THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, Circuit Court Judge

Case No. 2017-CP-46204476

EQUINOX, LLC, Plaintiff,

v.

BRANDON EPPS & COURTNEY EPPS, Appellants,

BRANDON EPPS AND COURTNEY EPPS, as Next of Friends of ALEXIS MARION HUCKS, ADRIANNE BELLE HUCKS, WELLS SKIPPER HUCKS, SAWYER LANE EPPS, COOPER WADE EPPS, and LILI MADELYN EPPS, Appellants,

v.

RICHARD B. DRESKIN, Respondent.

APPELLANTS' FINAL REPLY BRIEF

August 22, 2022

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Appellants Brandon Epps and Courtney Epps, Individually and As Next of Friends of Alexis Marion Hucks, Adrianne Belle Hucks, Wells Skipper Hucks, Sawyer Lane Epps, Cooper Wade Epps, and Lili Madelyn Epps (collectively, "Appellants" or "the Epps") respectfully submit this memorandum of law in reply to the Brief of Respondent Richard Dreskin ("Respondent" or "Dreskin").

ARGUMENT

I. Appellants Properly Preserved Their Arguments that They Brought Their Claims Against Dreskin Within the Statute of Limitations.

In arguing that Appellants' claims against Dreskin were properly dismissed as barred by the statute of limitations, Respondent incorrectly contends that Appellants' arguments on this issue are new, or not properly preserved. They make this contention first in an attempt to minimize the impact of the lawsuit filed by the Appellants in 2020 (the "2020 Action") on the statute of limitations analysis.

Specifically, Respondent erroneously contends that Appellants did not preserve their argument that the 2020 Action asserted their claims against Dreskin within the statute of limitations, stating on page 12 of his brief:

> *While both the Form Four Order and the Order discuss Appellants' arguments on whether their motion to amend extended any statute of limitations, neither order mentions the 2020 Action or any effect it had on the statute of limitations analysis.*

This is plainly wrong. As set forth in their initial brief, Appellants filed the 2020 action and served it on Dreskin, as well as on Equinox, LLC, in order to deal with the unique logistical issues raised by the initial COVID outbreak. The Order specifically describes the 2020 Action on page 3, and explains that Appellants had filed a motion to consolidate that 2020 Action with this one. The Order then further states that: "On October 9, 2020, the Court issued an order acknowledging

that the parties agreed it is in the best interests of judicial economy of the claims at issue in the 2017 Action and the 2020 Action to proceed under one civil number." Finally, Appellants' argument is explicitly acknowledged as having been made to the trial court in the Order. Order (R. p. 7) ("They also contend that these claims against Dreskin were timely filed with the filing of the 2020 Action").

Further, the Order is consistent with the transcript of the hearing. As with his brief to this Court, Respondent attempted to recast the October 2020 Order into something that it isn't. Hearing Tr. (R. p. 372). The Court did not rule on anything, or find that the 2020 Action had been wrongly filed, or decide that anything should be dismissed. It made no decisions, and there is no hint of the underlying analysis suggested by Respondent.

The Order simply acknowledged that the parties had agreed to resolve the claims in one action. Counsel for Respondent stated the following during the course of that argument:

> ***What really matters in this case and what determines the statute issues to me is that Mr. Dreskin was served with these claims within the Statute of Limitations. He was just served with those claims in the 2020 Action, which the parties agreed to resolve in the 2017 Action.***

Hearing Tr. 21 (R. p. 374).

There was no possible confusion, then, regarding Appellants' argument on this point. It is restated in their brief to this Court. The trial court obviously disagreed with Appellants about the impact of the 2020 Action, as it granted Respondent's motion to dismiss. There was no explanation or clarification of the Order needed, and no need to file a Rule 59 Motion for the Court to explain the ramifications of all possible rationales for its decision.[1] The trial court simply decided

[1] Respondent also incorrectly contends that Appellants' argument that their conversion claim accrued after May 2017 is "new." Respondent himself notes that Appellants' Counterclaims and Third-Party Claims clearly allege that Appellants' property was not sold off by Equinox and

Appellants' plainly stated argument was insufficient to defeat the motion to dismiss based on statute of limitations issues. Appellants believe this ruling was incorrect, and the Order should be reversed.

II. Appellants Preserved Their Arguments that They Stated a Claim for Individual Liability Against Respondent.

Respondent's focus on the Court's decision dismissing the alter ego claim again incorrectly focuses on perceived new claims or a purported failure to preserve arguments for appellate review. Respondent begins his argument with this statement:

> *Appellants appear to concede that South Carolina does not recognize a claim for alter ego as they make no arguments to the contrary.*

This is also plainly wrong, and Appellants have been clear on that point. Appellants believe that the holding in Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 668 S.E.2d 798 (2008), is very different from that argued by Respondent both to this Court and the lower court. As Appellants have consistently argued, Drury does not hold that there is no claim for alter ego under South Carolina law, or that an LLC must first be found to have been legally culpable before an alter ego claim can be made:

> *"Rather we set forth the general rule that a judgment against a corporation is **not** a prerequisite to an alter ego claim."*

Drury, 380 S.C at 103, 668 S.E. 2d at 802 (emphasis added).

Dreskin until the fall of 2017, after the mold had been discovered but Equinox and Dreskin refused to properly treat the house to allow Appellants to "be able to retrieve their property," at which point "Plaintiff**s** sold all of Defendants' belongings to unwitting buyers." See Respondent's Br., p. 14, (citing Sec. Amd. Ans., ¶ 64) (emphasis on the plural added). In ruling that the conversion claim was nonetheless barred by the statute of limitations, the trial court necessarily (if incorrectly) ruled upon the allegations in the Second Amended Counterclaims and Third-Party Complaint concerning when Appellants' property was sold out from under them.

Counsel for Appellants argued this issue at length before the trial court, and Appellants' arguments are by no means "new" on appeal. Hrg Transcript (R. p. 381, 388-396). Again, the trial court fully considered and ruled upon Appellants' arguments, such that there was nothing to clarify in the trial court's Order. The Order makes plain that the Court did not consider Appellants' arguments to be at all relevant because of its mistaken belief that "[f]or a member of a limited liability company to be held personally liable or responsible for acts of the LLC, the LLC must first be proven to be legally culpable." Order (R. pp. 10-11). The trial court simply disagreed with Appellants' arguments because, respectfully, it misunderstood the law on this point. The fact that the Court did not enter an alternative ruling specifically dealing with each element and allegation is of no moment. Respondents have properly pled this claim against Dreskin.

Finally, Respondent's contention that Appellants "have abandoned any argument concerning whether the trial court erred in finding that South Carolina law does not recognize a cause of action for alter ego liability," Respondent's Br., p. 15, defies credulity. In their initial brief to this Court, Appellants directly stated their contention that the law of South Carolina, under Drury, is that "a judgment against a corporation is not a prerequisite to an alter ego claim." Appellant's Br., p. 9 (quoting Drury, 380 S.C. at 103, 668 S.E.2d at 802). The trial court's holding to the contrary was wrong, and the Order should be reversed.

CONCLUSION

For the foregoing reasons, the January 16, 2022, Order granting Respondent Dreskin's Motion for Judgment on the Pleadings should be reversed. Appellants acknowledge the importance of Rule 59 to appellate review, but respectfully submit that their arguments were properly raised to, considered and ruled upon by the trail court, and that court's rulings are clear. See Wilde Corp v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). Appellants' claims against Dreskin

should be permitted to proceed to trial.

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RICHARD B. DRESKIN,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned also certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

[*Signature block on following page*]

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