

THE STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
Edgar W. Dickson, Circuit Court Judge

Case No: 2021-000797

RECEIVED

Mar 29 2024

SC Court of Appeals

Saundra R. Hoffman,Appellant,

v.

State Farm Fire and Casualty Company,Respondent.

**PLAINTIFF'S RETURN
TO DEFENDANT'S
PETITION FOR REHEARING**

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COUNSEL FOR APPELLANT

This matter is before the Court on both parties' motions for rehearing regarding the Plaintiff's claims of breach of contract, breach of contract by fraud, and bad faith. The Plaintiff files the following Reply at the direction of the Court addressing the following issues raised by the Defendant State Farm:

In the Court's de novo review of the facts of the Plaintiff's claim for breach of contract the Court properly ruled the Defendant State Farm was estopped from asserting a statute of limitations defense due to the Plaintiff's reliance on the Defendant's representations, and actions.

I. The Court properly ruled the Defendant was prohibited from asserting a statute of limitations defense as the statute of limitations did not begin to run until the contract was breached and the Plaintiff established all the elements for Equitable Estoppel.

Defendant claims:

“The Court erred in reversing the circuit court on the basis of equitable estoppel, as that defense was neither raised to nor ruled upon by the circuit court.”

The Defendant backs up this assertion with a statement that the Plaintiff did not allege estoppel, tolling or reliance to the circuit court. This is factually incorrect. Both the Defendant and the Plaintiff testified she continued to submit information and the Defendant continued to investigate, evaluate and communicate with her regarding the claim four years after the triggering event. [ROA 117 - 118 & 120-122].

The Court properly found the statute of limitations for a breach of contract is three years from the date the action accrues. A breach of contract action does not accrue until the contract is breached this requires that some party must refuse, or neglect to perform some duty required by the terms of the contract. *Tillinghast v. Bos. & Port Royal Lumber Co.*, 39 S.C. 484, 485, 18 S.E. 120, 121 (1893) (*mere fact one enters into a contract gives no cause of action, action does not arise until there is some breach*) see also *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204, 207 (S.C. Ct. App.

1998), (Plaintiffs, however, correctly argue the limitations period accrues from the date of the breach and not the date of the loss.); *Lowcountry Block LLC v. The Cincinnati Ins. Cos.*, Civil Action No. 9:17-1147-RMG, 2017 U.S. Dist. LEXIS 120346, at 4 (D.S.C. Aug. 1, 2017). The Plaintiff did not have a cause of action against the Defendant until the Defendant breached the contract. The statute of limitations simply does not run from the date of loss but runs three years from the breach.

The Court therefore properly held the Defendant was estopped from asserting a statute of limitations defense claiming the statute of limitations ran from the date of loss, as such would shorten the statute of limitations which is in violation of state law. *SC Code* § 15-3-140, see also *Scott v. Guardsmark Sec.*, 874 F. Supp. 117, 121 (D.S.C. 1995). Therefore, the Court correctly applied equitable estoppel to this case and this ruling should stand.

II. There is clear evidence in the record from the testimony of the State Farm Adjuster and supported by the Plaintiff supporting the Court's finding as a matter of law.

The Plaintiff offered sufficient proof supporting the Court's finding of equitable estoppel.

The Defendant claims:

“The Court erred in finding equitable estoppel where there is no evidence in the record to support application of that doctrine.”

Plaintiff testified in response to the question in deposition - “Did you talk with anyone at State Farm concerning the statute of limitations at anytime? A: No. Like I said, I just assumed that since she told me about the opening of the claim, that she would tell me if the claim was coming near the closing. “(Exh A Plaintiff. Depo pg. 181 ln 15-19) [ROA 123]. The Court properly found as a matter of law the clear evidence of the Plaintiff's reliance on her insurance company in continuing to submit damages in her claim. The Court properly applied the doctrine of equitable estoppel.

III. The Court properly ruled the Defendant was estopped from asserting a statute of limitations Defense as the Plaintiff proved estoppel as a matter of law.

The Defendant claims :

“The Court erred in ruling State Farm is “precluded” from asserting the defense of the statute of limitations.”

The Defense in this case is 1) continuing to assert the statute of limitations is three years from the date of loss not three years from the date of breach and; 2) claiming State Farm Insurance company, a multi- billion dollar insurance company that issues hundreds of policies every year to citizens of South Carolina, does not know the statute of limitations under their own insurance policy. The position of State Farm is their insured, the Plaintiff, is required to know what the statute of limitations is for her insurance policy BUT State Farm Insurance company is not required to know the statute of limitations for their insurance policy. The absurdity of this argument, coupled with the clear allegations of the Plaintiff, supported by the testimony of the Defendant adjuster supports the Court’s ruling, the Defendant is not permitted to assert this non-valid defense. Furthermore as stated above, this assertion the statute is three years from the date of loss, is in violation of South Carolina state law. *see above Id.*

IV. The opinion of the Court is Unpublished, the foot note is an accurate statement of the law and the Court can include dicta in their opinion.

The statute of limitations and how it is determined is relevant to the Court’s application of Reliance by the Plaintiff and equitable estoppel.

The Defendant claims:

“Footnote 2 of the Opinion states law inapplicable to the facts in this case, as is demonstrated by the cases cited in the footnote.”

Judicial dicta is "not essential to the decision." *Black's Law Dictionary* 465 (7th ed. 1999). Dicta or, as it is also known, dictum "is a statement on a matter not necessarily involved in

the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision." 21 C.J.S. *Courts* § 227 (2006), *Nash v. Tindall Corp.*, 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct. App. 2007). The cases cited in the footnote, also state the same statute, as opposed to the Defendant's apparent position that the statute of limitations accrues on the date the contract is triggered rather than breached.

Finally, State Farm continues to assert the statute of limitations here, is three years from the date of loss and cites a fire damage case in support of this incorrect assertion. *S.C. Farm Bureau Mut. Ins. Co. v. Kelly*, 345 S.C. 232, 236, 547 S.E.2d 871, 873 (Ct. App. 2001). The Court in that case was applying a different subsection of the three-year statute of limitations code section that applies to fire and life insurance policies only stating:

"(8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; . . . "

S.C. Code Ann. § 15-3-530.

The Defendants state: The Court appears to accept the proposition that the statute of limitations would be three years from the date of loss, in the *Farm Bureau case. Id.* The court in that case is actually applying the statute of limitations for a fire insurance policy. That code section does not apply here. *Maher v. Tietex Corp.*, 331 S.C. 371 (S.C. Ct. App. 1998); *Lowcountry Block LLC v. The Cincinnati Ins. Cos., Civil Action No. 9:17-1147-RMG*, 2017 U.S. Dist. LEXIS 120346, at 4 (D.S.C. Aug. 1, 2017). The courts have been clear that an insurance policy, other than one for fire or life, is subject to a three-year statute of limitations from the date of the breach. The Court's inclusion of the proper statute or code section that applies is applicable and certainly proper dicta for this case.

Finally, although not directly on point, Defense counsel continues to misapply the discovery rule. The discovery rule requires reasonable diligence in determining when the

Plaintiff has a claim, or when a statute of limitations would run, not reasonable diligence in submitting damages under a claim. The Plaintiff filed her claim with State Farm and upon notice BY STATE FARM that the statute of limitations had run she obtained counsel and filed a lawsuit within months of the notification when she reasonably, in good faith and with diligence, determined she had a cause of action against State Farm for their wrongful breach of contract.

CONCLUSION

Appellant/ Plaintiff would respectfully request for all the forgoing reasons, the Court decline any rehearing on the Court's findings as to the above referenced matters claimed by the Defenant.

Respectfully submitted:

March 29, 2024
Columbia, South Carolina

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PROOF OF SERVICE

I certify that I have served the **PLAINTIFF'S RETURN TO DEFENDANT'S PETITION FOR REHEARING** on counsel for Respondent by electronic service on March 29, 2024, as per the attached email as referenced below:

Robert W. Whelan, Esquire
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March 29, 2024

s/Malia Lemke
Malia Lemke
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