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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from the Charleston County Court of Common Pleas
for the Ninth Judicial Circuit

Honorable Robert Bonds, Circuit Court Judge

Appellate Case No. 2024-000210
Circuit Case No. 2023-CP-1003278

Kathy KennedyAppellant

v.

Bernard Myatt, III and Myatt Air Conditioning, LLC Respondents

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in dismissing Appellant's appeal from the Charleston Small Claims Court on the grounds that the 3-year statute of limitations had run?
- II. Did the Circuit Court err in upholding the Magistrate's finding that Appellant did not raise a valid claim for gross negligence?
- III. Did the Circuit Court err in upholding the Magistrate's dismissal of Bernard Myatt III as a party to the action because Appellant did not raise a cause of action for Piercing the Corporate Veil?

STATEMENT OF THE CASE

In November of 2018, Respondents contracted with Kathy Kennedy (“Appellant”) to install a new duct system under Appellant’s home. A written proposal dated November 14, 2018, states that Respondents were to install a 100% Galvanized sheet metal duct system (Exhibit A – Contract Proposal). Upon information and belief, after the work was completed, Appellant became dissatisfied and filed a Complaint with the South Carolina Department of Labor, Licensing, and Regulation in January 2020 (Exhibit B – Consent Agreement with LLR). Appellant filed her Complaint with the Charleston County Magistrate Court on April 10, 2023. In her Complaint, she alleges that Respondents installed flex duct, which was not consistent with the contract, and that the partial duct system installed by Respondents was not installed within the code requirements as specified by the State of South Carolina. As a result, Appellant alleges that the partial duct system must be removed and her flooring and subflooring must be repaired.

Respondents filed their Motion for Summary Judgment on May 5, 2023, on the grounds that Appellant’s claim is time-barred because she failed to commence it within the applicable statute of limitations. *See* S.C. Code Ann. § 15-3-530(1). (Exhibit C – Motion for Summary Judgment). The motion was heard on June 1, 2023 by the Honorable Laura D. Beck at the Charleston Small Claims Court. In her June 26 Order, Judge Beck dismissed Bernard Myatt III from the action, stating that the acting LLC, Myatt Air Conditioning, was the proper defendant and that there was no piercing of the corporate veil cause of action plead or otherwise raised. (Exhibit D – Magistrate’s Return). The Order found no valid claim for gross negligence as well. Further, Judge Beck granted the motion on the grounds that the 3-year statute of limitations had run. The Order stated that Appellant was aware in January of 2020 that some right had been invaded or a claim against Respondents might exist because Appellant called the Town of James

Island for an inspection and subsequently filed a complaint with the LLR. Because the Appellant did not file her claim until April 11, 2023, which is beyond three years, the claim was dismissed.

Appellant filed her notice of appeal in the Charleston County Court of Common Pleas on July 7, 2023. Judge Beck filed her Return on August 7, 2023, further explaining the reasons for granting summary judgment. Respondents filed their Reply to Appellant's Notice of Appeal on January 25, 2024 in the Charleston County Court of Common Pleas, and the Appeal was heard by the Honorable Judge Robert Bonds on January 31, 2024. At the hearing, Judge Bonds stated that he reviewed the Magistrate's Return, which was quite detailed and well-written as to her findings. (Exhibit E – Transcript of Hearing from 1.31.24). Judge Bonds concluded that the Magistrate's findings were correct and that the statute of limitations had run. Judge Bonds entered an Order the same day dismissing the Appellant's Appeal.

Appellant filed the current Appeal on February 12, 2024. Appellant argues that the Circuit Court erred in upholding the Magistrate's grant of summary judgment to Respondents, that the court erred in its determination that Appellant's cause of action was rooted in contract, and that the court inappropriately removed Bernard Myatt III as a party.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, the Court of Appeals applies the same standard that governs the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *see also* Rule 56(c), SCRCP. Summary judgment must be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant . . ." *Willis v. Wu.*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004). Summary judgment is appropriate when "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Byerly v. Connor*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992).

ARGUMENT

I. The Circuit Court correctly upheld the Magistrate’s grant of summary judgment in favor of Respondents because Appellant failed to file her claim within the statute of limitations.

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014); *see Kreutner v. David*, 320 S.C. 283, 286-87, 465 S.E.2d 88, 90 (1995) (affirming the circuit court's order granting summary judgment because the statute of limitations had run); *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 11. The statute of limitations for actions pursuant to a contract is three years. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (citing S.C. Code Ann. § 15-3-530(1)). "The limitations period begins to run when a party knows or should know, through the exercise of reasonable diligence, that a cause of action might exist." *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008) (known as the "discovery rule"). "A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). The failure of the injured party to comprehend the full extent of damages is immaterial. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157, 160 (Ct. App. 1989).

Appellant filed her Complaint with the Charleston County Small Claims Court on April 10, 2023. Thus, the "cutoff" date relevant to the application of the discovery rule is April 10, 2020. The facts of this case show that Appellant discovered the alleged breach of contract or could have or should have discovered the breach through the exercise of reasonable diligence prior to April

10, 2020, and therefore her claim is time-barred and Respondents are entitled to judgment as a matter of law.

Respondents contracted with Appellant to complete duct work in November 2018, and the work was completed shortly thereafter. As is evidenced by the Consent Agreement that is attached to this brief as Exhibit B, Appellant filed a Complaint with the LLR on January 19, 2020. On March 29, 2021, an LLR investigator completed an inspection report (Exhibit C – Inspection Report). The inspection report identifies Appellant as the “Complainant” and Myatt Air Conditioning, LLC as the “respondent.” The report states that “Complainant advised the reporting investigator that *she personally observed the installation of the ductwork*, and contends the respondent did not seal the concealed connections of the metal ductwork and the insulation wrap with an approved UL 181 tape.” (emphasis added). It goes on to state that “Complainant indicated the respondent’s failure to seal the metal ductwork has caused condensation issues that resulted in damaged hardwood and tile flooring... Complainant advised the reporting investigator that she has personally attempted to make repairs of the breaches in duct insulation, and provided additional photographs of metal duct seams that appeared to not be sealed.”

The above quotes from the inspection report show that Appellant was aware of the alleged breaches at least prior to January 19, 2020, when she filed a complaint with the LLR. She stated that she personally observed the installation—which clearly would have occurred on or before January 19, 2020—and realized alleged breaches of the contract and of the South Carolina code at that time. At that very point, Appellant knew or should have known that a cause of action against Respondents might exist. The statute began running during installation of the duct work. That occurred prior to the April 10, 2020, “cutoff” date. “Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations.” *McMaster v.*

Dewitt, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014). Magistrate Judge Becker therefore found that Appellant slept on her rights and did not file within the statute of limitations. Charleston Circuit Court Judge Bonds also noted in the January 31, 2024 hearing regarding the Appellant's appeal to that court that the Magistrate's Return was very detailed and that it was well-written as to the finding that the statute of limitations had run based on the facts of the case. Therefore, because Appellant did not commence this action within the three-year statute of limitations applicable to actions upon a contract, her claim is barred and Respondents are entitled to judgment as a matter of law.

In addition, Appellant is incorrect in her assertion that the statute of limitations is eight years. Both the Small Claims Court and Circuit Court held that it is three years in contract cases. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (citing S.C. Code Ann. § 15-3-530(1)). The Magistrate Judge explained in her Return that the potential eight year period allowed under the statute of repose does not toll the other statutes of limitation set forth in the law, and the statute of repose serves as "a time bar for construction defect claims brought outside of the 8-year date from substantial completion...Plaintiff cannot use the Statute of Repose to lengthen the time for the construction defect, breach of contract, negligence, or gross negligence statute of limitations under the circumstances of this case, even with the facts alleged in the light most favorable to Plaintiff." (See Magistrate's Return). The South Carolina Supreme Court has explained that "[a] statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time." *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). A statute of repose is typically an absolute time limit beyond which liability no longer exists. *Id.* at 404, 438 S.E.2d

at 243. The latter cannot be used to extend the former, as Appellant has tried to do in this case, and the three-year limitation applies.

Furthermore, “[s]tatutes 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.* “Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.” *Id.* 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). The contract was entered into and the work was performed approximately 4 ½ years ago. Appellant observed the installation. The Circuit Court recognized that the claim Appellant has pursued is a stale one, and it correctly upheld the Magistrate’s grant of judgment as a matter of law in favor of Respondents in accordance with the public policy of this state.

II. The Circuit Court correctly upheld the Magistrate’s finding that there was no valid claim for gross negligence because Appellant could not show gross negligence.

The Magistrate Judge held that there was no valid claim for gross negligence because the Appellant could not show the elements of gross negligence. The Return stated, “[a] mere violation of the law does not rise to the level of gross negligence.” (See Magistrate’s Return). Gross negligence is defined as “the failure to exercise slight care.” *Steinke v. South Carolina Dep’t of Labor, Licensing and Regulation*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999). It has also been defined as “the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Id.* Gross negligence “is a relative

term, and means the absence of care that is necessary under the circumstances." *Id.* "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corrs.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989). The Magistrate found that even in the light most favorable to Appellant, the elements could not be met and that the Appellant's claim could be framed as a breach of contract claim, a breach of contract with fraudulent act claim, or a negligence claim. The facts of this case simply do not support a finding that Respondents failed to exercise even slight care in their actions, and as such, the Circuit Court correctly upheld the Magistrate's conclusion that there was no valid claim for gross negligence.

III. The Circuit Court did not err in upholding the Magistrate's dismissal of Bernard Myatt III as a party to the action because Appellant did not raise a cause of action for Piercing the Corporate Veil.

The Magistrate concluded that Bernard Myatt III should be dismissed as a party because "at no point in the Complaint, nor in the Motion, nor in the Argument for the Motion did [Appellant] raise the cause of action for Piercing the Corporate Veil, and offered no evidence that the veil should be pierced." (See Magistrate's Return). This is appropriate considering that "[i]t is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection." *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 271 S.E. (2d) 596 (1980). "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears." *Sturkie v. Sifly*, 280 S.C. 453, 457. "The party seeking to have the corporate identity disregarded has the burden of proving that the doctrine should be applied." *Id.* At no point in this case has Appellant raised the cause of action for piercing the corporate veil or suggested that Myatt Air Conditioning, LLC, as a corporate entity is a mere

façade for the operations of Bernard Myatt III. Thus, there is no reason for Bernard Myatt III to be included as a party to the action, and the Circuit Court correctly upheld the Magistrate's dismissal.

CONCLUSION

For the foregoing reasons, Respondents ask this Honorable Court to affirm the grant of summary judgment in favor of Respondents entered by Charleston County Small Claims Court and upheld by the Charleston County Circuit Court.

Respectfully submitted,

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