

EXHIBIT - A

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS  
Civil Action Number: 2020-CP-36-00506

Terence L. Rush,  
Plaintiff,

PLAINTIFF'S REPLY BRIEF ON  
THE MOTION TO DISMISS

v.  
Michael B. Scribble, et al,  
Respondent(s), Individually and  
in their Official Capacity as  
Newberry County Sheriff's  
Deputies,

Provided to Walton CI  
On 5/3/21 for Mailing  
Date

Respondent(s)

Inmate's Initials *SR* 4-30-21

MOVING BEFORE THE HONORABLE DONALD B. HOCKER

PLAINTIFF'S REPLY BRIEF ON THE MOTION TO DISMISS

Terence L. Rush, Plaintiff  
% RUSH, TERENCE L., #E03490  
Walton Correctional Institution  
691 Institution Road  
Defuniak Springs, Florida 32433

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SC Court of Appeals

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## ARGUMENT IN REPLY

I. Defendant Stibble is not immune from suit and liability because the complaint alleges that his actions constituted actual fraud, actual malice, [or] intent to harm, which is conduct outside the course and scope of his official duties.

Nothing in South Carolina Code Annotated (S.C. Code Ann.) Chapter 15-78-70 may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, [or] intent to harm.

S.C. Code Ann. §15-78-30 defines scope of official duty or scope of state employment [as] mean[ing] (1) acting in and about the official business of governmental entity and (2) performing official duties. S.C. Code Ann. §15-78-30 (i) (2005)

This action as alleged in the complaint *Terence L. Bush v. Michael B. Stibble, et. al.*, Civil Action No.: 2020-CF-36-00506 is one for fraud. Recapping how Michael B. Stibble came onto private property under the color of authority of the Newberry County Sheriff's Office (N.C.S.O.) and the probable cause that would have been entwined and established in the warrant that he said he had for a *Cesay* Pena, whom which he also stated that the Plaintiff looks like him. See complaint

exhibit on record of Corey Pena.<sup>1</sup> Clearly from Mr. Pena's record, photo and information, Sergeant Michael B. Stribble would have been there to look for a caucasian, white male not a(n) black male, if in fact he had an actual warrant directing him to 2809 S.C. Hwy. 66, Whitmire, S.C. 29178 to look for a Corey Pena from a Magistrate Judge. Michael B. Stribble thereby establishing himself as a proper party because of his actions which resulted in a complaint against him alleging actual fraud, malice, and his intentions to harm. 2020 U.S. Dist. LEXIS 89297 :: Bellamy v. Horry City Police Dep't,

April 30, 2020 (Distinguished from Rush v. Stribble, et. al. with regard to complaint)

Michael B. Stribble was not acting in and about the official business of the Newberry County Sheriff Department when he trespassed unlawfully, civilly conspired with fellow deputies to defraud the Plaintiff out of his identity and with every intention to arrest the Plaintiff thereby causing him financial and legal hardship.

In closing on the reply to being a proper party, Michael B. Stribble normally would not be named as a defending party as decided in Johnson v.

City of Aiken, 278 F. 3d 333 (January 22, 2002) because S.C. Code Ann.  
1. obtained Corey Pena's Exhibit in 2019 after having to grieve the Mail Room for interfering with evidence in my legal action.

§15-78-70 provides absolute immunity to government employees acting within the scope of their employment. *Bush v. Strible, et al.* is distinguished from *Johnson v. City of Aiken*, wherein the appellees in *Johnson v. City of Aiken* did not allege in their complaint that the officers actions constituted fraud, malice, or intent to harm as alleged in the Plaintiff's complaint which is stated in subsection (b) of S.C. Code Ann. §15-78-70(b). The Defendant's affirmative defense as to point 1 in his Motion to Dismiss complaint should be denied.

II. The Claimant at Law/Plaintiff did file his claim within both of the three (3) year statute of limitation time frame provided under the general or residual statute of limitation and under the South Carolina Tort Claims Act (S.C.T.C.A.) for this action for fraud once it was discovered.

In 2018, the Plaintiff found out that his family was homeless and denied access to the residence of 2809 S.C. Hwy 66, Whitmire, S.C. 29178 that he had been paying monthly payments on to purchase. Having, been locked up and extradited back to Florida for a failure to appear out of Orange County Florida in 2015 by Newberry County Sheriff Deputy Sergeant Michael B. Strible, the Plaintiff sought to find out if there was anything he could do to correct this.

Having limited resources and no access to the laws of South Carolina or a faster way to communicate to family save by Postal mail, the claimant at law discovered he had been the victim of fraud by law enforcement. In South Carolina actions for fraud has a Three (3) year statute of limitation time frame which begins to run once the fraud is discovered.

A. Due to extraordinary circumstances external to the Plaintiff, Equitable tolling would apply in this action.

*Edmonson v. Eagle Nat'l Bank*, 922 F.3d 535, 549

Equitable tolling applies to this case because "it doesn't rely on looking into the actions of the defendant [which gave cause to the action] but rather focuses on whether there was "excusable delay" by the plaintiff. *Edmonson v. Eagle Nat'l Bank*, 922 F.3d at 549. The plaintiff has not been out of custody since the date of the incident, which occurred on October 2<sup>nd</sup>, 2015. Being twenty-one (21) days in maximum security holding in South Carolina at the Newberry County Jail. The detainee was not aware of any available resources provided by the County Jail to detainees and was not made aware of any available resources by staff.

Florida jails and institutional law libraries house and contain resources

that pertain only to Florida law. There is no internet access or devices with internet capabilities available to detainees or prisoners due to security concerns. Applicable South Carolina Rules of Court, Procedures and Applicable S.C. statutory law was and still is unavailable to the Plaintiff. Citing *Whiteside v. United States*, 775 F. 3d 180, 184 (4<sup>th</sup> Cir. 2014) (en banc) (internal quotation marks omitted) Equitable tolling applies "in th[is] rare instance where - due to circumstances external to the party's own conduct it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

B. The statute of limitations for an action for fraud is governed by the discovery rule; and does not begin to run until discovery of the fraud itself. *Burgess v. American Cancer Socy. S.C. Div., Inc.*, 300 S.C. 182, 185, 386 S.E. 2d 798, 799 (S.C. App. 1989)

"I was in the library (law library) at Taylor C.I., researching something on the Lexis Nexis files that happened to me in 2018 by the Florida Department of Corrections staff when I stumbled across S.C. Federal Circuit. I was looking up being false imprisoned in my cell for someone else's actions. That's when I found out that the actions and

statements of the staff revealed to me that what occurred to me in South Carolina was fraud. That was around October of 2018. The statute of limitations does not begin to run until discovery of the fraud itself. *Burgess v. American Cancer Socy, S.C. Div. Inc., 300 S.C. 182, 185, 386 S.E. 2d 798, 799 (Ct. App. 1989)*. The defendants claim as to the Plaintiff being barred by the applicable statute of limitations must be dismissed.

C. The limitations period commences under South Carolina law when "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., 414 S.C. 33, 777 S.E. 2d 176, 198 (S.C. 2015)*

Having found out that my children and their mother was put out of our home we were purchasing in 2018 by our financial investor, I sought to pursue legal actions against him concerning our agreement. When it was brought to my attention that work was being destroyed and personal property was being withheld from my children and mother along with my stuff, I sought out all available legal avenues that was accessible to me being confined by incarceration in

a Florida Correctional facility. When it occurred that losing something by an intentional deception to circumvent, or deceive another, when the perpetrator knows and does not care that that what they are doing will cause an injury in fact to the person even when it is false and misleading, that gives rise to an action in court for fraud. The conduct of the ones committing these intentional and wrongful actions gives the injured person by law the right to redress those wrongs in court.

The plaintiff could not have surmised what an action like such would be brought at in the courts of another state and could not very well use one states laws, rules and procedures to turn another state's court eyes towards the direction of their injury without first being able to guide them and lead them toward the wrongdoing.

My finding out that I had been wronged in South Carolina by Sergeant Michael B. Strible was made aware by the similar actions of state employees in Florida and through the research of Florida law to be

able to identify the cause of action, and just how long I have to bring it to court before I lose my right to address my injury before a court with jurisdiction over my claims. I had no knowledge I was deceived by Michael B. Strible until the same kind of situation went on behind prison walls and fences and I sought out the cause to those actions in 2018. Which put me on notice that fraud has a three year statute of limitations in South Carolina and doesn't begin to run until a party should have known by reasonable diligence that a cause of action arose from wrongful conduct.

That conduct being the Deputies actions and statements coupled with their uniform to carry out such treachery.

The defendant's claim that the plaintiff is barred by the applicable statute of limitations must be dismissed.

III. The S.C.T.C.A. is not intended to protect state employees from liability for intentional torts. *Smith v. Omit*, 394 E. Supp. 2d 787, 792 (D.S.C. 2005).

To look into the actions of Sheriff Michael B. Strible, all one would have to do is look to the complaint filed with the

Clerk of Court in Civil Action No.: 2020-CP-36-00506, Terence L.

Rush v. Michael B. Strible, et al. and one could read in the complaint of the allegations of how Michael B. Strible intentionally and with reckless disregard to the truth that I am a Black male and not a white male, that he was acting outside the course and scope of his Department's official business and his employment when he actual committed fraud by making the false and misleading statement that he "had a warrant for a Corey Penn, and that I look like him. The Defendant never had the probable cause to trespass on my property, my rights or to question me about my identity when the person he said he was looking for is of a completely different skin color. The complaint actually alleges fraud, malice and reckless disregard for my rights. Actions that are outside the course and scope of Michael B. Strible's employment, leaving him without immunity from a tort claim, leaving him open to being subjected to a punitive damage claim as well in his individual capacity where he acted outside the scope of his

employment. 2015 U.S. Dist. LEXIS 196027 11 Doe v. Spartanburg

County Sch. Dist. Three; August 19, 2015. If you look to the

complaint you will see that it alleges fraud, malice and intent

to recklessly disregard my rights, as well as that this action is

initiated also in Michael B. Strible's, Individual capacity thereby

making him subject to punitive damages claim. Smith v. Oemit,

394 F. Supp. 2d 787, 792 (D.S.C. 2005)

The Defendant's claim that the plaintiff's action is barred

from recovering punitive damages pursuant to the S.C.T.C.A.

against the Defendant would be correct in his official capacity

and were he acting within the course and scope of his employment.

However, the complaint alleges his fraud, malice, and recklessness

also in his individual capacity which is outside the course and

scope of his employment leaving him open to suit and not immune

from liability or punitive damages. The Defendant's claim must

be dismissed.

## CONCLUSION

Accordingly, the Plaintiff asks this Court to deny the Defendant's Motion to Dismiss and leave Michael B. Stribble as a party to this action.

CERTIFICATE OF SERVICE

The undersigned Plaintiff, Terence L. Rush, does hereby certify that service of the Plaintiff's Reply Brief on the Motion to Dismiss submitted by the Defendant in the above-captioned action was made upon the Counsel for the Defendant and The Honorable Donald B. Hacker by placing the same in the United States Mail, first class postage prepaid, at the below listed addresses on this 30<sup>th</sup> day of April, 2021, addressed as follows:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply Brief complies with the  
page requirements and/or word limitations for a reply brief.

This brief contains \_\_\_\_\_ words



Terence L. Rush.

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