RECEIVED
Feb 28 2023
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**
In The Court of Appeals

---

**APPEAL FROM PICKENS COUNTY**
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

---

Case No. 2019-CP-3901224
Appellate Case No. 2022-001777

---

Christopher Young and Biotech Restorations, LLC

Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Painter, Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents/Appellants.

---

# CROSS-APPELLANTS' INITIAL BRIEF

Steven R. LeBlanc (SC Bar 14221)
Steve LeBlanc, LLC
P.O. Box 9198
Greenville, S.C. 29604
Tel: (864) 902-4411
Steve@LeBlancLLC.com

***Attorneys for Respondents/Cross-Appellants***

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Statutes**



**Rules**

**Treatises**

## STATEMENT OF ISSUES ON APPEAL

**I. Did the trial court err in denying Cross-Appellants' motion for a directed verdict based on res judicata?**

**II. Did the trial court err in denying Cross-Appellants' motion for a directed verdict based on the statute of limitations?**

**III. Did the trial court err in admitting into evidence the General Partnership Agreement shown in Plaintiffs' Exhibit 3?**

## STATEMENT OF THE CASE

Around 2004, Dr. Valerie Paynter developed a bioremediation technology that she named "the Factor" to remediate contaminated soil. 9/13/16 Aff. of Dr. Kline. In 2006, Dr. Paynter and Appellant/Respondent Christopher Young signed a General Partnership Agreement stating, "Valerie A. Paynter having sole knowledge of the proprietary Factor formulation, agrees to provide the partnership; exclusive use of Factor formulated products during the term of the Partnership." 1/16/06 General Partnership Agreement, ¶ 3.b. The General Partnership Agreement further provided, "The partnership will terminate upon the death or incapacity of a partner." *Id.* at ¶ 4.

Appellants/Respondents allege that within five months of the original General Partnership Agreement, Dr. Paynter and Appellant/Respondent Christopher Young signed an amended General Partnership Agreement that essentially conveyed ownership of Dr. Paynter's bioremediation technology to the surviving partner. 5/30/06 General Partnership Agreement, ¶ 4.

Dr. Paynter died September 4, 2017. Death Certification. Appellants/Respondents filed a Creditor's Claim during the probate of Dr. Paynter's Estate, claiming ownership of Dr. Paynter's bioremediation technology. Statement of Creditor's Claim. Specifically, Appellants/Respondents claimed that ***they*** owned Dr. Paynter's bioremediation technology and that Cross-Appellants Paynter and Nelson[1] — Dr. Paynter's sole heirs — had possession of the trade secrets (*i.e.*, Dr. Paynter's laboratory and product formulation records), had refused to return the trade secrets, and had attempted to sell the trade secrets in breach of the General

[1] As used throughout this document, "Cross-Appellants" shall refer to only Respondents/Appellants Paynter and Nelson.

Partnership Agreement. *Id.* Cross-Appellant Paynter, as the Personal Representative of Dr. Paynter's Estate, disallowed Appellants/Respondents' claim. Notice of Disallowance of Claim. Appellants/Respondents did not pursue the claim further, and probate of Dr. Paynter's Estate closed on March 25, 2019. Order Closing Estate.

On September 11, 2019, Appellants/Respondents filed the present lawsuit, again claiming that they owned Dr. Paynter's bioremediation technology and that Cross-Appellants had possession of Dr. Paynter's records, had refused to return the records, and had attempted to sell the trade secrets in breach of the General Partnership Agreement. Compl., ¶ 1. On January 28, 2020, Cross-Appellants filed an Answer, generally denying the allegations in the Complaint and asserting affirmative defenses for, *inter alia*, lack of service, res judicata, and the statute of limitations. Ans., ¶¶ 28, 29, and 34-39. Appellants/Respondents did not perfect service of the Summons and Complaint on Cross-Appellants until January 19, 2021. Acceptance of Service.

On February 22, 2021, Appellants/Respondents filed an Amended Complaint, adding a new claim for a declaratory judgment that Dr. Paynter's transfer of her bioremediation technology to her daughters – Cross-Appellants – was fraudulent. Am. Compl., pp. 18-20. On March 8, 2021, Cross-Appellants filed an Answer to the Amended Complaint, again generally denying the allegations in the Amended Complaint and asserting affirmative defenses for, *inter alia*, res judicata and the statute of limitations. Ans. to Am. Compl., ¶¶ 72-77.

On September 14, 2021, Cross-Appellants filed an Amended Answer and Counterclaim. Am. Ans. and Countercl. On September 28, 2021, Appellants/Respondents filed an Answer to the Counterclaim. Ans. to Countercl.

On April 18, 2022, the parties selected a jury, and a jury trial commenced on April 20, 2022. Trial Tr. Cross-Appellants objected to the admission of either General Partnership

Agreement into evidence based on South Carolina's Dead Man's Statute, S.C. Code Ann. § 19-11-20. Trial Tr., pp. 16-20, 93. After Appellants/Respondents rested their case on April 20, Cross-Appellants made oral motions for a directed verdict on all claims based on res judicata and the statute of limitations, which were denied. Trial Tr., pp. 239, 243.

At the resumption of trial on April 21, 2022, the parties agreed to dismiss the jury, suspend the trial to discuss settlement, and continue the trial as a bench trial if settlement could not be reached. Trial Tr., pp. 276-277. On August 11, 2022, Judge Verdin conducted a hearing at which time Cross-Appellants rested their case without presenting any evidence.

On November 10, 2022, Judge Verdin filed an Order Construing the General Partnership Agreement. 11/10/22 Order Construing the General Partnership Agreement. On November 11, 2022, Appellants/Respondents filed a Motion for Reconsideration of the Order filed November 10, 2022. On November 17, 2022, Judge Verdin filed an amended Order Construing the General Partnership Agreement and an Order granting in-part and denying in-part Appellants/Respondents' motion to reconsider. 11/17/22 Order Construing the General Partnership Agreement; 11/17/22 Order on Motion to Reconsider.

On November 28, 2022, Appellants/Respondents filed a Motion under Rule 60 which Judge Verdin denied on December 12, 2022. 12/12/22 Order on Motion under Rule 60.

On December 13, 2022, Judge Verdin entered Judgment granting a verdict in favor of Cross-Appellants for all causes of action. 12/13/22 Judgment.

On December 14, 2022, Appellants/Respondents filed and served a notice of appeal of Judge Verdin's November 17, 2022, Order Construing the General Partnership Agreement; Judge Verdin's December 12, 2022, Order denying Appellants/Respondents' Rule 60 Motion; and the Judgment entered December 13, 2022.

On January 11, 2023, Cross-Appellants filed and served a notice of cross-appeal of Judge Verdin's orders on April 20, 2022, denying Cross-Appellants' motions for a directed verdict based on res judicata and the statute of limitations and Judge Verdin's decision to admit into evidence the General Partnership Agreement and November 17, 2022, Order denying Cross-Appellants' motion to reconsider the decision.

## STANDARD OF REVIEW

### A. Directed Verdict

An appellate court applies the same standard as the trial court when reviewing a denial of a motion for a directed verdict. "When ruling on a motion for a directed verdict, the trial court must view all evidence and all reasonable inferences in the light most favorable to the nonmoving party, and if the evidence is susceptible of more than one reasonable inference, the trial court should submit the case to the jury." *Roddey v. Wal-Mart Stores East, LP*, 415 S.C. 580, 588, 784 S.E.2d 670, 675 (2016) (citing *Unlimited Servs., Inc., v. Macklen Enters., Inc.*, 303 S.C. 384, 386, 401 S.E.2d 153, 154 (1991). "The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt." *RFT Mgmt. Co., LLC v. Tinsley & Adams LLP*, 399 S.C. 322, 333, 732 S.E.2d 166, 171 (2012). "In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Id.* (citing *Welch v. Epstein,* 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000)); *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006).

### B. Evidentiary Rulings

A trial court's evidentiary rulings will not be disturbed on appeal absent a clear abuse of discretion. *Hofer v. St. Clair*, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without

evidentiary support." *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." *Id.*

## ARGUMENTS

Appellants/Respondents have appealed various Orders of the trial court construing the General Partnership Agreement admitted into evidence as Plaintiffs' Exhibit 3, as well as the Judgment entered in favor of Cross-Appellants on all claims. Cross-Appellants appeal three separate rulings by the trial court which, if decided correctly, provide independent bases for affirming the Judgment and rendering moot or vacating the trial court's construction of the General Partnership Agreement admitted into evidence as Plaintiffs' Exhibit 3.

### I. The Trial Court Erred in Denying Cross-Appellants' Motion for a Directed Verdict based on Res Judicata

Appellants/Respondents previously asserted the same claims against Cross-Appellants during the probate of Dr. Paynter's Estate. Those claims were denied, and Appellants/Respondents did not appeal the denial of their claims by the Probate Court. Therefore, res judicata precludes Appellants/Respondents from asserting the same claims against Cross-Appellants in the present lawsuit, and the trial court erred in denying Cross-Appellants' motion for a directed verdict based on res judicata.

#### A. Undisputed Facts

In 2006, Dr. Paynter and Appellant/Respondent Christopher Young signed a General Partnership Agreement stating, "Valerie A. Paynter having sole knowledge of the proprietary Factor formulation, agrees to provide the partnership; exclusive use of Factor formulated products during the term of the Partnership." 1/16/06 General Partnership Agreement, ¶ 3.b.

The General Partnership Agreement further provided, "The partnership will terminate upon the death or incapacity of a partner." *Id.* at ¶ 4.

Appellants/Respondents allege that within five months of the original General Partnership Agreement, Dr. Paynter and Appellant/Respondent Christopher Young signed an amended General Partnership Agreement that conveyed ownership of Dr. Paynter's bioremediation technology to the surviving partner. 5/30/06 General Partnership Agreement, ¶ 4.

Dr. Paynter died September 4, 2017. Death Certification. Appellants/Respondents filed a Creditor's Claim during the probate of Dr. Paynter's Estate, claiming ownership of Dr. Paynter's bioremediation technology. Statement of Creditor's Claim. Specifically, Appellants/Respondents claimed that they owned Dr. Paynter's bioremediation technology and that Cross-Appellants — Dr. Paynter's sole heirs — had possession of the trade secrets (*i.e.*, Dr. Paynter's laboratory and product formulation records), had refused to return the trade secrets, and had attempted to sell the trade secrets in breach of the General Partnership Agreement. *Id.* Cross-Appellant Paynter, as the Personal Representative of Dr. Paynter's Estate, disallowed Appellants/Respondents' claim. Notice of Disallowance of Claim. Appellants/Respondents did not pursue the claim further, and probate of Dr. Paynter's Estate closed on March 25, 2019. Order Closing Estate.

On September 11, 2019, Appellants/Respondents filed the present lawsuit, again claiming that they owned Dr. Paynter's bioremediation technology and that Cross-Appellants had possession of Dr. Paynter's records, had refused to return the records, and had attempted to sell the trade secrets in breach of the General Partnership Agreement. Compl., ¶ 1. On January 28, 2020, Cross-Appellants filed an Answer, generally denying the allegations in the Complaint and

asserting the affirmative defense of res judicata. Ans., ¶¶ 34-38. On February 22, 2021, Appellants/Respondents filed an Amended Complaint, adding a new claim for a declaratory judgment that Dr. Paynter's transfer of her bioremediation technology to Cross-Appellants – her daughters and sole heirs — was fraudulent. Am. Compl., pp. 18-20. On March 8, 2021, Cross-Appellants filed an Answer to the Amended Complaint, again generally denying the allegations in the Amended Complaint and asserting the affirmative defense of res judicata. Ans. to Am. Compl., ¶¶ 72-76. On September 14, 2021, Cross-Appellants filed an Amended Answer and Counterclaim, again generally denying the allegations in the Amended Complaint and asserting the affirmative defense of res judicata. Am. Ans. and Countercl., ¶¶ 72-76.

### B. Appellants/Respondents' Claims are Barred by Res Judicata

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (citation omitted). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.* (citation and quotation marks omitted). "Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012).

Res judicata requires proof of the following elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

#### 1. The Parties Are Identical

The first element to establish the defense of res judicata is "identity of the parties" – *i.e.*, the parties in the second proceeding are either identical to or in privity with the parties in the first

proceeding. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992). "Under the doctrine of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction, without fraud or collusion, **is conclusive as to the rights of the parties and their privies**." *Griggs v. Griggs*, 214 S.C. 177, 184, 51 S.E.2d 622, 626 (1949) (emphasis added). "[T]he concept of privity rests not on the relationship between the parties asserting it, but rather on each party's relationship to the subject matter of the litigation." *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012). "The term 'privy' when applied to a judgment or decree means one so identified in interest with another that he represents the same legal right. **One in privity is one whose legal interests were litigated in the former proceeding**." *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986) (emphasis added).

The first proceeding for purposes of res judicata was the probate of Dr. Paynter's Estate in the Pickens County Probate Court from 2017-2019. On one side of the probate dispute, Appellants/Respondents asserted a claim for ownership of Dr. Paynter's trade secrets. Creditor's Claim, p. 1. On the other side of the probate dispute, Cross-Appellants opposed the claim as the sole heirs of Dr. Paynter's Estate with possession of Dr. Paynter's trade secrets. Therefore, no genuine dispute exists that the probate of Dr. Paynter's Estate involved the identical parties as the case at bar, with Appellants/Respondents on one side and Cross-Appellants on the other side.

**2. The Claims are Identical**

The second element to establish a defense of res judicata is "identity of the subject matter" – *i.e.*, the claims arise out of the same transaction or occurrence that was the subject of the prior adjudication. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992); *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "[F]or purposes of res judicata, 'cause of action' is not the form of action in which a claim is

asserted but, rather the 'cause for action, **meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon**.'" *Judy v. Judy*, 393 S.C. at 172, 712 S.E.2d at 414 (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 36, 512 S.E.2d 106, 110 (1999)) (emphasis added). "The plaintiff's claim is extinguished even when the plaintiff is 'prepared in the second action (1) [t]o present evidence or grounds or theories of the case not presented in the first action, or (2) [t]o seek remedies or forms of relief not demanded in the first action.'" *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 388, 737 S.E.2d 502, 508 (Ct. App. 2013) quoting *Restatement (Second) of Judgments* § 25 (1982 & Supp. 2012).

All of Appellants/Respondents' claims in both the probate of Dr. Paynter's Estate and the case at bar involve the same transaction or occurrence. Specifically, during the probate of Dr. Paynter's Estate, Appellants/Respondents alleged that (1) the General Partnership Agreement granted Appellants/Respondents sole ownership of Dr. Paynter's trade secrets, (2) Cross-Appellants had possession of Dr. Paynter's trade secrets, (3) Cross-Appellants had refused to turn over Dr. Paynter's trade secrets to Appellants/Respondents, and (4) Cross-Appellants had attempted to sell Dr. Paynter's trade secrets. Creditor's Claim, p. 1. Appellants/Respondents repeat the same allegations in the present lawsuit, as shown in the table below.

| **Probate Court Allegation** | **Amended Complaint Allegation** |
|---|---|
| the General Partnership Agreement granted Appellants/Respondents sole ownership of Dr. Paynter's trade secrets | ¶¶ 1, 73 |
| Cross-Appellants had possession of Dr. Paynter's trade secrets | ¶¶ 1, 71, 76, 98, 99, 104, 105, 108 |
| Cross-Appellants had refused to turn over Dr. Paynter's trade secrets to Appellants/Respondents | ¶¶ 1, 78, 87, 92, 105 |
| Cross-Appellants had attempted to sell Dr. Paynter's trade secrets | ¶¶ 1, 56, 72, 75, 88, 93 |

The preceding table demonstrates that the same transaction or occurrence forms the basis for all of Appellants/Respondents' claims in each proceeding, and it does not matter that Appellants/Respondents now style their claims under different causes of action. *Judy v. Judy*, 393 S.C. at 172, 712 S.E.2d at 414; *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. at 388, 737 S.E.2d at 508. Stated differently, Appellants/Respondents' present causes of action for breach of agreement, return lab notes, interference with contract, conversion, aiding and abetting breach of fiduciary duty, breach of fiduciary duty, constructive trust, and fraudulent conveyance are all predicated on the same allegations made during probate of Dr. Paynter's Estate, namely that (1) the General Partnership Agreement granted Appellants/Respondents sole ownership of Dr. Paynter's trade secrets, (2) Cross-Appellants had possession of Dr. Paynter's trade secrets, (3) Cross-Appellants had refused to turn over Dr. Paynter's trade secrets to Appellants/Respondents, and (4) Cross-Appellants had attempted to sell Dr. Paynter's trade secrets.

In addition, Appellants/Respondents rely on the same evidence to support their claims in both proceedings. Just as they did during probate of Dr. Paynter's Estate, Appellants/Respondents again rely on the alleged second General Partnership Agreement as the only evidence to support their ownership claim to Dr. Paynter's trade secrets. As the Supreme Court has stated, "Because the tort duties that were breached and the evidence was the same in both proceedings, there was 'identity of subject matter' for the purposes of *res judicata.*" *Judy v. Judy*, 393 S.C. at 173, 712 S.E.2d at 415. Therefore, no genuine dispute exists that the subject matter raised in the present matter is identical to the subject matter raised during probate of Dr. Paynter's Estate, and the second element required for res judicata is met.

### 3. The Pickens County Probate Court Fully Adjudicated Appellants/Respondents' Claims

The third and final element to establish res judicata is an adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

Probate Courts in South Carolina have ***exclusive***, original jurisdiction over all subject matter related to the estates of decedents. S.C. Code Ann. § 62-1-302(a)(1). Dr. Paynter was a resident of Pickens County when she died. Death Certification. Therefore, the Pickens County Probate Court had exclusive, original jurisdiction over any claims asserted by anyone against Dr. Paynter's Estate.

As previously discussed, Appellants/Respondents filed a claim for sole ownership of Dr. Paynter's trade secrets during the probate of Dr. Paynter's Estate. Creditor's Claim. The Pickens County Probate Court disallowed Appellants/Respondents' claim. Notice of Disallowance of Claim. Appellants/Respondents did not pursue the claim further, and probate of Dr. Paynter's Estate closed on March 25, 2019. Order Closing Estate. Therefore, the decision of the Pickens County Probate Court constitutes a final, **adverse** adjudication of Appellants/Respondents' ownership claim of Dr. Paynter's trade secrets.

## C. Conclusion

"The doctrine [of res judicata] flows from the principle that public interest requires an end to litigation and no one should be sued twice for the same cause of action." *Duckett v. Goforth*, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007) (citation omitted). Appellants/Respondents asserted the same claims against Cross-Appellants during the probate of Dr. Paynter's Estate. The Pickens County Probate Court denied all of Appellants/Respondents' claims, and Appellants/Respondents did not appeal that decision. Therefore, as a matter of law,

res judicata bars all of Appellants/Respondents' claims in the present lawsuit, and this Court should affirm the Judgment in favor of Cross-Appellants and declare as moot or vacate the trial court's construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3.

## II. The Trial Court Erred in Denying Cross-Appellants' Motion for a Directed Verdict based on the Statute of Limitations

Appellants/Respondents' claims are all based on events that occurred well-before Dr. Paynter's death on September 4, 2017, and Appellant/Respondent Young testified to knowledge of the facts giving rise to each cause of action more than three years before Appellants/Respondents commenced the present lawsuit. Therefore, the statute of limitations bars all of Appellants/Respondents' claims, and the trial court erred in denying Cross-Appellants' motion for a directed verdict based on the statute of limitations.

### A. Undisputed Facts

Appellants/Respondents filed the present lawsuit on September 11, 2019. However, Appellants/Respondents did not perfect service of the Summons and Complaint on Cross-Appellants until January 19, 2021. 1/19/21 Acceptance of Service.

Appellants/Respondents have asserted eight causes of action against Cross-Appellants, styled as breach of agreement, return lab notes, interference with contract, conversion, aiding and abetting breach of fiduciary duty, breach of fiduciary duty, constructive trust, and fraudulent conveyance. 2/22/21 Am. Compl. Each cause of action is predicated on Appellants/Respondents' belief that they own Dr. Paynter's bioremediation technology and that Cross-Appellants have been in possession of, have refused to turn over, and have attempted to sell Dr. Paynter's trade secrets. 2/22/21 Am. Compl.

At trial, Appellant/Respondent Young testified that in January 2015 he was aware that Cross-Appellant Paynter was trying to disrupt the partnership, abrogate the partnership, and

interfere with Dr. Paynter's performance in the partnership. Trial Tr., pp. 125-127, 139. Appellant/Respondent Young also testified that during a meeting in April or May 2016 he had learned directly from Cross-Appellants that Cross-Appellants claimed to be the sole owners of Dr. Paynter's trade secrets, that Cross-Appellants were not sharing Dr. Paynter's trade secrets with him after May 2016, and that Cross-Appellants and Dr. Paynter had received offers to purchase Dr. Paynter's trade secrets. *Id.*, pp. 136, 142-143, 195. Lastly, Appellant/Respondent Young testified that before Dr. Paynter's death he knew that Cross-Appellants had possession of Dr. Paynter's trade secrets, had refused to turn over Dr. Paynter's trade secrets, and had been trying to sell Dr. Paynter's trade secrets, and that each of these actions constituted a breach of the partnership agreement. *Id.*, pp. 144-145.

### B. Appellants/Respondents' Claims Are Barred by the Statute of Limitations

"The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005). "Statutes of limitations are, indeed, fundamental to our judicial system." *Id.*

The statute of limitations period begins to run when "the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 525, 787 S.E.2d 485, 489 (2016). "This standard as to when the limitations period begins to run is *objective* rather than subjective." *Id.* (quoting *Burgess v American Cancer Society, South Carolina Division, Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989)). "Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor,

rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Id.*, 416 S.C. at 526, 787 S.E.2d at 490.

The South Carolina Court of Appeals has also held that the date the statute of limitations began to run is not a question for the jury when there is "no dispute regarding the information that was readily available to them" to show when the claimant knew or should have known there was a potential cause of action. *Personal Care, Inc. v. Theos*, 426 S.C. 78, 825 S.E.2d 281, 287 (Ct. App. 2019); *see Burgess*, 300 S.C. at 186, 386 S.E.2d at 800 ("A party cannot escape the application of [the discovery rule] by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence, the same result follows").

Appellants/Respondents filed the present lawsuit on September 11, 2019. However, Appellants/Respondents did not perfect service of the Summons and Complaint on Cross-Appellants until January 19, 2021. 1/19/21 Acceptance of Service. Therefore, Appellants/Respondents did not commence the present lawsuit against Cross-Appellants until January 19, 2021. S.C. R. Civ. P., 3(a).

Appellants/Respondents have asserted eight causes of action against Cross-Appellants, variously styled as breach of agreement, return lab notes, interference with contract, conversion, aiding and abetting breach of fiduciary duty, breach of fiduciary duty, constructive trust, and fraudulent conveyance. 2/22/21 Am. Compl. The statute of limitations for each cause of action is three years. S.C. Code Ann. § 15-3-530(1), (4). Therefore, the three-year statute of limitations operates as a complete bar to any causes of action that accrued prior to January 19, 2018 – three years before Appellants/Respondents commenced the present litigation.

Appellant/Respondent Young repeatedly and unambiguously testified that he was aware of the facts giving rise to each cause of action ***before*** Dr. Paynter's death on September 4, 2017. Specifically, Appellant/Respondent Young testified that before Dr. Paynter's death he knew that Cross-Appellants had possession of Dr. Paynter's trade secrets, had refused to turn over Dr. Paynter's trade secrets, and had been trying to sell Dr. Paynter's trade secrets. Trial Tr., pp. 144-145. Appellant/Respondent Young further testified that he believed that each of these actions constituted a breach of the partnership agreement. *Id.* Therefore, there can be no dispute that on September 4, 2017, Appellants/Respondents knew or should have known there was a potential cause of action against Cross-Appellants, and any claims Appellants/Respondents may have had against Cross-Appellants based on this knowledge began to accrue no later than Dr. Paynter's death on September 4, 2017. Inasmuch as Appellants/Respondents did not commence the present litigation within three years of September 4, 2017, the statute of limitations operates as a complete bar to all of the causes of action asserted by Appellants/Respondents.

**C. Conclusion**

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" *Id.* (quoting *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." *Id.*

According to Appellants/Respondents' own testimony at trial, Appellants/Respondents had actual knowledge of the facts giving rise to the asserted causes of action more than three years before Appellants/Respondents commenced the present litigation. Therefore, the three-

year statute of limitations bars each cause of action, and this Court should affirm the Judgment in favor of Cross-Appellants, rendering moot the trial court's construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3.

## III. The Trial Court Erred in Admitting into Evidence the General Partnership Agreement Shown in Plaintiff's Exhibit 3

The trial court erred in admitting into evidence the General Partnership Agreement shown in Plaintiffs' Exhibit 3, and the complete lack of evidence of this partnership agreement is fatal to Appellants/Respondents' claims and provides an additional reason for affirming the Judgment in favor of Cross-Appellants for all of Appellants/Respondents' causes of action.

### A. Undisputed Facts

The partnership agreement described in paragraph 17 of the Complaint forms the basis for all of Appellants/Respondents' causes of action. Compl., ¶ 1. During discovery, Cross-Appellants' served Appellants/Respondents with a request to admit that the General Partnership Agreement shown in Plaintiffs' Exhibit 3 is a true and accurate copy of the partnership agreement described in paragraph 17 of the Complaint, and Appellants/Respondents denied this request to admit. Pls.' Resp. to Req. to Admit 1.

During the trial conducted on April 20, 2022, Judge Verdin overruled Cross-Appellants' objections and allowed Appellant/Respondent Young to authenticate and admit into evidence, as Plaintiffs' Exhibits 2 and 3, two versions of a General Partnership Agreement. Trial Tr., pp. 16-20, 93. Plaintiffs' Exhibit 2 purports to be a General Partnership Agreement between Appellant/Respondent Young and Dr. Paynter (deceased) and bears notary subscriptions from G. David Utley dated January 10, 2006, and Kay Kirkley Barrett dated January 16, 2006. 1/16/06 General Partnership Agreement. Plaintiffs' Exhibit 3 purports to be a second General Partnership Agreement between Appellants/Respondents, Paynter Consulting, LLC, and Dr.

Paynter and bears notary subscriptions from Rose Dalton dated May 30, 2006. 5/30/06 General Partnership Agreement.

### B. Appellants/Respondents Provided No Admissible Evidence to Authenticate the General Partnership Agreement shown in Plaintiffs' Exhibit 3

South Carolina's Dead Man's Statute "prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest." *Brooks v. Kay*, 339 S.C. 479, 486, 530 S.E.2d 120, 124 (2000) citing *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997); S.C. Code Ann. § 19-11-20. As the South Carolina Supreme Court explained in *Brooks*, "The rule is founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matters when such testimony, if untrue, cannot be contradicted." *Id.*

The General Partnership Agreement shown in Exhibit 3 is undeniably a communication and/or transaction between Appellants/Respondents and Dr. Paynter (deceased) that could affect Appellants/Respondents' interest in this lawsuit. Appellants/Respondents offered no testimony from a disinterested witness to authenticate the document, including Rose Dalton who purportedly notarized the signatures on the document. Instead, Appellants/Respondents relied exclusively on Appellant/Respondent Young's testimony to authenticate the document, even though Appellants/Respondents had denied Cross-Appellants' request to admit that the same document is a true and accurate copy of the partnership agreement described in paragraph 17 of the Complaint. Appellant/Respondent Young was undeniably an interested person under South Carolina's Dead Man's Statute, and the trial court erred in allowing Appellant/Respondent Young to authenticate the document.

### C. Conclusion

Appellants/Respondents offered no testimony from a disinterested witness to authenticate the General Partnership Agreement shown in Exhibit 3, and the trial court erred in allowing Appellant/Respondent Young to authenticate the document and admitting the document into evidence over Cross-Appellants' objections. Appellants/Respondents provided no other evidence to support their claims of ownership of Dr. Paynter's bioremediation technology. Therefore, this Court should strike the General Partnership Agreement shown in Exhibit 3 from evidence, vacate the trial court's construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3, and affirm the Judgment in favor of Cross-Appellants.

## CONCLUSION

For the foregoing reasoning and analysis, the trial court erred in failing to grant a directed verdict to Cross-Appellants on all causes of action based on res judicata and/or the statute of limitations. Alternately, or in addition, the trial court erred in admitting into evidence the General Partnership Agreement shown in Plaintiffs' Exhibit 3. Therefore, this Court should affirm the Judgment in favor of Cross-Appellants and declare as moot or vacate the trial court's construction of the General Partnership Agreement shown in Plaintiffs' Exhibit 3.

Respectfully submitted,

s/Steven R. LeBlanc

Steven R. LeBlanc (SC Bar 14221)
Steve LeBlanc, LLC
P.O. Box 9198
Greenville, S.C. 29604
Tel: (864) 902-4411
Steve@LeBlancLLC.com

***Attorneys for Respondents/Cross-Appellants***

RECEIVED
Feb 28 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

---

Case No. 2019-CP-3901224
Appellate Case No. 2022-001777

---

Christopher Young and Biotech Restorations, LLC

Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Painter, Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents/Appellants.

---

**PROOF OF SERVICE**

---

I certify that on February 28, 2023, I filed a **Cross-Appellants' Initial Brief** with the South Carolina Court of Appeals and served a copy on all counsel of record by email as demonstrated by the attached email.

Respectfully submitted,

s/Steven R. LeBlanc

Steven R. LeBlanc (SC Bar 14221)
Steve LeBlanc, LLC
P.O. Box 9198
Greenville, S.C. 29604
Tel: (864) 902-4411
Steve@LeBlancLLC.com

***Attorneys for Respondents/Cross-Appellants***

**From:** Steven LeBlanc
**To:** Wesley Few (wes@wesleyfew.com)
**Cc:** Kim Parker
**Subject:** Cross-Appellants" Initial Brief
**Date:** Tuesday, February 28, 2023 2:58:00 PM
**Attachments:** image001.png
2-28-23 Appeal Brief.pdf
2-28-23 POS.pdf

---

Wes,

Please see attached Cross-Appellants' Initial Brief and proof of service which will be filed with the Court of Appeals.

Steve