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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Alex Hyman, Circuit Court Judge

Appellate No. 2023-001311
Civil Action No.: 2023-CP-22-00410

William SteinerAppellant,

v.

Wedgfield Plantation Association and Johnathan Rutstein, President Respondents.

**INITIAL BRIEF OF RESPONDENTS WEDGEFIELD PLANTATION ASSOCIATION
AND JONATHAN RUTSTEIN**

WALL TEMPLETON & HALDRUP, P.A.
Morgan S. Templeton (15456)
Ford H. Thrift (103294)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Attorneys for Respondents Wedgfield Plantation
Association and Jonathan Rutstein

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STATEMENT OF ISSUES ON APPEAL

The Respondents adopt the statement of the issues on appeal set forth in the Appellant's Brief.

STATEMENT OF THE CASE

Appellant William Steiner (“Appellant”) initiated this case on May 22, 2023, by filing a Summons and Complaint in the Georgetown County Court of Common Pleas. (R. ___; *See* Compl., filed May 22, 2023). The Appellant alleged that his neighborhood homeowner’s association, the Wedgefield Plantation Association, and the president of its board of directors, Jonathan Rutstein, “failed to abide by the laws of the South Carolina Nonprofit Corporation Act and the rules, policies, and covenants of Wedgefield Plantation.” (R. ___; *Id.* at p. 2). The Appellant alleged four causes of action but classifies each one as a breach of contract claim. (R. ___; *Id.*). Specifically, the Appellant alleged (1) “Violating a Court mandated binding mediation settlement;” (2) “Terminating [his] rights as a member;” (3) “Violations of State Laws 33-31-830, and 834;” and (4) “Breach of Contract.” (R. ___; *Id.* at p. 2-6). The Appellant supported his claims by referencing correspondence between himself and the Wedgefield board on September 30, 2019 and attached a copy of this letter to his complaint as an exhibit. (R. ___; *Id.*, p. 6; p. 12). The Respondents responded to the complaint by filing a motion to dismiss pursuant to Rule 12(b)(6), SCRCPP. (R. ___; *Respt’s* Mot. Dismiss). In relevant part, the Respondents argued that Appellant’s claims were time barred by the statute of limitations as they arose from acts or omissions that occurred more than three years before the filing of Appellant’s complaint. (R. ___; *Id.* at p. 6-7).

On July 23, 2023, a hearing was convened via WebEx at which Appellant appeared *pro se* and Ford H. Thrift of Wall Templeton & Haldrup, P.A. appeared on behalf of the Respondents. Following oral argument, the Honorable B. Alex Hyman granted Respondents’ Motion to Dismiss, stating that “the statute of limitations is three years. And ... what you have cited in your [C]omplaint are board meetings from 2019. And this [C]omplaint was filed ... in May of 2023, which would be outside the statute of limitations.” (R. ___; *Hr’g* Tr., pp. 15:24-16:5). The Circuit

Court entered an Order granting the Respondents’ motion to dismiss on July 24, 2023. (R. ___; *See* Order Granting Mot. to Dismiss). In its Order, the Circuit Court ruled that Appellant’s claims were “time-barred by the applicable statute of limitations.” (R. ___; *Order*, p. 4). Appellant filed his Notice of Appeal in the Georgetown County Court of Common Pleas on August 16, 2023. On March 18, 2024, the Appellant successfully filed his initial brief. (R. ___; *See* Appellant’s Initial Br.). This brief of Respondent follows.

STANDARD OF REVIEW

In reviewing an Order granting a motion to dismiss, this Court applies the same standard of review as the trial court. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. *Id.* Although the Appellant is self-represented, his pleadings and causes of action must be held to the same standard as if he were an attorney. “A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). Thus, his Complaint must adhere to the pleading requirements of the South Carolina Rules of Civil Procedure. “Under Rule 12(b)(6), SCRCPP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). “It is axiomatic that no cause of action is stated absent sufficient allegations of facts.” *Akers v. Hard*, 275 S.C. 100, 102, 267 S.E.2d 536, 537 (1980); *see also* Rule 8, SCRCPP. “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the Complaint states any valid claim for relief.” *Doe*, 373 S.C. at 395, 645 S.E.2d at 248 (internal citation omitted). It is proper for a trial court to grant a motion to dismiss where the action is barred by the applicable statute of limitations. *See Gillman v. City of Beaufort*, 368 S.C. 24, 627 S.E.2d 746 (Ct. App. 2006).

ARGUMENT

I. The Circuit Court properly dismissed the Appellant's claims because they were based on events occurring in 2019 or earlier and, therefore, barred by the 3-year statute of limitations.

The Circuit Court properly found that the Appellant's claims were barred by the three-year statute of limitations because the Appellant's claims are based on a dispute that began more than three years before the date of his complaint. As Appellant stated in his complaint, this is a breach of contract case. (R. ___; Compl., filed May 22, 2023, p. 2). The Circuit Court properly held that the applicable statute of limitations for any cognizable claim is three years. S.C. Code Ann. § 15-3-530 (2005) ("An action upon a contract" must be brought "[w]ithin three years."); (R. ___; Hr'g Tr., pp. 15:24-25). The plain face of the Appellant's complaint shows that this case was not filed within the three-year period after the statute of limitations began. "A breach of contract action usually accrues at the time a contract is breached or broken." *State v. McClinton*, 369 S.C. 167, 173, 631 S.E.2d 895, 898 (2006). "Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016) (citation omitted). "Unless an action is commenced before expiration of the limitations period, the plaintiff's claim is normally barred." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct. App. 2004) (citation omitted). This Court should affirm the Circuit Court's Order because the statute of limitations bars Appellant's claims.

The Appellant filed his Complaint on May 22, 2023, meaning that that statute of limitations bars any claims that arose before May 22, 2020. His complaint, however, shows that his claims arose well before that date and that the statute of limitations began running at least as early as

September 30, 2019. (R. ___; Order Granting Mot. to Dismiss, p. 3). The Appellant alleges in his complaint that the Respondents' attorney sent him a letter on this date that terminated his rights as a member of the Wedgefield Plantation Homeowners Association. (R. ___; Compl., p. 6). "Under the discovery rule, the statute of limitations begins to run from the date the claimant knew or should have known that, by the exercise of reasonable diligence, a cause of action exists." *Holmes v. Nat'l Serv. Indus., Inc.*, 395 S.C. 305, 309, 717 S.E.2d 751, 753 (2011). Indeed, "South Carolina's statute of limitations requires 'very little to start the clock.'" *Maher v. Tietex Corp.*, 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998). As the Appellant's entire second cause of action stems from the impact of this letter, there can be no mistake that the applicable statute of limitations for Appellant's claims began running at least on this date, which was more than three years prior to the date of his complaint.

Likewise, the Circuit Court properly noted that each of the Appellant's claims were time-barred because they all arose from and concerned a dispute that began more than three years before the date of filing. (R. ___; Order, p. 3 n. 2). In his complaint, the Appellant alleged that the Respondents violated a "mandated mediation binding arbitration agreement settlement," because they failed to prevent violations of the Respondents' rules and covenants. (R. ___; Compl., p. 5). The Appellant alleged that these violations were "as shown in actions two through four," thus confirming the interlocking nature of the actions and the complaint as a whole. (*Id.*). In reviewing these allegations, the Circuit Court properly found that the Appellant alleged that Respondents had failed to enforce a restrictive covenant that prohibited the establishment of a business at or within a home in the neighborhood. (R. ___; Order, p. 3). In support of his final cause of action, the Appellant continues, "[Respondents] have the right to enforce compliance in the event of a

violation of the covenants, restriction and limitations [of the HOA].” (R. ___; Compl., p. 10). “The character of an action is primarily determined by the allegations contained in the complaint.” *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 635, 776 S.E.2d 434, 437 (Ct. App. 2015) (citation omitted). In detailing his allegations, the Appellant includes exhibits describing HOA meetings in June and October 2019 regarding bids and contracts involving the Live Oak Excavation Company. (R. ___; Compl., p. 9).¹ The Appellant alleged that it is “the presence of this company operating on Live Oak Lane,” and the Respondents’ failure to prevent it, that breaches the HOA’s restrictive covenants. (*Id.*). The Appellant’s exhibits attached to the complaint include an October 2019 letter further detailing these disputes by identifying as a “point of concern,” the issue of whether members could establish a company or business in their home. (*Id.*, p. 14). Specifically, the Appellant notes that “[t]his would include construction companies . . .” (*Id.*)

Additionally, the Circuit Court correctly concluded that any additional letters that were exchanged after May 22, 2020, would still be time barred as “South Carolina does not recognize a ‘continuing breach theory’ that would operate to save a party who pleads a series of events linking a time-barred act with an act that is within the limitations period. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 349, 878 S.E.2d 896, 899 (2022).” (R. ___; Order, pp. 3-4). Therefore, the Appellant’s claims arose once the contract was first broken and the alleged continuation of the dispute does not keep the Appellant’s claims alive beyond the three-year statute of limitations. As

¹ As noted above, the statute of limitations began running at least as early as September 30, 2020, but it likely began much earlier. The Appellant’s complaint includes a letter dated August 19, 2019, that refers even further back to a Board meeting January of 2018. (R. ___; Compl., p. 16). The extended timeline is made most clear by the Appellant’s prayer for damages that include a refund of his HOA dues “for the period 2018 through the present.” (*Id.*, p. 10).

the Circuit Court properly pointed out during the Motion to Dismiss hearing, “this is a statute of limitations issue and the Courts have continuously held that there is no such thing as a continuous breach.” (R. ___; Hearing Transcript, p. 22:5-7). Of course, it must not be forgotten that the Appellant himself also styled and categorized these claims as breach of contract claims so there can be no confusion as to whether some other standard may apply. (R. ___; Compl. p. 4). At the hearing of this matter, the Appellant noted that he did, in fact, raise these issues more than three years ago and that he brought this lawsuit because “it’s continued to exist.” (R. ___; Hr’g Tr., p. 9). The Appellant notes that the issue has persevered for “the last five years[.]” (*Id.*, pp. 9-10). Unfortunately, the statute of limitations does not benefit those who wait. *See Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights). The time, if any, for the Appellant to bring a lawsuit regarding this matter has come and gone.

II. The Appellant’s second issue on appeal regarding the application of the Business Judgment Rule is not preserved for appeal because the Circuit Court did not make any rulings on it.

The Appellant also asks this Court to consider whether the Circuit Court erred in applying the business judgment rule to “override [Respondents’] duty of care as required by state law.” (R. ___; Appellant’s Br., pp. 2-3). This Court need not address this issue because the Circuit Court did not make any rulings on the business judgment rule that can be challenged on appeal. “The court of appeals should not address the merits of an issue not preserved for review.” *State v. Jenkins*, 322 S.C. 360, 369, 474 S.E.2d 812, 817 (Ct. App. 1996) (citation omitted). “In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the

trial judge.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). The Circuit Court’s Order is clear and granted Respondents’ motion to dismiss solely based on the statute of limitations. (R. ___; Hr’g Tr., pp. 15:24-16:5; *see also* R. ___; Order, p. 4). Although the Appellant challenges this issue on appeal, he concedes in his brief the Circuit Court “did not weigh it in his decision to dismiss.” (R. ___; Appellant’s Br., p. 3). If the Appellant wished to appeal this matter then the proper mechanism to preserve the issue would have been a Rule 59(e) motion. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“A party *must* file [a Rule 59(e)] motion when an issue or argument have been raised, but not ruled upon, in order to preserve it for appellate review” (emphasis in original)). Following the Circuit Court’s Order, the Appellant did not file such a motion and instead directly appealed the rulings of the Circuit Court. Therefore, the only issue before this Court is whether the Circuit Court erred in making its only ruling – that the Appellant’s claims are time-barred.

CONCLUSION

South Carolina law is clear that the statute of limitations for breach of contract claims begins running at the time when a contract breach. In this case, the Appellant alleges that this occurred no later than September 30, 2019. He did not file his complaint, however, until more than three years after that date and the Circuit Court properly granted Respondents’ motion to dismiss on the basis that Appellant’s claims are time barred. Based on the foregoing arguments, this Court should affirm the Circuit Court’s grant of dismissal.

[Signature Block to Follow]

Dated this 15th Day of April, 2024.

WALL TEMPLETON & HALDRUP, P.A.

A handwritten signature in blue ink, appearing to read "J. Reed", is written over a horizontal line.

Morgan S. Templeton (15456)
Ford H. Thrift (103294)
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500