

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Lester Van Epps, III,)
)
Plaintiff,)
)
v.)
)
Dana Michelle Faulkenberry,)
)
Defendant.)
_____)

C/A No. 2023-CP-46-02713

ORDER OF DISMISSAL

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Dec 20 2023
SC Court of Appeals

This matter came before the court on November 16, 2023, upon Defendant’s motion to dismiss Plaintiff’s complaint, pursuant to Rule 12(b)(6) S.C. R. Civ. P. and based upon the expiration of the applicable statute of limitations. For the reasons set forth herein, the court finds and concludes that Defendant’s motion should be GRANTED.

Rule 12(b)(6) Standard

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of a plaintiff’s complaint. A Rule 12(b)(6) motion should only be granted “when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action.” Disabato v. South Carolina Ass’n of School Adm’rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). A ruling on a motion to dismiss must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled facts as true. Id. A statute of limitations defense may be raised by Rule 12(b)(6) motion “where facts sufficient to rule on [that] affirmative defense are alleged in the complaint.” Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007); *see also* Berry v. McLeod, 328 S.C. 435, 441, 492 S.E.2d 794, 797 (1997) *cert. denied* (1998).

Plaintiff's Complaint and Factual Allegations

Plaintiff commenced this lawsuit on August 29, 2023. Plaintiff's complaint alleges:

- 1) Plaintiff and Defendant organized a limited liability company, Palmetto Contracting Services of York County, LLC ("Palmetto"), in January 2005. Complaint ¶ 4;
- 2) Palmetto's business and operations were governed by a written operating agreement which, among other provisions, required "written consent of all members" to dissolve the company. Id. ¶ 7;
- 3) Defendant "voluntarily dissolved Palmetto on January 15, 2015" without Plaintiff's knowledge or consent. Id. ¶ 9;
- 4) Palmetto's Articles of Termination were filed by the South Carolina Secretary of State on April 23, 2018. Id.;
- 5) Plaintiff "was unaware that the Defendant terminated Palmetto on January 15, 2015 and officially on April 23, 2018." Id. ¶ 11.

Based upon those factual allegations, Plaintiff asserts three causes of action: (1) breach of contract; (2) breach of the duty of loyalty and care under the South Carolina Limited Liability Company Act; and (3) an unspecified claim for treble damages and attorney's fees¹ based upon Defendant's alleged "fraudulent intent and fraudulent act of misrepresenting to the State of South Carolina that Palmetto was properly dissolved."

Analysis

At the hearing on Defendant's motion to dismiss, Defense Counsel argued – and Plaintiff's Counsel did not contest – that each of Plaintiff's causes of action is governed by the three-year statute of limitations set forth in S.C. Code § 15-3-530 (Law. Co-op. 2005). The court also finds

¹ While Plaintiff's complaint does not mention the UTPA, his third cause of action appears to be an attempt to assert a claim under that statute.

and concludes that each of Plaintiff's claims is subject to a three-year statute of limitations. Thus, the issue before this court is whether the facts alleged by Plaintiff – accepted as true - establish that his claims accrued more than three years before he filed this lawsuit. If so, Plaintiff's claims are time-barred, and dismissal is appropriate.

Accepting the factual allegations of Plaintiff's complaint as true, the court finds and concludes that each of Plaintiff's claims is barred by the statute of limitations. “[T]he three-year statute of limitations found in §15-3-530 begins to run when the underlying cause of action reasonably ought to have been discovered. Thus, the three-year clock starts ticking on the ‘date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.’” Martin v. Companion Healthcare, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004)(internal citations omitted). The determination of when a claim accrues for purposes of the statute of limitations is objective, rather than subjective.

As such, the question is not whether the particular plaintiff in this case actually knew he had a claim. Instead, [the question] is “whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.”

Id. at 576, 593 S.E.2d at 627 (quoting Young v. S.C. Dept’ of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)).

Plaintiff alleges that Defendant “voluntarily dissolved” Palmetto on January 15, 2015 and that the South Carolina Secretary of State then “officially” filed Palmetto’s Articles of Termination on April 23, 2018. Complaint ¶¶ 9 & 11. By filing the Articles of Termination, the Secretary of State provided “public disclosure” that Palmetto’s existence as a South Carolina limited liability had terminated. *See* Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) *cert. denied* (1998) (filing of record by Aiken County Clerk of Court constituted “public

disclosure” of document’s contents, and placed plaintiffs on inquiry or constructive notice for purposes statute of limitations); *see also* S.C. Code § 33-44-805 (Law. Co-op. 2006). Therefore, even if Plaintiff did not have actual notice² that Defendant “voluntarily dissolved Palmetto on January 15, 2015,” he was placed on “inquiry or constructive notice” of that fact when the Secretary of State filed the Articles of Termination. Berry at 445, 492 S.E.2d at 800. The “three-year clock” for Plaintiff to investigate and, if appropriate, to file suit “start[ed] ticking” no later than April 23, 2018. *See id.* (“[T]he statute of limitations began to run, at the latest, when the . . . documents [at issue] were filed with the clerk of court . . .”). Plaintiff’s complaint was not filed until August 29, 2023 -- more than five years after the Secretary of State “officially filed” Palmetto’s Articles of Termination and more than two years after the statute of limitations applicable to Plaintiff’s claims had expired.

Because Plaintiff’s claims are barred by the statute of limitations, he has “failed to allege facts sufficient to establish a cause of action.” Disabato v. South Carolina Ass’n of School Adm’rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007). Defendant is entitled to dismissal under Rule 12(b)(6) S.C. R. Civ. P.

Order

Defendant’s motion to dismiss pursuant to Rule 12(b)(6) S.C. R. Civ. P. is GRANTED.

This action is DISMISSED WITH PREJUDICE.

² Plaintiff alleges that he only “recently discovered” that Palmetto was dissolved in April 2018. Complaint ¶ 15. For purposes of this motion, the court accepts that allegation as true. Despite that fact, Plaintiff’s claims are time-barred because a “person of common knowledge and experience” would have been on notice “that some right of his was invaded” once the Articles of Termination were filed by the South Carolina Secretary of State. Plaintiff cannot avoid the statute of limitations by claiming that he (subjectively) was unaware of the existence of a publicly-filed record. Martin v. Companion Healthcare, 357 S.C. 570, 576, 593 S.E.2d 624, 627 (Ct. App. 2004); Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) *cert. denied* (1998).



York Common Pleas

Case Caption: Lester Van Epps III VS Dana Michelle Faulkenberry
Case Number: 2023CP4602713
Type: Order/Dismissal

So Ordered

s/Daniel D. Hall 2753