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**Jun 27 2022**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2021-000265

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Sula Adams ..... Appellant,

vs.

PennyMac Loan Services, LLC; The United States of America, acting by and through its Agency, The Secretary of Housing and Urban Development; Lanier Law Firm, LLC; Abbey Robertson; Investors Title Insurance Company and Equifax, LLC ..... Respondents.

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FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUE ON APPEAL

- I. DID THE TRIAL JUDGE BELOW ERR IN FAILING TO FIND THAT THE STATUTE OF LIMITATIONS WAS EQUITABLY TOLLED FROM SEPTEMBER 30, 2016 UNTIL OCTOBER 8, 2020, WHICH WOULD HAVE QUALIFIED THE PLAINTIFF TO BRING THE WITHIN ACTION?

## STATEMENT OF THE CASE

This matter arose on September 30, 2016 when the Plaintiff sold her house that she owned at 216 Dairwood Drive in Simpsonville, S.C.

Prior to the sale of this home on September 30, 2016, she had two (2) mortgages on her property, the first mortgage held by Academy Mortgage Corporation under LOAN NUMBER 222483 was dated November 16, 2012 and was recorded November 21, 2012 Mortgage Book 5188 at Page 1642 in the Greenville County, S. C. Office of Register of Deeds. The Mortgage was then assigned to PennyMacLoan Services, LLC and recorded on July 23, 2014 in Mortgage Book 5262, at Page 3092 in the Office of the Greenville County, S. C. Register of Deeds.

That this case on June 10, 2015, the Plaintiff sought financial assistance from HUD to help her avoid the foreclosure of her mortgage through PennyMac Loan Services. HUD loaned the Plaintiff \$78,478.13 to help her avoid defendant PennyMac from foreclosing on her. That she executed a subordinate note for \$78,478.13 to HUD.

That the first mortgage for \$267,602.00 from PennyMac Loan Services was of issued under LOAN NUMBER 2224083 and a MIN number of 10006080002240830 but no payments were due.

That the loan issued by HUD specifically stated that no payments would be

due on the loan so long as the first mortgage is still owed. However, once the primary note has been paid full, the second mortgage would need to be paid. If the home were sold, then a payoff would be required at closing.

That at closing, and referenced on the settlement document were two (2) Payoffs on behalf of the seller. One such payoff was to DISCOVER and the other was a MORTGAGE PAYOFF. A PAYOFF was issued for Defendant PENNYMAC on September 16, 2016, for LOAN NUMBER 8000100368 in the amount of \$202,212.05. However, the original loan amount for LOAN 8000100 was ONLY \$78,478.13. NO OTHER MORTGAGE PAYOFF WAS OBTAINED BY THE CLOSING ATTORNEY.

That in a letter, dated August 25, 2017, HUD conveyed to the Plaintiff that the LOAN AMOUNT OF \$106,879.13. was still due as that amount was still on the HUD LOAN. HUD MOVED FORWARD WITH WAGE GARNISHMENT FROM THE PLAINTIFF.

That the PLAINTIFF requested a hearing with HUD REGARDING HER PROPOSED ADMINISTRATIVE WAGE GARNISHMENT. On September 13, 2017, the PLAINTIFF, by way of a letter, requested a hearing and conveyed to HUD that she had been told by her attorney as well as her Closing attorney that the mortgage from HUD HAD BEEN FORGIVEN.

Further, in a letter, dated September 19, 2017, an attorney for Investors Title Insurance Company to HUD requesting that their lien BE released ON THE BASIS THAT PENNYMAC PROVIDED INCORRECT INFORMATION REGARDING THE PAYOFFS. NO LOAN WAS RELEASED BY HUD.

That the Plaintiff has claimed financial hardship to HUD as a reason that her wages should not be garnished. She also claimed that the amount owed to HUD should not be due because PENNYMAC provided her closing attorney with incorrect information, but HUD HAS CONTINUED TO GARNISH HER WAGES.

This action arose because the Plaintiff was unable to satisfy her loan from HUD upon the sale of her home at closing, but the plaintiff contends that she had been told that the HUD part of her loan had been forgiven. The plaintiff sold her house to a third party at the time of the closing on September 30, 2016, there were two mortgages on her house but only one mortgage was satisfied from the closing proceeds. This left her other mortgage still outstanding. In this action, all defendants filed Motions to Dismiss. The Secretary of Housing and Urban Development ("HUD") filed a Motion to Dismiss. Plaintiff informed the Court that she was settlement negotiations with Defendants TransUnion; Experian Information Solutions, Inc.; and Equifax, LLC. As to Plaintiff's Motion for TRO against HUD, she withdrew her motion pursuant to HUD's agreement not to garnish wages during the pendency of this action.

This action arises out of the failure of Plaintiff to properly satisfy two existing mortgages in connection with the sale of her home. Plaintiff sold her house to a third-party and at the time of the closing on September 30, 2016, there were two mortgages against the property. For some reason, only one of the mortgages was satisfied from the closing proceeds, which left the other mortgage still outstanding. Plaintiff contends the error was a result of Defendants' failure to properly reference both mortgages in the payoff statements. As a result, the outstanding mortgage, HUD sought garnishment of

Plaintiff's wages to satisfy the debt. Plaintiff brought this action against all parties involved in the closing for claims of breach of contract, intentional infliction of emotional distress, and unfair trade practices. Subsequently, the current Motions to Dismiss were filed. All of these Motions to Dismiss have various grounds for their dismissal related to each Defendant's Motion but all contend that this action was not commenced within the Statute of Limitations. The Court addressed the Statute of Limitation.

#### STANDARD OF REVIEW

To grant a Motion to Dismiss, the Court must base its decision solely on allegations set forth in the Complaint, *Doe v. Marion*, 373 S. C. 390, 645 S.E.2d 245 (2007). "The Complaint should not be dismissed merely because the Court doubts the Plaintiff will prevail in the action." *Marion* at 645 S. E 2d.245, 248. For a Motion to Dismiss, the Court looks at the facts alleged in the light most favorable to the Plaintiff to determine whether the Plaintiff is entitled to relief on any legal theory. *Marion* at 395, 645 S. E. 2d 245, 247.

#### ARGUMENT

All Defendants asserted that the Statute of Limitations bars this action which they contend is supported only by looking to the Complaint. The Complaint asserts causes of action for breach of contract, intentional infliction of emotional distress and violation of the S. C. Unfair Trade Practices Act. The relevant Statute of Limitations for all of these Causes of actions is three years as provided by S.C. Code Ann.,

Sections 15-3-530 and 39-5-150. The event which gives rise to Plaintiff's claims took place on September 30, 2016. The Summons and Complaint were not filed until October 8, 2020. In the Complaint the Plaintiff alleged she received a letter dated June 12, 2012, from Attorney Robertson outlining the issues and acknowledging that the second mortgage had not been satisfied. (*See* Compl. ¶ 16; R. at 12.) The Plaintiff further alleges that she received a letter dated August 25, 2017, from HUD demanding payment on the outstanding loan and that it planned to pursue garnishment of wages for payment of the debt. (*See* Compl. ¶ 17; R. at 12.) As of these dates, Plaintiff was advised the second mortgage had not been paid off and she would have clearly known she would have had a claim against the responsible persons. However, Plaintiff failed to commence an action until October 8, 2020, more than four years after the closing and more than three years after she was advised in writing of the issues. The Plaintiff argues equitable tolling should apply as she was awaiting an administrative decision from HUD on the wage garnishment issue. Based on the Complaint, Plaintiff alleges she objected to wage garnishment because of financial hardship and because Robertson was to blame for providing incorrect information about the two mortgages. This would not toll the statute because she was merely contesting HUD's right to garnish her wages and not awaiting any type of decision on whether the debt was owed. Thereafter, the trial court committed reversible error by finding that Plaintiff should have been aware she received more proceeds than she was entitled to at closing and should have known one of the

mortgages had not been paid off. Therefore, the Court committed error when it found this action was not commenced within the applicable statute of limitations and granted the Defendants' Motions to Dismiss.

On the other hand, the Plaintiff contends that the Statute of Limitation should have been equitably tolled since she was trying to resolve her problem with preventing HUD from garnishing her wages through the EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS.

“Tolling” refers to suspending or stopping the running of a Statute of Limitation. It is analogous to a clock stopping, then restarting. 51 Am. Jur. 2d Limitation of Actions, 169 (2000); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S. C. 108, 687 S. E. 2d 29 (2009). The Plaintiff is trying to resolve her Wage Garnishment problem with HUD through the administrative procedures of HUD. Equitable Tolling is a judicially created remedy to serve justice where it is required. *Hooper, Supra.* (2009).

In the present case, the "Equitable Tolling" demanded that the Statute of Limitation be stopped while the plaintiff was trying to resolve her problems of her wage Garnishment with HUD through the administrative procedures of HUD. *Hooper, Supra.* (2009).

Although each of the Defendants filed additional grounds to support their Motions to address those because the dismissal was granted based on the Statute of Limitations.

CONCLUSION

For the foregoing reasons, the Trial Court's findings should and must be reversed if the Statute of Limitation was equitably tolled while the Plaintiff was trying to resolve her wage Garnishment with HUD through HUD's Administrative Procedures.

Respectfully submitted,

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June 27, 2022

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief complies with Rule 211(b), SCACR.

June 27, 2022

s/Michanna Talley Tate  
Michanna Talley Tate