

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2024-001004

Sandra R. Hoffman, Appellant,

v.

State Farm Fire and Casualty Company, Respondent.

PETITION FOR CERTIORARI

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State Farm Fire and Casualty Company (“State Farm”) respectfully petitions this Court for a Writ of Certiorari to the South Carolina Court of Appeals, to review *Hoffman v. State Farm*, Opinion No. 2024-UP-067 (refiled opinion dated May 15, 2024) (rehearing denied May 15, 2024).

CERTIFICATE OF COUNSEL

Pursuant to R. 242(d)(1), SCACR, undersigned counsel hereby certifies a petition for rehearing was filed with the Court of Appeals and, on May 15, 2024, rehearing was denied.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in applying the doctrine of equitable estoppel where that doctrine was neither raised to nor ruled upon by the Circuit Court?**
- II. Did the Court of Appeals err in applying the doctrine of equitable estoppel where there is not evidence in the record to support application of that doctrine?**
- III. Did the Court of Appeals err in issuing a dispositive ruling that State Farm is “precluded” from raising the statute of limitations due to equitable estoppel where that theory was never presented to or litigated in the trial court?**

STATEMENT OF THE CASE

1. On January 8, 2014, a pipe burst over Sandra Hoffman’s garage, damaging contents in the garage and a room over the garage. Hoffman testified she called her State Farm agent about the loss on January 8. (R. 60; Br. of Appellant at 4.)

2. On February 4, 2014, Hoffman “formally fil[ed] a claim” for the loss against State Farm. (Br. of Appellant at 11.)

3. On or about January 6, 2016, Hoffman submitted a list of approximately fifty items she claimed were damaged to State Farm. State Farm adjusted and paid for these items on or about March 4, 2016. (R. 91)

4. January 8, 2017, marked three years from the date of loss, and Hoffman's notice to her State Farm agent. February 4, 2017 marked three years from the date she "formally file[ed] a claim" under her State Farm policy.

5. In March or April 2017, Hoffman alleged she called State Farm and asked whether she could add additional unspecified items to the claim. She testified State Farm said she could. (R. 72-73.)

6. In October 2017, Hoffman submitted a claim for over seven hundred (700) additional items she had not previously told State Farm about. She claimed many of these items were wet clothes she placed in garbage bags and stored in her attic for over three years. (R. 87.)

7. In January 2018 State Farm denied the claim for the seven hundred newly reported items.

8. October 12, 2018, Hoffman filed suit against State Farm for breach of contract, breach of contract accompanied by fraudulent act, and bad faith. (R.26-27) State Farm was served on December 21, 2018. (R. 23.)

9. On November 6, 2019, State Farm moved for summary judgment. (R. 54.) The parties submitted briefs, including a fifteen-page brief submitted by Hoffman. (R. 114-28). This brief did not raise the issue of equitable estoppel. On December 17, 2020, the motion was heard by Judge Edgar Dickson. The issue of equitable estoppel was not raised. (R.45-48). On February 9, 2020, Judge Dickson granted State Farm summary judgment as to all claims. (R.1-4). On February 19, 2020, Hoffman filed a motion to reconsider, which did not raise the issue of equitable estoppel. (R. 6-11).

10. After Hoffman appealed, the Court of Appeals affirmed summary judgment for State Farm on Hoffman's claims for breach of contract accompanied by a fraudulent act and for bad faith, but reversed summary judgment as to Hoffman's bad faith count. The court held the doctrine of equitable estoppel saved Hoffman's claims.

STANDARD OF REVIEW

The appellate courts apply the same standard as the trial court when reviewing a grant of summary judgment. *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 92, 687 S.E.2d 321, 326 (2009) (quoting *Cafe Assoc., Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991)). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004).

Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

ARGUMENT

- I. **The Court of Appeals erred in reversing the circuit court on the basis of equitable estoppel, as that theory was neither raised to nor ruled upon by the circuit court.**

“It is axiomatic that an issue cannot be raised for the first time on appeal; it must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Furthermore, a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (internal quotations and citations omitted) (holding it was error for court of appeals to consider appellant’s argument “because it was improperly raised for the first time in the Rule 59(e) motion. The court of appeals should have refused to entertain that theory...”).

The Court of Appeals improperly based its reversal of summary judgment on Hoffman’s breach of contract claim on grounds not preserved for appellate review. To successfully preserve an issue for appellate review, the issue must be: “(1) raised and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity.” *S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefler Toal *et al.*, *Appellate Practice in South Carolina*, 57 (2d ed. 2002)).

Hoffman did not argue to the circuit court State Farm was estopped from relying on the statute of limitations. No argument was made concerning equity, estoppel, tolling, or reliance in Hoffman’s fifteen-page opposition brief, nor was it made during the December 17, 2020, hearing, nor did it appear in Hoffman’s 20-paragraph motion to reconsider. (R. p. 6-11; p. 45-50; p. 114-128). As a result, the circuit court’s order did not address or rule on the issue of equitable estoppel. (R. p. 1-4) In short, Hoffman never raised equitable estoppel to the trial court, the trial court did not rule on equitable estoppel, and Hoffman did not raise equitable estoppel in her motion to

reconsider. Accordingly, the issue of equitable estoppel was not preserved for appellate review and it was error for the Court of Appeals to reverse the circuit court on that ground.

Where the Court of Appeals bases its ruling upon a doctrine not preserved for appeal, this Court must vacate that ruling. *Hendrix v. E. Distribution, Inc.*, 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995) (“We vacate the Court of Appeals' opinion to the extent it addressed an issue which was not preserved.”); *State v. Dunbar*, 356S.C. 138, 143, 587 S.E.2d 691, 695 (2003) (“because the warrant statute argument was not raised to the trial court below for a ruling and, thus, is not preserved for appellate review, we vacate the Court of Appeals' opinion to the extent it addresses the search warrant and the underlying affidavit at issue.”); *State v. Roach*, 377 S.C. 2, 3, 659 S.E.2d 107 (2008) (“At oral argument before this Court, Roach's counsel admitted that the State was correct in asserting that the hearsay issue was not properly preserved for appellate review. We therefore hold that the hearsay issue should not have been addressed by the Court of Appeals.”).

II. The Court of Appeals erred in finding equitable estoppel where there is not evidence in the record to support a genuine issue of material fact as to that doctrine.

Even if equitable estoppel had been argued to and ruled on by the circuit court, it does not apply under the facts presented. An essential element of equitable estoppel as to the party asserting it is reliance, and an essential element as to the party estopped is conduct that has induced delay that would otherwise give operation to the statute of limitations. *See, e.g., Maher v. Tietex Corp.*, 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998); *Moates v. Bobb*, 322 S.C. 172, 175, 470 S.E.2d 402, 403 (Ct. App. 1996). Here, there are not facts in the record sufficient to raise a genuine issue of material fact with respect to these necessary elements of estoppel.

- a. **Hoffman did not argue or point to evidence that her delay in filing suit was due to reliance upon State Farm.**

Hoffman has never argued she relied upon State Farm’s conduct, and no court has found Hoffman so relied. Hoffman never alleged reliance to the circuit court, much less presented evidence of reliance. Even in her briefs to the Court of Appeals, she never pointed to any evidence of reliance, or even alleged reliance. In discussing her *fraud* claim at sub-section III (D) of her brief, Hoffman alleged she had a “right to rely” on State Farm’s conduct; however, there was no discussion or allegation Ms. Hoffman actually relied on anything State Farm did or said when delaying her suit. (App. Br., p. 22-23).¹ Because Hoffman did not allege or present any evidence of reliance, it was error for the Court of Appeals to find a genuine issue of fact with respect to equitable estoppel.

Actual reliance is a foundational element of equitable estoppel. For example, in *Cruz v. City of Columbia*, the Court of Appeals, in listing the elements of equitable estoppel, enumerated the three elements “the *relying party* must prove.” 437 S.C. 204, 212, 877 S.E.2d 479, 482-83 (Ct. App. 2022) (emphasis added). Reliance is just as critical when equitable estoppel is applied to a statute of limitations. For example, summary judgment on the statute of limitations must be affirmed over a defense of equitable estoppel where “there [is] no showing that the plaintiff had delayed filing suit **in reliance on the defendant hospital’s conduct.**” *Black v. Lexington School Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997) (emphasis added) (discussing *Vines v. Self Memorial Hospital*, 314 S.C. 305, 443 S.E.2d 909 (1994)). And claims of equitable estoppel to assert the statute of limitations fail, even in the face of intentional “misconduct,” where there is no evidence a plaintiff’s delay in filing suit was due to reliance on that misconduct. *Maher v. Tietex Corp.*, 331 S.C. 371, 381-82, 500 S.E.2d 204, 209 (Ct. App. 1998) (“A necessary element of

¹ Actual reliance is undoubtedly different from a right to rely—they are two different elements of a fraud cause of action. *See, e.g., Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444–45 (Ct. App. 2003) (describing the distinct elements of fraud as including both “(7) the hearer’s reliance on the truth” and “(8) the hearer’s right to rely thereon.”).

equitable estoppel is Maher's reliance on the misconduct of Tietex.... Maher did not rely on any misrepresentation or deception as to the financial information, and thus any claim of equitable estoppel based on this misconduct fails for lack of this essential element.”); *see also, Kleckley v. Nw. Nat. Cas. Co.*, 338 S.C. 131, 137, 526 S.E.2d 218, 221 (2000) (“In the instant case, Northwestern is estopped from asserting the statute of limitations defense because their lack of communication with Kleckley was the **sole reason** she allowed the statute of limitations to elapse.”) (emphasis added)

There is a good reason Hoffman has failed to argue detrimental reliance: there is none. Though Hoffman provided a host of reasons for her delay in submitting her claim for items and in filing her lawsuit, none were caused by State Farm; certainly, she cannot establish State Farm’s conduct was the “sole reason she allowed the statute of limitations to lapse.” *Id.* In addition to the volume of items and the difficulty in listing them, Hoffman attributed her delays to her fibromyalgia, migraine headaches, shingles, asthma, being sick a lot, being very afraid of spiders, getting insect bites all over her face and neck, taking care of her uncle when he was hospitalized and after he passed away, going through a lot with her daughter, preparing grant applications for her daughter’s college, having heart issues, and getting medical tests related to her heart issues. (R. 68 and 75 (Hoffman Dep., p. 51:12-52:6 and 78:21-79:18)). In 184 pages of deposition testimony, she never claimed State Farm induced her to delay filing suit or delay submitting her claim.

Despite the many excuses, it is apparent the primary reason Hoffman did not file suit until four years and nine months after the loss was her belief the statute of limitations was five years.

Q. Okay. All right. Was there anything else going on that kept you from doing this first 50 items any quicker?

A. I mean just -- No. I mean, like, I just thought that -- honestly, in my mind, I thought the time to have this done was five years, and I don't know why I thought

that. I just assumed if, you know, if it was coming to an end, they would let me know, so...

Q. Just to be clear, when you thought that the time to get this done was five years, that did not come from anything anyone said at State Farm, did it?

A. No.

Q. Do you know whether you thought that because of --

A. No. I just -- I mean, when I look at -- like, I have a lot of stuff, you know, but when I -- when I look at what it would be like to do a whole house, I can't imagine that you only have three years, but, you know, I guess that depends on how much stuff you have, you know.

(R. 75-76 (Hoffman Dep., p. 80:18—81:12)). It is inescapable from this testimony that Ms. Hoffman's four year and nine-month delay in filing suit was due to her own belief concerning the length of the statute of limitations. A party's own mistaken belief in the length of the statute of limitations cannot support an equitable estoppel defense to that statute. *See, e.g. United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004) ("ignorance of the law is not a basis for equitable tolling.") This is further supported by the fact State Farm's last contact with Ms. Hoffman was in January 2018, when it informed her the claim for items submitted in November 2017 was denied. Yet, Hoffman waited an additional 9 months, until October 12, 2018, to file suit against State Farm. Clearly, this further nine-month delay could not have been in reliance upon anything State Farm said or did. Instead, Ms. Hoffman "thought the time to have this done was five years, and I don't know why I thought that." (R. 75-76).

B. The evidence of State Farm's alleged inducement is not sufficient to support a claim for equitable estoppel to assert the statute of limitations.

Even if Hoffman presented this argument to the trial court, and even if she presented sufficient evidence of detrimental reliance, State Farm's conduct still cannot support equitable estoppel. In *Moates v. Babb*, the Court of Appeals held equitable estoppel was not supported as a matter of law where a defendant's insurer: (1) provided plaintiff with a \$24,225 "advance" to

purchase a new home for the injured party; (2) “communicated many times” with the plaintiff over “two years”; (3) “[t]hrough telephone calls and letters, [] continually requested information so the parties could ‘settle’ the case”; (4) met with plaintiff’s counsel personally to encourage him to cooperate “so they could resolve the matter.” 322 S.C. 172, 174-5, 470 S.E. 2d 402, 403 (Ct. App. 1996). There, the trial court held equitable estoppel tolled the statute of limitations, due to the insurer’s repeated reference to “settlement” and its \$24,225 “advance towards settlement.” *Id.* The court reversed, holding the insurer was merely trying to obtain “essential medical information ... so the parties could “get moving toward the settlement of the case.” *Id.* at 176, 470 S.E. 2d at 403-04. The court noted the “important public policy considerations” embodied in statutes of limitations, “in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” *Id.* at 176, 470 S.E. 2d at 404. Thus, although the plaintiffs had “suffered a terrible tragedy” the court held “it would be highly unfair to expose Bobb now to the immense potential liability ... after the Moatses ‘slept on their rights.’” *Id.*

State Farm’s alleged “inducement” here is nothing next to the alleged “inducement” in *Moates*. In this case, State Farm simply processed the new information sent by Hoffman in October 2017 and communicated with her concerning the details of that new information. In other words, State Farm was trying to obtain information to adjust the claim. If mere information gathering was sufficient to support equitable estoppel, insurers would be faced with a Catch-22. If they do not review information or adjust the claim, they could be subject to suits for bad faith; if they do adjust the claim, they could be estopped from asserting valid defenses. This cannot be the law, just as mere unconsummated settlement negotiations cannot support equitable estoppel to assert the statute of limitations.

If State Farm’s conduct were all that is necessary to support a claim of equitable estoppel, the *Moats* case and many previous appellate cases would have come out differently. *See, Black v.*

Lexington Sch. Dist. No. 2, 327 S.C. 55, 488 S.E.2d 327, 332 (1997) (no equitable estoppel despite “series of discussions and correspondence” with defendant’s counsel leading plaintiff to believe the defendant was “interested in settling the case”); *Vines v. Self Mem’l Hosp.*, 314 S.C. 305, 309, 443 S.E.2d 909, 911 (1994) (no equitable estoppel where defendant employees assisted plaintiff in filling out claims forms); *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88, 89 (1995) (no equitable estoppel where defendant failed to respond to numerous communications, but did provide the requested mortgage, which bore no recording stamps or marks); *Gadsden v. S. R. R.*, 262 S.C. 590, 592, 206 S.E.2d 882, 883 (1974) (no equitable estoppel despite where a “fair summary of the record reveals nothing more nor less than the fact that negotiations for a settlement were undertaken but never finalized.”); *Harvey v. S.C. Dept. of Corr.*, 338 S.C. 500, 509, 527 S.E.2d 765, 770 (Ct. App. 2000) (no equitable estoppel despite ongoing negotiations leading plaintiffs to believe the matter could be solved out of court).

III. The Court of Appeals erred in holding State Farm is “precluded” from asserting the statute of limitations.

The third sentence of the Court of Appeals’ “Law/Analysis” section reads: “We reverse summary judgment on the breach of contract claim because we find State Farm is precluded from asserting the defense of the statute of limitations for that claim.” The Court of Appeals should not have reached a legal conclusion as to the applicability of equitable estoppel where there is no evidence in the record to support such a finding, as discussed above. Additionally, this conclusion was inappropriate where the estoppel defense was never raised below, and Hoffman never presented any evidence or argument for equitable estoppel. As a result, State Farm did not brief, argue, or present evidence as to equitable estoppel below.

This language, at a minimum, provides Hoffman with an argument the Court of Appeals has essentially *granted summary judgment in Appellant’s favor*, by ruling that “State Farm is precluded from asserting the defense of the statute of limitations.” Of course, issuing a dispositive

ruling as to an issue not raised, argued, or heard below would deprive State Farm of substantial rights, would violate the rules of appellate practice in this state, and requires reversal by this Court.

CONCLUSION

The Court of Appeals correctly affirmed summary judgment on Hoffman's bad faith and breach of contract accompanied by fraudulent act claims. It also was correct in not disturbing the circuit court's ruling that Hoffman did not file within the statute of limitations under the unusual facts of this case. However, the Court of Appeals' decision to grant Hoffman relief under an inapplicable estoppel theory that had not been raised by Hoffman or ruled upon by the Circuit Court was clear error under the law of this state. State Farm respectfully requests this Court issue a writ of certiorari limited to the Court of Appeals' decision concerning equitable estoppel.

Respectfully submitted,

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