

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ (New York), et al,)	C/A No. 1:07-CV-0943 LEK/DRH
)	
Plaintiffs,)	
)	
v.)	
)	MOTION TO DISMISS
STATE OF NEW YORK, et al,)	
)	
Defendants.)	
_____)	

PLEASE TAKE NOTICE that on December 21, 2007 at 9:00 a.m., or as soon thereafter as is convenient for the Court, the Defendant State of South Carolina (State)¹ shall and hereby does move before this Court for the dismissal of the Amended Complaint herein pursuant to Rules 12(b)(1), (2), (3), and (6), FRCP, in that, for the following reasons, the Court lacks jurisdiction over the subject matter of this action, the Court lacks jurisdiction of the person as to this Defendant, venue is improper and the Plaintiffs have failed to state a claim upon which relief can be granted:

1. This Court lacks personal jurisdiction as to the Defendant State of South Carolina.
2. The venue is improper.
3. This action is barred by the Eleventh Amendment as to the State.

¹ The Defendant Mark Hammon(sic)[correct spelling is Hammond], Secretary of State, (Secretary) was named in the original complaint but dropped as a Defendant in the Amended Complaint. Therefore, he is no longer a party to this case; however, *arguendo*, in an abundance of precaution and to the extent necessary, this Motion to Dismiss includes the Secretary as to both the original and amended complaints. Reasons 1, 2, 4 and 5, listed in this Motion, apply to the Secretary including, but not limited to, lack of personal jurisdiction of the Secretary. An additional ground is that the Secretary has no responsibility under South Carolina law for the matters alleged.

4. The Plaintiffs have failed to state a claim upon which relief can be granted.
5. The Court lacks subject matter jurisdiction of this case.

Respectfully submitted,

/s/ J. Emory Smith, Jr.
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November 9, 2007

Counsel for the State of South Carolina

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FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT SCHULZ (New York), et al,)	C/A No. 1:07-CV-0943 LEK/DRH
)	
Plaintiffs,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
STATE OF NEW YORK, et al,)	
Defendants.)	
_____)	

I hereby certify that I have served the Motion to Dismiss upon Plaintiffs in accordance with this Court’s Order of October 30, 2007, by mailing a copy of each document to the Lead Plaintiff’s Representative at the address below via the United States Mail this November 9, 2007:

Mr. Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Service on other Defendants is by electronic means.

/s/ J. Emory Smith, Jr.
NY Bar Roll No. 106463
J. EMORY SMITH, JR.
Assistant Deputy Attorney General