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SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 Cynthia Griffis)
)
 Plaintiff)
 v.)
 Cherry Hill Estates, LLC, Eugene O'Neil)
 and Ronald Faulkner)
 Defendant(s))
)
 Cherry Hill Estates, LLC and Ronald)
 Faulkner,)
 Third Party Plaintiffs)
 v.)
 Anthony E. Griffis)
 Third Party Defendant)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-07-06054

ORDER ON MOTION
FOR RECONSIDERATION
AND ORDER GRANTING
THIRD PARTY DEFENDANT'S
SUMMARY JUDGMENT MOTION

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 CLERK OF COURT
 BEAUFORT COUNTY, S.C.

This matter came before the Court on August 14, 2012 upon Motion for Reconsideration by Third Party Defendant ("Mr. Griffis") of this Court's Order rendered on August 3, 2012 in which the Court applied "equitable tolling" to allow Third Party Plaintiffs additional time, outside the applicable statute of limitations, to obtain the expert affidavit required by S.C. Code Section 15-36-100(F) in support of its legal malpractice claims. Upon reconsideration, this Court finds that "equitable tolling" should not be applied to this case, and therefore grants Third Party Defendant's Motion for Summary Judgment as to the Third Party Plaintiffs' First, Second and Third Causes of Action.

Mr. Griffis seeks summary judgment on the Third Party Plaintiffs First, Second and Third Causes of Action which assert claims for breach of fiduciary duty and professional negligence.

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all arising out of a duty created by the attorney-client relationship. Mr. Griffis invokes South Carolina Code of Laws Section 15-30-100 which requires that an affidavit from an expert be filed with a Complaint asserting such causes of action, and that the within causes of action are barred by the applicable statute of limitations. This Court finds:

1. The applicable period of limitations for Third Party Plaintiffs' complaint expired on or before October 9, 2010 – three years after Third Party Plaintiffs' attorney and attorney-in-fact (John P. Qualey, Esq.) had actual notice of the personal guarantees on the loan obligations.

Dorman v. Campbell, 500 S.E.2d 786 at p 789 (S.C App. 1998); *Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306 (1979); *Faulkner v. Millar*, 319 S.C. 216 (1995).

2. Third-Party Plaintiffs did not “have” the required expert affidavit until after expiration of the period of limitations, as evidenced by the notary date of November 11, 2010, on the expert affidavit. South Carolina Code section 15-36-100(F) provides, in pertinent part:

[I]f a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, **the complaint is not subject to renewal after the expiration of the applicable period of limitation** unless a court determines that the plaintiff **had** the requisite affidavit within the time pursuant to this section...” (emphasis added)

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

Although this Court on August 3, 2012, denied the subject Motion for Summary Judgment, based upon the doctrine of “equitable tolling”, this Court now recognizes that equitable tolling should not be invoked by the Court of it's own Motion, and should only be used

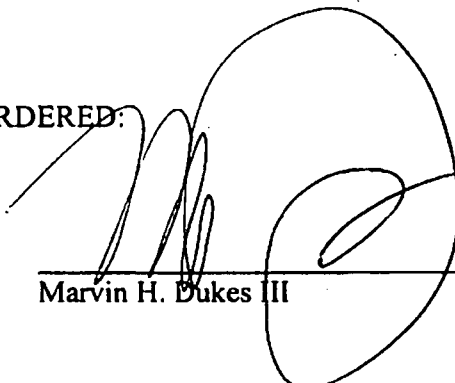
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sparingly. *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C.108 (SC 2009); *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App. 2011); *Holmes v. Marion School District*, 093011 SCDC (US District Court, Florence Division, September 30, 2011). Accordingly, equitable tolling does not apply to the instant case, and therefore Third Party Plaintiffs' First, Second, and Third Causes of Action are hereby dismissed with prejudice pursuant to S.C. Code Section 15-36-100(F).

IT IS SO ORDERED:

Beaufort, South Carolina
February 20, 2013



Marvin H. Dukes III

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