bank employee and moved forward to identify the persons in the still shots. One of those persons was thereafter identified as the plaintiff. At no time did the bank or its employee notify the detective that a mistake was made regarding the date of the video that was pulled and provided. It was only later discovered by the plaintiff and her criminal defense counsel that the dates on the video coincided with the dates the deposit was entered into the system, not the date the deposit was actually made. Plaintiff has provided no evidence that Detective Bousquet purposefully obtained photos for the wrong date or that she realized she had photos for the wrong date before attorney Strowd notified her in October, 2018. It is also undisputed that immediately upon being notified of this information, Detective Bousquet contacted the solicitor's office and the charges were dismissed. Because the information that ultimately proved to be incorrect was provided by Bank employee Danny Conyers, the City is entitled to immunity pursuant to § 15-78-60 (20).

C. GROSS NEGLIGENCE IS NOT TO BE INTERPOLATED INTO THE EXCEPTIONS ASSERTED BY THE CITY IN THIS MATTER.

The plaintiff has asserted that the gross negligence standard should be applied to the immunities asserted by the Defendant. The South Carolina Supreme Court has clearly addressed when the gross negligence standard should be applied to an immunity that does not contain the standard.

> [I]n order for the gross negligence standard from on immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case. We disavow any suggestion to the contrary . . . In many instances, a governmental entity may initially plead entitlement to immunity pursuant to a subsection containing a gross negligence standard. In many of those instances, that particular immunity may ultimately not apply to the facts of the case. In such a case, the gross negligence standard contained in that immunity is not to be read into applicable immunity subsections that do not contain a gross negligence standard.

Repko v. Cty of Georgetown, 818 S.E. 2d 746, 750 (S.C.2018). Neither of the exceptions asserted by North Charleston, §15-78-60 (20) and (23), contain a gross negligence standard. Additionally, the section asserted by the plaintiff is not applicable to the claim of malicious prosecution. Therefore the gross negligence standard is not to be applied to the exceptions to waiver of immunity asserted by the Defendant under the Tort Claims Act.

III. EQUITABLE TOLLING

Plaintiff asserts that equitable tolling should be applied in this case despite the applicability of the statute of limitations. Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness. *Id.* (internal quotations omitted). The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. *Id.* (internal quotations omitted).

Here, Plaintiff asserts Defendant was given notice of the claims, although not proper notice under the verified claim statute, prior to the filing of this action and did not sleep on her rights while letting the statute of limitations run. Plaintiff asserts the arguments relied on by the court in *Scanwell Logistics (CHI), Inc. v. VIS, LLC* (2018-CP-23-04175), but that case is clearly distinguishable from this matter. The party seeking to toll the statute of limitations bears the burden of establishing facts sufficient to justify its use. *Hooper,* 386 S.C. at 115 (2009). Here,

plaintiff has provided no reason for not filing within the statute of limitations, despite having already filed the case once and putting the defendant on notice that the case would be refiled. Plaintiff has also put forth no acts or omissions by the defendant that prevented her from timely filing. A misunderstanding of the applicable statute of limitations is not sufficient to qualify for equitable tolling.

Plaintiff's counsel also referenced the difficulties presented by the Coronavirus Pandemic as to why equitable tolling should apply. However, while the Supreme Court did extend filing deadlines as a result of the Coronavirus Pandemic, they specifically declined to extend the statute of limitations. *See Operation of Trial Courts During the Coronavirus Emergency,* S.C. Court Order 2020-04-03-01. During the time period applicable to this matter, Charleston County had electronic filing and such was available. Therefore, this is not a basis on which to toll the statute of limitations. Accordingly, equitable tolling does not apply to this matter.

CONCLUSION

The claims false arrest/false imprisonment, assault and battery, and negligence were filed after the expiration of the statute of limitations and are dismissed on that basis. The claim for malicious prosecution is dismissed based on the discussed immunities contained in the South Carolina Tort Claims Act. The City is entitled to summary judgment on all claims. The motion is GRANTED and this matter is hereby dismissed.

AND IT IS SO ORDERED!

Charleston Common Pleas

Case Caption: Paulette Lawrence VS North Charleston City Of

Case Number: 2020CP1003999

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134