FILED: December 3, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1772
(3:17-cv-01775-TLW)

CLARENCE B. JENKINS, JR.

Plaintiff - Appellant

v.

UNITED STATES

Defendant - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1772

CLARENCE B. JENKINS, JR.,

Plaintiff - Appellant,

v.

UNITED STATES,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Terry L. Wooten, Senior District Judge. (3:17-cv-01775-TLW)

Submitted: September 26, 2019 Decided: September 30, 2019

Before NIEMEYER and KEENAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Clarence B. Jenkins, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clarence B. Jenkins, Jr., appeals the district court's order accepting the recommendation of the magistrate judge and denying the United States' motion to dismiss Jenkins' complaint pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1), 2671-2680 (2012). Jenkins also appeals the court's order accepting the recommendation of the magistrate judge, granting the United States' motion for summary judgment, and denying Jenkins' motion for summary judgment. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Jenkins v. United States*, No. 3:17-cv-01775-TLW (D.S.C. Apr. 9, 2018; filed Jan. 31, 2019 & entered Feb. 1, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Clarence B. Jenkins, Jr.,	)	
	)	
Plaintiff,	)	
	)	C/A No. 3:17-cv-1775-TLW
v.	)	
	)	
United States,	)	**ORDER**
	)	
Defendant.	)	
	)	

Plaintiff Clarence B. Jenkins, Jr., proceeding *pro se*, filed this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, 1346(b), alleging that Defendant United States negligently placed a suggestion box over chairs in the Dorn VA Medical Center. ECF No. 1. The parties filed cross motions for summary judgment, ECF Nos. 42, 54, which have been fully briefed.

This matter now comes before the Court for review of the Report and Recommendation (the Report) filed on September 25, 2018, by United States Magistrate Judge Paige J. Gossett, to whom this case was previously assigned pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.). ECF No. 61. In the Report, the Magistrate Judge recommends denying Plaintiff's motion and granting Defendant's motion. *Id.* Plaintiff filed objections to the Report, ECF Nos. 64, 66, 68, and Defendant filed a reply, ECF No. 67. This matter is now ripe for disposition.

This Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C. § 636. In conducting its review, the Court applies the following standard:

> The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report and the objections. The Court concludes that Plaintiff's filings offer no factual support for his legal conclusions that Defendant negligently placed the suggestion box. Further, Plaintiff has not presented the Court with sufficient evidence of negligence because he stated, "I did noticed [*sic*] the suggestion box located on the wall but it appeared to be not in the way." ECF No. 54-2 at 3. For the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Plaintiff's objections are **OVERRULED** and the Magistrate Judge's Report and Recommendation, ECF No. 61, is **ACCEPTED**. Plaintiff's motion for summary judgment, ECF No. 42, is **DENIED**, and Defendant's motion for summary judgment, ECF No. 54, is **GRANTED**. Pursuant to this Order, this case is hereby **DISMISSED**.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

January 30, 2019
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Clarence B. Jenkins, Jr., Plaintiff,	)	C/A No. 3:17-1775-TLW-PJG
v.	)	**REPORT AND RECOMMENDATION**
United States, Defendant.	)	

The plaintiff, Clarence B. Jenkins, Jr., a self-represented litigant, filed this action pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680, 1346(b). Plaintiff filed this action *in forma pauperis* under 28 U.S.C. § 1915. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the parties' cross motions for summary judgment. (ECF Nos. 42 & 54.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Plaintiff of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to Defendant's motion. (ECF No. 55.) The parties filed a response in opposition to each other's motion, (ECF Nos. 43 & 59), and the parties also filed replies to those responses (ECF Nos. 44 & 60). Having reviewed the record presented and the applicable law, the court finds Defendant's motion should be granted and Plaintiff's motion should be denied.

PJG

BACKGROUND

The following facts are either undisputed, or are taken in the light most favorable to the plaintiff, to the extent they find support in the record. On August 4, 2015, Plaintiff hit his head on the suggestion box while he was sitting down in the pharmacy at the Dorn VA Medical Center in Columbia, South Carolina, which is operated by the Veterans Administration. (Compl., ECF No. 1 at 5.) He alleges Defendant was negligent because the locations of the sitting chairs and the suggestion box were improper. (Id.) He indicates he brings this negligence claim pursuant to the FTCA, seeking damages. (Id. at 3.)

DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the

PJG

entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322. Further, while the federal court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Erickson v. Pardus, 551 U.S. 89 (2007), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

B. Defendant's Motion

Defendant moves for summary judgment, arguing Plaintiff cannot show that the Veterans Administration breached a duty of care owed to Plaintiff. The court agrees.

The FTCA provides for a limited waiver of the United States's sovereign immunity from suit by allowing a plaintiff to recover damages in a civil action for loss of property or personal injuries caused by the "negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); see also Medina v. United States, 259 F.3d 220,

PJG

223 (4th Cir. 2001) ("The statute permits the United States to be held liable in tort in the same respect as a private person would be liable under the law of the place where the act occurred.").

To establish a cause of action for negligence in South Carolina, the plaintiff must prove: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Bishop v. S.C. Dep't of Mental Health, 502 S.E.2d 78, 82 (S.C. 1998) (citing Rickborn v. Liberty Life Ins. Co., 468 S.E.2d 292 (S.C. 1996)). "The Court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." Dorrell v. S.C. Dep't of Transp., 605 S.E.2d 12, 15 (S.C. 2004) (citing Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 520 S.E.2d 142, 149 (S.C. 1999)).

In South Carolina, the duty of care owed to a plaintiff in a premises liability action is determined by the status or classification of the plaintiff in relation to the property at the time of his injury. See Roe v. Bibby, 763 S.E.2d 645, 650 (S.C. Ct. App. 2014) (quoting Singleton v. Sherer, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008)). Here, Plaintiff was an invitee at the Dorn VA Medical Center. (See Report and Recommendation, ECF No. 34 at 4); see Lane v. Gilbert Constr. Co. Ltd., 681 S.E.2d 879, 882 (S.C. 2009) ("An invitee is a person 'who enters onto the property of another by express or implied invitation, his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and there is a mutuality of benefit or a benefit to the owner.' ") (quoting Singleton); Sims v. Giles, 541 S.E.2d 857, 861 (S.C. Ct. App. 2001) (stating invitees are offered the utmost duty of care by the landowner, compared to other classifications of persons on a defendant's premises).

In South Carolina, property owners owe invitees a duty of exercising reasonable or ordinary care for the invitee's safety, and are liable for injuries resulting from the breach of such duty. Sims,

PJG

541 at 863 (citing Larimore v. Carolina Power & Light, 531 S.E.2d 535 (S.C. Ct. App. 2000)). Adopting the position of the Restatement of Torts (Second) on this issue, the South Carolina Supreme Court has held, "A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." Callander v. Charleston Doughnut Corp., 406 S.E.2d 361, 362 (S.C. 1991) (adopting the Restatement of Torts (Second) § 343A (1965)) (original emphasis omitted). The court also states in Callander that "an owner may be required to warn the invitee, or take other reasonable steps to protect him, if the 'possessor has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, . . . or fail to protect himself against it.' " Id. at 362-63 (omission in original) (quoting the Restatement of Torts (Second) § 343A, comment (f) and 220-221 (1965)).

Here, Plaintiff has failed to forecast any evidence that the Veterans Administration breached a duty of care to Plaintiff. See Fed. R. Civ. P. 56(c)(1)(B). Plaintiff asserts in the Complaint that the locations of the sitting chairs and the suggestion box were "improper," but provides no evidence that would support that contention. Based on the record as a whole, no reasonable jury could find that Defendant breached a duty of care that caused Plaintiff's injury.

PJG

RECOMMENDATION

Consequently, the court recommends Defendant's motion for summary judgment be granted, and Plaintiff's motion be denied.

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

September 25, 2018
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Clarence B. Jenkins, Jr.,	)	
	)	
Plaintiff,	)	
	)	C/A No. 3:17-cv-1775-TLW-PJG
v.	)	
	)	
United States,	)	**ORDER**
	)	
Defendant.	)	
	)	

Plaintiff Clarence B. Jenkins, Jr., proceeding *pro se*, filed this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, 1346(b), alleging that Defendant negligently place a suggestion box over sitting chairs. ECF No. 1. On November 20, 2017, Defendant United States filed a Motion to Dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 25. Plaintiff filed a response opposing the motion. ECF Nos. 30, 31.

This matter now comes before the Court for review of the Report and Recommendation (the Report) filed on March 12, 2018, by United States Magistrate Judge Paige J. Gossett, to whom this case was previously assigned pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2), (D.S.C.). In the Report, the Magistrate Judge recommends denying Defendant's Motion to Dismiss. ECF No. 34. Objections to the Report were due on March 26, 2018. However, Defendant did not file objections to the Report. This matter is now ripe for disposition.

This Court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C.

§ 636. In the absence of objections to the Report, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

The Court has carefully reviewed the Report and relevant filings, and notes that Defendant did not file objections to the Report. For the reasons articulated by the Magistrate Judge, it is hereby **ORDERED** that the Magistrate Judge's Report and Recommendation, ECF No. 34, is **ACCEPTED**, and Defendant's Motion to Dismiss, ECF No. 25, is **DENIED**.

IT IS SO ORDERED.

s/Terry L. Wooten
Chief United States District Judge

April 9, 2018
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Clarence B. Jenkins, Jr., Plaintiff,	)	C/A No. 3:17-1775-TLW-PJG
v.	)	**REPORT AND RECOMMENDATION**
United States, Defendant.	)	

The plaintiff, Clarence B. Jenkins, Jr., a self-represented litigant, filed this action pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680, 1346(b). Plaintiff files this action *in forma pauperis* under 28 U.S.C. § 1915. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on Defendant's motion to dismiss. (ECF No. 25.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Plaintiff of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to Defendant's motion. (ECF No. 27.) Plaintiff filed a response in opposition to the motion and a supplement. (ECF Nos. 30 & 31.) Having reviewed the record presented and the applicable law, the court finds the defendant's motion should be denied.

BACKGROUND

The following allegations are taken as true for purposes of resolving Defendant's motion to dismiss. Plaintiff alleges that on August 4, 2015, he hit his head on the suggestion box while he was sitting down in the pharmacy at the Dorn VA Medical Center in Columbia, South Carolina.

PJG

(Compl., ECF No. 1 at 5.) He alleges Defendant was negligent because the locations of the sitting chairs and the suggestion box were improper. (Id.) He indicates he brings this negligence claim pursuant to the FTCA, seeking damages. (Id. at 3.)

DISCUSSION

A. Rule 12(b)(6) Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the complaint. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. Id. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 94 (2007). The court "may also consider documents attached to the complaint, see Fed. R. Civ. P. 10(c), as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." Philips v. Pitt Cty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (citing Blankenship v. Manchin, 471 F.3d 523, 526 n.1 (4th Cir. 2006)).

Further, while the federal court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Erickson, 551 U.S. 89, the requirement of liberal construction does not mean that the court can ignore a clear failure in

PJG

the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

B. Defendant's Motion to Dismiss

Defendant argues Plaintiff fails to state a claim upon which relief can be granted for negligence because the facts alleged in the Complaint show Defendant has not breached a duty of care to Plaintiff. The court disagrees.

The FTCA provides for a limited waiver of the United States's sovereign immunity from suit by allowing a plaintiff to recover damages in a civil action for loss of property or personal injuries caused by the "negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); see also Medina v. United States, 259 F.3d 220, 223 (4th Cir. 2001) ("The statute permits the United States to be held liable in tort in the same respect as a private person would be liable under the law of the place where the act occurred.").

To establish a cause of action for negligence in South Carolina, the plaintiff must prove: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Bishop v. S.C. Dep't of Mental Health, 502 S.E.2d 78, 82 (S.C. 1998) (citing Rickborn v. Liberty Life Ins. Co., 468 S.E.2d 292 (S.C. 1996)). "The Court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." Dorrell v. S.C. Dep't of Transp., 605 S.E.2d 12, 15 (S.C. 2004) (citing Steinke v. S.C. Dep't of Labor, Licensing, & Regulation, 520 S.E.2d 142, 149 (S.C. 1999)).

PJG

In South Carolina, the duty of care owed to a plaintiff in a premises liability action is determined by the status or classification of the plaintiff in relation to the property at the time of his injury. See Roe v. Bibby, 763 S.E.2d 645, 650 (S.C. Ct. App. 2014) (quoting Singleton v. Sherer, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008)). Here, the parties agree Plaintiff was an invitee at the Dorn VA Medical Center. (Def.'s Mem. Supp. Mot. to Dismiss, ECF No. 25-1 at 4; Pl.'s Resp. in Opp'n, ECF No. 30 at 1); see Lane v. Gilbert Constr. Co. Ltd., 681 S.E.2d 879, 882 (S.C. 2009) ("An invitee is a person 'who enters onto the property of another by express or implied invitation, his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and there is a mutuality of benefit or a benefit to the owner.' ") (quoting Singleton); Sims v. Giles, 541 S.E.2d 857, 861 (S.C. Ct. App. 2001) (stating invitees are offered the utmost duty of care by the landowner, compared to other classifications of persons on a defendant's premises).

In South Carolina, property owners owe invitees a duty of exercising reasonable or ordinary care for the invitee's safety, and are liable for injuries resulting from the breach of such duty. Sims, 541 at 863 (citing Larimore v. Carolina Power & Light, 531 S.E.2d 535 (S.C. Ct. App. 2000)). Adopting the position of the Restatement of Torts (Second) on this issue, the South Carolina Supreme Court provides, "A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." Callander v. Charleston Doughnut Corp., 406 S.E.2d 361, 362 (S.C. 1991) (adopting the Restatement of Torts (Second) § 343A (1965)) (original emphasis omitted). The court also provides in Callander that "an owner may be required to warn the invitee, or take other reasonable steps to protect him, if the

'possessor has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, . . . or fail to protect himself against it.' " Id. at 362-63 (omission in original) (quoting the Restatement of Torts (Second) § 343A, comment (f) and 220-221 (1965)).

Here, Defendant argues it did not breach its duty of care to Plaintiff because Plaintiff was aware of the location of the suggestion box before he hit his head on it. This alleged fact does not appear in Plaintiff's Complaint; rather, Defendant relies on an administrative claim form (Form 95) Plaintiff filed with the Department of Veterans Affairs Office of Regional Counsel, wherein Plaintiff states, "I did notice the suggestion box located on the wall but it appeared to be not in the way." (Ex. 1, Def.'s Mot. to Dismiss, ECF No. 25-2 at 3.) However, this evidence is beyond the proper scope of a motion to dismiss pursuant to Rule 12(b)(6). See E.I. du Pont de Nemours & Co. v. Kolon Indus., 637 F.3d 435, 448 (4th Cir. 2011) ("[T]he district court cannot go beyond [the complaint and documents attached or incorporated therein] on a Rule 12(b)(6) motion; if it does, it converts the motion into one for summary judgment. Such conversion is not appropriate where the parties have not had an opportunity for reasonable discovery.") (internal citations omitted); Dolgaleva v. Va. Beach City Pub. Schs., 364 F. App'x 820, 826 (4th Cir. 2010) (providing it is error for a district court to consider facts outside the pleadings when ruling on a Rule 12(b)(6) motion, without giving the necessary notice and opportunity for discovery sufficient to convert the motion into one for summary judgment); cf. Phillips v. LCI Intern., Inc., 190 F.3d 609, 618 (4th Cir. 1999) (providing that in addressing a motion to dismiss, courts may consider documents outside the pleading if the documents are integral and explicitly relied on in the complaint). Thus, assuming without deciding that such a fact would conclusively establish that Defendant did not breach its duty of care to Plaintiff, no such fact appears in the pleading, and the court finds Plaintiff has alleged in the

Complaint facts plausibly showing that Defendant breached its duty of care to Plaintiff. See Iqbal, 556 U.S. at 678.

RECOMMENDATION

Based on the foregoing, the court recommends Defendant's motion to dismiss be denied based on the ground presented. (ECF No. 25.)

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

March 12, 2018
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

MIME-Version:1.0 From:SC ilingstat@scd.uscourts.gov To:scd_ecf_ localhost.localdomain
Bcc: Message-Id:<8366575@scd.uscourts.gov>Subject:Activity in Case 3:1 cv-01775-TLW-PJG
Jenkins v. United States Order Ruling on Report and Recommendation Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

District of South Carolina

Notice of Electronic Filing
The following transaction was entered on 4/9/2018 at 1:48 PM EDT and filed on 4/9/2018

Case Name:	Jenkins v. United States
Case Number:	3:17-cv-01775-TLW-PJG
Filer:	
Document Number:	40

Docket Text:
ORDER accepting the [34] Report and Recommendation and denying Defendant's [25] Motion to Dismiss. Signed by Chief Judge Terry L. Wooten on 4/9/2018. (bgoo)

3:17-cv-01775-TLW-PJG Notice has been electronically mailed to:
Terri Hearn Bailey terri.bailey@usdoj.gov, CaseView.ECF@usdoj.gov, lisa.gillam@usdoj.gov, sateedra.revander@usdoj.gov, saundra.woods@usdoj.gov
3:17-cv-01775-TLW-PJG Notice will not be electronically mailed to:
Clarence B Jenkins, Jr
945 Wire Rd
Neeses, SC 29107

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=4/9/2018] [FileNumber=8366573-0]
[8b3f34aa7be80fd26adaf5333d5d13e7fb4d7be9ca1edd85bf30ab09354741c56202
2d96b510eea164fcb8deb81dedd27cac1c2c325f2c2599528afc29d92170]]

MEDIATION INITIATION FORM

Case: Jenkins v. South Carolina Human Affairs Commission,

C/A No. 3:16-cv-03255-TLW-PJG

Please check the applicable box to indicate the status of the above referenced case:

- ☐ case settled prior to or without mediation
- ☐ case dismissed by court or pending ruling on summary judgment motion
- ☐ case to proceed to trial
- ☐ case continued to next term

OR

- ☑ case will be or has been mediated *(complete the following information):*

Mediator Name: _____ Mediator Phone No._____

Date Mediation Scheduled to Occur *or* Date Mediation Completed:_____

Submitted by: Clarence B. Jenkins Jr. Signature Clarence B Jenkins Jr
(Printed name of counsel)

For which party? Clarence B. Jenkins Jr. Date: 1-18-2017
(Name of party counsel represents)

Please fax completed form to Danny Mullis, ADR Program Director @ 843-579-1434 or mail to P.O. Box 835, Charleston, SC 29402.

IN THE UNITED STATES DISTRICT COURT)
) STANDING ORDER TO
FOR THE DISTRICT OF SOUTH CAROLINA) CONDUCT MEDIATION

4:02-mc-5001-25

Mediation is to be scheduled and completed in all cases, including those cases involving unrepresented parties. Mediation shall be completed by the date indicated in the scheduling order. Upon completion of the mediation, counsel shall advise the Court in writing only that the mediation has occurred, the date of the mediation, whether the case was settled in whole or in part, and whether a trial is required.

The parties should select a mediator consistent with Local Rule 16.06 DSC. A roster of certified mediators can be retrieved from the district court's website at www.scd.uscourts.gov or from The Clerk of Court. Any questions concerning selection of a mediator or the mediation process generally should be referred to the Court's ADR Program Director, Danny Mullis at (843) 579-1435.

All parties and their lead trial counsel, having full settlement authority[1], are required to attend the mediation in person unless excused by the Court for good cause shown. Insurer representatives with decision-making authority also are required to attend in person, unless excused by the Court, if their agreement would be necessary to achieve a settlement. Every person who is excused from attending in person must be available to participate by telephone, unless otherwise ordered. At the mediation, parties, their insurer representatives and their primary trial counsel should be prepared to participate in a mutual, good faith effort to negotiate a fair and reasonable settlement. All necessary discovery should be completed prior to mediation. Lack of discovery or settlement authority is no excuse for failure to appear and/or participate. See Local Rule 16.09 DSC.

This order has been mailed to all counsel of record and to all *pro se* parties. Counsel are responsible for notifying and ensuring the presence of parties and insurer representatives as described above. If a case has been mediated previously, counsel shall notify the Court promptly in writing.

Communications made in connection with or during the mediation are confidential and protected by Federal Rule of Evidence 408 and Federal Rule of Civil Procedure 68. If a settlement is not reached at the mediation, settlement discussions are neither admissible at trial nor to be disclosed to the presiding judge, see Local Rules 16.08(C) and 16.10(H) DSC, except as allowed by Local Rule 26.05(F) DSC.

If any reason exists why any party or counsel should not participate in this mediation, the court is to be advised of these reasons in writing.

AND IT IS SO ORDERED.

Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

Florence, South Carolina
January 31, 2002

---

[1] "Full settlement authority' for the defendant means an individual who can decide to offer the plaintiff a sum up to the existing demand of the plaintiff or the policy limits of any applicable insurance policy, whichever is less. 'Full settlement authority' for the plaintiff means the plaintiff himself or herself or a representative of the plaintiff who can make a binding decision on behalf of the plaintiff or plaintiffs."