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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Hon. Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-02475
Court of Appeals Case No. 2024-000440

Nicholas F. Wilson,

Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour
Trustee; James B. Parker; James B. Parker, Sr.;
Mary Ann Parker; Kenneth Gregory Moore;
R&G Corp. d/b/a Century 21 The Harrelson
Group; Patton Development SC, LLC; Flagstar
Bank, N.A.; Sonia M. Raymond; Raymond Law
Firm, P.A.,

Respondents.

**RESPONDENTS SONIA M. RAYMOND AND RAYMOND
LAW FIRM, P.A.'S REPLY MEMORANDUM IN SUPPORT
OF RESPONDENTS' MOTION TO DISMISS APPEAL**

Bruce Wallace, SC Bar No. 11653
Rhett D. Ricard, SC Bar No. 102353
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.577.9440

*Attorneys for Respondents Sonia M. Raymond
and Raymond Law Firm, P.A.*

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FACTS

Appellant argued at least three (3) times before the Circuit Court¹ that the dismissal of Appellant's Complaint should be without prejudice, and Appellant should be allowed to amend his Verified Complaint to allege facts that would cure Respondents' grounds for dismissal. First, Appellant filed a memorandum in opposition to the Motion to Dismiss on September 7, 2023. See Exhibit A attached. In that memorandum, Appellant argued

A circuit court does not have 'discretion' to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Exhibit A at 3. Second, after the Court dismissed the Complaint, on September 18, 2023, Appellant filed his Notice of Motion and Motion to Alter or Amend Order Filed September 8, 2023 (the "Rule 59(e) Motion"). See Motion attached as Exhibit B. In his Rule 59(e) Motion, Appellant argued the Circuit Court could not dismiss the complaint with prejudice. Exhibit B at 2. Appellant also argued the Order dismissing the Complaint "does not address or consider whether or not 'plaintiff [should be provided] a meaningful chance to amend the complaint.'" *Id.* Appellant further argued the September 8, 2023 Order dismissing the action did not "'expressly' specify whether ... Plaintiff's Verified Complaint claims are dismissed with prejudice. **At a minimum, Plaintiff is entitled to re-plead and include even more specific facts...**" Exhibit B at 2 (emphasis added).

¹ Just as Appellant opened his Return to the Motion to Dismiss quoting *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 181, 826 S.E.2d 585, 588 (2019), Appellant quoted *Skydive* in each of three memoranda filed with the Circuit Court.

Third, in support of his 59(e) Motion to Judge Culbertson, Appellant incorporated his Motion to Amend the Complaint. See Plaintiff's Reply In Support of Motion to Alter or Amend, attached as Exhibit C. In that Reply Memorandum, Appellant stated "Plaintiff herein incorporates by reference his Motion to Amend Complaint [sic], filed Dec. 5, 2023, and its accompanying Exhibits 1-4..." Exhibit C at 4. In his Motion to Amend the Complaint, Appellant argued "a complaint is not subject to dismissal with prejudice unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations." Exhibit D at 2.

In short, Appellant filed four separate memoranda arguing the Circuit Court (1) should not dismiss the Complaint with prejudice and (2) should permit Appellant to amend his Verified Complaint. In response, the Circuit Court denied Appellant's request for relief. Specifically, after Appellant argued that the Motion to Dismiss should be denied and Appellant should be allowed to amend, the Circuit Court dismissed the Complaint. And in Appellant's 59(e) Motion, Appellant argued he was entitled to amend his complaint (and provided a proposed Amended Complaint to the Court), the Circuit Court denied Appellant's 59(e) Motion.

ARGUMENT

It appears Appellant argues that Rule 15 Motions extend the time to appeal a dismissal under Rule 12(b)(6). Appellant notes in his Memorandum that the presumption is the dismissal was without prejudice. Memo at 6. Appellant contends he "was only required to seek to amend his pleading after the decision on the initial motion to dismiss". Memo at 7. Therefore, Appellant contends the dismissal only became final after the

Circuit Court denied the Motion to Amend on March 12, 2024. Memo at 7. Appellant's contention contravenes the Rules of this Court and the law of South Carolina.

An order granting a Rule 12(b) motion is directly appealable under S.C. Code Ann. § 14-3-330(2) because it affects a substantial right and strikes out a pleading. See *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986)(holding a 12(b)(6) dismissal is directly appealable). Rule 203(b), SCACR, requires Appellant to serve his notice of appeal within thirty (30) days from the receipt of the Order. Appellant clearly failed to serve his notice of appeal within 30 days of receipt of notice of the Order denying Appellant's Rule 59(e) Motion. Appellant's Return to Motion to Dismiss at 1.

The Circuit Court twice denied Appellant's request to Amend the Complaint, in both the original Order dismissing the Complaint, and in the Order denying the Rule 59(e) Motion. Judge Culbertson implicitly considered Appellant's request each time, and denied Appellant's request each time. See, *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e), SCRCR, motion when "an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review"). Judge Stephen H. DeBerry, Jr. held, in denying the Motion to Amend, that Judge Culbertson had already ruled on – and denied – Appellant's request to Amend the Verified Complaint. See Order denying Motion to Amend Complaint, attached as Exhibit E, at pages 2-3. Appellant quotes Judge DeBerry's grounds in his initial Appellate Brief. See Appellant's Initial Brief at 6.²

The case of *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757 (2017) is instructive on this point. In *Tillman*, the circuit court dismissed the counterclaim and denied

² At no point in his Initial Brief does Appellant contend that Judge DeBerry's ruling is incorrect.

defendant's oral motion to amend the counterclaim. However, in the written order denying the motion to reconsider, the circuit court held "the defendants may make a formal motion to amend their counterclaims." *Id.* at 248, 801 S.E.2d at 758-59. On appeal, the South Carolina Supreme Court started its analysis by stating that "[t]he granting of a Rule 12(b)(6) motion to dismiss is immediately appealable." *Id.* at 248, 801 S.E.2d at 758. In deciding the Order at issue was not immediately appealable, the Supreme Court found the trial court's order inviting a formal motion to amend was determinative. *Id.* at 250, 801 S.E.2d at 759-60. Under the circumstances here, therefore, where the circuit court denied Appellant's request to amend the complaint in the Orders dismissing the case and denying the Rule 59(e) Motion, Appellant's claims have been "finally determined." At no point did the circuit court invite Appellant to file a "formal" motion to amend. In denying the Motion to Amend, in fact, Judge DeBerry held that Judge Culbertson's Orders had addressed and denied Appellant's request to amend the Complaint. As such, the Order denying the Rule 59(e) Motion was immediately appealable, and Appellant was required to serve his notice of appeal by March 8, 2024, which he admittedly did not do.

CONCLUSION

For the reasons set forth in the Motion to Dismiss and in this Reply, Respondents Sonia M. Raymond and Raymond Law Firm, P.A. request the Court dismiss this appeal for failure to timely file the notice of appeal pursuant to Rule 203, SCACR

Respectfully submitted,

s/Bruce Wallace

Bruce Wallace, SC Bar No. 11653

Rhett D. Ricard, SC Bar No. 102353

Maynard Nexsen, PC

205 King Street, Suite 400

Charleston, SC 29401

Telephone: 843.720.1760

Email: BWallace@maynardnexsen.com

RRicard@maynardnexsen.com

July 26, 2024

*Attorneys for Respondents Sonia M. Raymond
and Raymond Law Firm, P.A.*

EXHIBIT A

RESPONDENTS' REPLY MEMORANDUM IN
SUPPORT OF THE MOTION TO DISMISS
APPEAL

Court of Appeals Case No. 2024-000440

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Case No: 2023-CP-26-02475

Nicholas F. Wilson,)
)
)
Plaintiff,)

**PLAINTIFF’S JOINT MEMORANDUM
IN OPPOSITION TO MOTIONS TO
DISMISS OF: (1) SONIA M. RAYMOND,
AND RAYMOND LAW FIRM, P.A., AND
(2) JANET P. GOCHENOUR, AND
JANET P. GOCHENOUR TRUSTEE
BASED ON THE STATUTE
OF LIMITATIONS**

vs.)

Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; R&G Corp.,)
d/b/a Century 21 The Harrelson Group; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; Sonia M. Raymond;)
Raymond Law Firm, P.A.;)
)
Defendants.)

Plaintiff respectfully submits this joint response in opposition to the following motions:

- (i) Motion to Dismiss by Sonia M. Raymond and Raymond Law Firm, P.A. (hereafter “Law Firm Defendants”) (filed May 24, 2023); and (ii) Motion to Dismiss by Janet P. Gochenour and Janet P. Gochenour Trustee (“Seller Defendants”) (filed June 14, 2023).

On August 28, 2023, the Law Firm Defendants filed their Memorandum in Support of Motion to Dismiss. The only claim at issue in this motion is Plaintiff’s Claim 6: “Breach of Fiduciary Duty / Legal Malpractice.”

On September 4, 2023, the Seller Defendants filed their Memorandum in Support of Motion to Dismiss. The claims at issue in the Seller Defendants’ motion include: Plaintiff’s Claim 1: Breach of Contract; Plaintiff’s Claim 7: Fraud; Plaintiff’s Claim 8: Constructive Fraud;

Plaintiff's Claim 9: Breach of Contract Accompanied by a Fraudulent Act; and Plaintiff's Claim 10: Declaratory Judgment.¹

All claims at issue in both motions have a three-year statute of limitations.

The Discovery Rule

The statute of limitations for a legal malpractice cause of action is three years. S.C. Code Ann. § 15-3-350. Under the discovery rule, “the statute of limitations accrues at the time of the negligence or when the facts and circumstances would put a person of common knowledge on notice that there might be a claim against another party.” *True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615, 616 (1997); *see also Personal Care, Inc. v. Theos*, 426 S.C. 78, 89, 825 S.E.2d 281, 287 (Ct. App. 2019); *Holmes v. Haynsworth, Sinkler & Boyd, PA*, 408 S.C. 620, 623-33, 760 S.E.2d 399, 405 (2014).

The discovery rule also applies to all claims put at issue by the Seller Defendants.

STANDARD OF REVIEW

“A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to relief on any theory of the case.” *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). “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.” *Patterson v. Witter*, 418 S.C. 66, 76, 791 S.E.2d 294, 300 (Ct. App. 2016).

¹ The Seller Defendants' Memorandum mistakenly references Plaintiff's Claim 2: Interference with a Contract, and Plaintiff's Claim 11: SC Unfair and Deceptive Trade Practices Act. These claims are not plead against the Seller Defendants. In addition, Plaintiff's Claim 10: Declaratory Judgment, is plead against all parties and seeks an order declaring his rights in the Property in accordance with the sales contract with the Seller Defendants (Verified Complaint at ¶¶'s 117 and 123).

Rule 8, SCRCP

Rule 8(c), SCRCP provides a list of “affirmative defenses,” stating, *inter alia*, as follows:

In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

Id. (underline emphasis added).

The statute of limitations is an affirmative defense. In circumstances where facts are in dispute, discovery is necessary. *See e.g., Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (stating, “[t]his means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.”). In addition, even if these Defendants could prevail with the court viewing the facts as plead in the light most favorable to the Plaintiff, the Plaintiff would still have a right to re-plead his claims under *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). In *Skydive*, the Supreme Court stated:

A circuit court does not have “discretion” to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Id. (underline emphasis added).

APPLICATION

In Paragraph 43 of the Verified Complaint, Plaintiff states he “was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property

he was to receive from Janet under their Contract.”² In Paragraph 46 of the Verified Complaint, Plaintiff states, “[a]t all times before and after Jan. 23, 2020, Plaintiff made it abundantly clear that he would not purchase the property unless he was going to be deeded the driveway.”

In Paragraph 22 of the Verified Complaint, Plaintiff states:

On January 23, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “Seller shall have the property surveyed, including the additional acreage listed as being included in the sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale.” (hereafter the “Property”).

Id. (underline emphasis added).

Plaintiff was only ever provided one survey pursuant to the Jan. 23, 2020 Addendum. (Verified Complaint at ¶¶’s 25, 42). “Plaintiff relied on the Original Survey.” (*Id.* at ¶ 42).

As legal counsel to the Plaintiff, the Law Firm Defendants had a duty to “communicate” with him. Rule 407, SCACR: Rule 1.4. This rule requires, *inter alia*, that the Law Firm Defendants “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* at 1.4(b). The Law Firm Defendants failed to communicate with the Plaintiff regarding the representation.

In their motion and Memorandum, counsel for the Law Firm Defendants assumes facts not in evidence and contrary to the facts as alleged in the Verified Complaint. Specifically, that the Law Firm Defendants provided Plaintiff with a copy of the deed and explained how it complied with the contract provisions on March 6, 2020. This did not occur.

² Neither of the moving Defendants reference ¶ 43 in their motions or memoranda in support.

Counsel for the Law Firm Defendants also assumes the Law Firm Defendants provided Plaintiff with a copy of the survey / plat to be recorded as part of the transaction on March 6, 2020. This also did not occur. (Verified Complaint at ¶¶'s 25, 42).

Instead, as is also shown in the 475 pages of file materials provided to Plaintiff after the filing of this lawsuit, counsel to Plaintiff (*i.e.*, the Law Firm Defendants) relied upon the Seller's Attorney to draft the deed. There is no indication the Law Firm Defendants even checked to see if the provisions in the January 23, 2020 Addendum were incorporated into the deed. (Verified Complaint at ¶¶'s 25, 88). According to the closing statement, Plaintiff actually paid the seller's attorney's fees, which were \$470.00, as well as reimbursing the seller's attorney for a \$40.00 recording fee.³

If the Law Firm Defendants had fulfilled their duty to properly communicate with the Plaintiff about the material issues related to the representation, and had explained the deed and the "new" plat to the Plaintiff (and maybe even that they relied exclusively on the Seller's Attorney to draft same), then two things would have happened. Number 1: Plaintiff would not have "purchased the property."⁴ (Verified Complaint at ¶ 46). Number 2: If somehow, Plaintiff had proceeded to have purchased the property, the statute of limitations as to the matters actually disclosed would have begun to run on March 6, 2020. Counsel to the Law Firm Defendants seeks

³ The fact that the closing documents were "recorded" by the Seller's Attorney is yet another indication that counsel to the Plaintiff / Law Firm Defendants may not have even seen the documents prior to them being recorded.

⁴ And the Law Firm Defendants get no fees for the closing, and the Real Estate Agent Defendants would get no commission for the sale (at least \$13,950.00, *see e.g.*, RLF_000139, 140).

a reward for the malpractice of the firm, namely protection of the statute of limitations based on assumed facts contrary to the facts set forth in the Verified Complaint.

Plaintiff was led to believe that the Original Survey was the document to be recorded showing the property he was to receive, which he believed was consistent with the January 23, 2020 Addendum. The Original Survey showed him receiving 8.24 acres, including 0.49 acres for Tract D (the driveway), which he did not get as part of the sale. Plaintiff in fact received less than the 8 acres promised in the Jan. 23, 2020 Addendum.

CONCLUSION

For at least the reasons set forth herein, the motions to dismiss of the Law Firm Defendants and the Seller Defendants must be denied.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Sept. 7, 2023

EXHIBIT B

RESPONDENTS' REPLY MEMORANDUM IN
SUPPORT OF THE MOTION TO DISMISS APPEAL

Court of Appeals Case No. 2024-000440

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)
)
)
Plaintiff,)

Case No: 2023-CP-26-02475

vs.)

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
ORDER FILED SEPT. 8, 2023**

Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; R&G Corp.,)
d/b/a Century 21 The Harrelson Group; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; Sonia M. Raymond;)
Raymond Law Firm, P.A.;)
)
Defendants.)

**TO: THE HONORABLE BENJAMIN H. CULBERTSON, 15TH CIRCUIT JUDGE;
BRUCE WALLACE, ESQ., COUNSEL TO SONIA M. RAYMOND, ESQUIRE AND
RAYMOND LAW FIRM, P.A.; AND WILLIAM LUSE, ESQ., COUNSEL TO JANET P.
GOCHENOUR; JANET P. GOCHENOUR TRUSTEE:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff respectfully move before The Honorable Benjamin H. Culbertson (presiding Judge of the 15th Judicial Circuit at hearings on Sept. 7, 2023) within ten (10) days from the date hereof or as soon thereafter as counsel may be heard under S.C. R. Civ. P. Rule 59(e) for an order or orders reconsidering, altering and / or amending the order granting two motions to dismiss, filed Sept. 8, 2023, stating, as follows:

Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

...

Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Id. at 1.

Plaintiff incorporates by reference herein his Joint Memorandum in Opposition to Motions to Dismiss, filed Sept. 7, 2023 at 11:54 A.M., and his Supplemental Memorandum in Opposition to Motions Dismiss, filed Sept. 7, 2023 at 6:09 P.M.¹

As set forth in the Plaintiff's Memorandum:

A circuit court does not have "discretion" to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019) (underline emphasis added); see also Baughman v. At&T, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (stating, "[t]his means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

The subject order does not address or consider whether or not "plaintiff [should be provided] a meaningful chance to amend the complaint." Skydive at 592.

The subject order does not "expressly" specify whether or not the Plaintiff's Verified Complaint claims are dismissed with prejudice. At a minimum, Plaintiff is entitled to re-plead and include even more specific facts as to when he could have first discovered the fraud perpetrated on him in January, February and March of 2020. Plaintiff maintains, however, that ¶

¹ The Form 4 Order put at issue by this motion was e-signed by the court on Sept. 7, 2023 at 4:29 P.M. Id. at 3. Therefore, the Plaintiff's Supplemental Memorandum, filed later that same day at 6:09 P.M., could not have been considered before the subject order issued.

43 of the Verified Complaint, which states, Plaintiff “was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract.” As noted in the Plaintiff’s Memorandum, both counsel to the Law Firm Defendants and the Seller Defendants failed to reference ¶ 43 in their motions or memoranda in support. *Id.* at 4 (fn. 2)

In *Slack v. James*, 356 S.C. 479, 482-483, 589 S.E.2d 772, 774 (Ct. App. 2003), our Court of Appeals stated, “[t]he person committing the fraud cannot defeat a claim for misrepresentation simply because the person defrauded is charged with notice under a recording statute, particularly where the misrepresented facts are peculiarly within the representor’s knowledge.” *Id.* The Court of Appeals in *Slack*, further stated, “[t]he purpose of the recording act is to protect one who buys a recorded title against one who acquires a paper title but fails to record it. The recording act is not intended to protect a seller who makes a false or misleading statement.” *Id.*; *see also Moseley v. All Things Possible*, 395 S.C. 492, 498, 719 S.E.2d 656, 659 (2011) (noting, “general rule must at times yield when confronted with fraudulent misrepresentations. The purpose of the recording act is, after all, to protect innocent purchasers, not fraudulent sellers.” (citing *Slack*)).

Fuller-Ahrens Partnership v. S.C. Dept. of H’ways and Pub. Trans., 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993), which counsel to Defendants stated they relied upon at the hearing on Sept. 7, 20203, was decided in 1993, years before both *Slack* in 2003 and *Moseley* in 2011. *Id.* Further, as noted in Plaintiff’s Supplemental Memorandum, the facts of *Fuller-Ahrens* are very different from this case. For example, in *Fuller*, the “constructive notice” at issue involved a deed recorded in the chain of title in favor of the South Carolina Department of

Highways and Public Transportation, recorded in 1956. *Id.* at 921. The party held to have been on “constructive notice” of the deed, namely Fuller-Ahrens Partnership, was a successor to the purchasers of the subject property from “Andrew Patterson and others in his family” in 1985. *Id.* The party held to have been on constructive notice of the 1956 deed in the chain of title of its grantor was not even formed until 1986, after the property was purchased by Frederick B. Fuller and Leslie H. Ahrens individually. *Id.* (stating, “Fuller-Ahrens Partnership was formed in 1986 and purchased the property from Fuller and Ahrens shortly thereafter.”). Ultimately, the Court of Appeals held, “Fuller-Ahrens had constructive notice of the pipe’s existence because of a 1956 deed in Fuller-Ahrens’ chain of title.” *Id.*

In this case, the contents of the recorded deed and the 2nd survey / plat were withheld from the Plaintiff at the closing on March 6, 2020, and thereafter by Defendants. He had no reason to believe his real estate agent and closing attorney, each of which owed him fiduciary duties, would be involved in violating those duties. Therefore, he had no reason to go and check the record to discover documents or information they had a duty to provide him with in the first instance.

Further, in *Fuller*, the party held to have been on “constructive notice” of the “ditch” could have discovered it via a title search. In contrast, Plaintiff here would have had to conduct a second title search after the one he had already relied upon from the Law Firm Defendants. The Fuller-Ahrens Partnership acknowledged they ultimately found out about the “ditch” via actual notice. *Id.* (stating, “it discovered the pipe ‘sometime after the property was purchased on June 20, 1985.’”). Here, it was only after the fraud and the failure to disclose occurred on March 6, 2020, that Plaintiff could have been on “constructive” or “inquiry” notice.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests an order altering and amending the order / judgment entered on Sept. 8, 2023, and permitting all of his claims to proceed to discovery where Defendants will have every opportunity to establish notice of the existence of the claims.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Sept. 18, 2023

EXHIBIT C

RESPONDENTS' REPLY MEMORANDUM
IN SUPPORT OF THE MOTION TO
DISMISS APPEAL

Court of Appeals Case No. 2024-000440

STATE OF SOUTH CAROLINA)
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COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)
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Plaintiff,)

Case No: 2023-CP-26-02475

vs.)

**PLAINTIF’S REPLY IN SUPPORT OF
MOTION TO ALTER OR AMEND
ORDER FILED SEPT. 8, 2023**

Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; R&G Corp.,)
d/b/a Century 21 The Harrelson Group; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; Sonia M. Raymond;)
Raymond Law Firm, P.A.;)

Defendants.)
)
)

Plaintiff herein respectfully submits this Reply in Support of his Motion to Alter or Amend Under Rule 59, filed Sept. 18, 2023. Defendants Sonia Raymond and Raymond Law Firm filed their opposition to the Plaintiff’s Rule 59 motion on Oct. 5, 2023.

In their opposition, Defendant Sonia Raymond argues *Slack v. James* is distinguishable for several reasons, including primarily that it is not a “legal malpractice” case. *Id.* at 2-3 (citing *Slack v. James*, 364 S.C. 609, 612, 614 S.E.2d 636, 637 (2005)). Counsel to Defendant Raymond acknowledges that portion of *Slack v. James* which speaks to the practical issues relating to “constructive notice,” of publicly filed documents, noting in their response, “it would be unreasonable to expect a purchaser to research the title before entering into a contract.” *Id.* (citing *Slack*, 614 S.E.2d at 639 (which states, “Further, given the speedy nature of residential real estate contracts today, it is not feasible to expect a buyer to be able to research the title of the property they are buying before entering into a contract.”)). Similarly, Plaintiff here had all the

more reason not “research the title of the property [he was] buying [after] ~~before~~ entering into a contract,” and closing on the property with the services of a licensed real estate attorney.

Here, Plaintiff had hired Defendant Raymond to prepare the closing documents and the deed in accordance with his contract with Defendant Janet Gochenour. In reality, Defendant Raymond did not even prepare the deed. Instead, another local attorney, Mr. Inabnit, Esquire, prepared it, and it even appears from the closing documents that Plaintiff paid \$320.00 for Mr. Inabnit to draft the deed.

As shown in Defendant Raymond’s correspondence dated March 6, 2020 (attached to the proposed Amended Verified Complaint as Exhibit 4), she admits she did not provide Plaintiff with a copy of the deed at the closing (or immediately thereafter). Further, Defendant Raymond’s correspondence dated May 7, 2020 (attached to the proposed Amended Verified Complaint as Exhibit 5) acknowledges she did not attempt to provide the Plaintiff with a copy of the deed until May 7, 2020, when she sent him the letter attached to the Plaintiff’s Motion to Amend as proposed Exhibit 5 to the Amended Complaint. These letters were not included in Defendant Sonia Raymond’s 475 pages of informal “discovery,” provided to Plaintiff by email on May 25, 2023 via a system link referenced as “SendThisFile”.

Defendants in their opposition to the Plaintiff’s Rule 59 Motion also fail to acknowledge that this case involves claims 6-8 for fraud, constructive fraud and breach of contract accompanied by a fraudulent act, all of which were enabled by the conduct Defendant Raymond as Plaintiff’s closing attorney.

Counsel to Defendant Raymond presumably had not been made aware of his client's correspondence dated March 6, 2020 and May 7, 2020 (Exhibits 4 and 5 to proposed Amended Complaint), when it was argued, "Like the Plaintiffs in *Watts*, Plaintiff [Nicholas F. Wilson] closed his eyes and did not read the deed." *Id.* at 3.

Defendant Raymond also confuses and/or conflates actual notice, *e.g.*, Plaintiff "closed his eyes" with "constructive notice," which is nowhere mentioned in the Court's Sept. 8, 2023 order.

Next, Defendant Raymond argues, "like the plaintiffs in *Fuller-Ahrens*, Plaintiff here could have pulled the deed and would have determined there was a mistake on its face." *Id.* at 4 (citing *Fuller-Ahrens Partnership v. S.C. Dept. of Highways and Pub. Trans.*, 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993)). This is not true or accurate. As shown in Defendant Raymond's letter dated March 6, 2020, she knew her office had not provided Plaintiff a "copy" of the deed at closing. (Exhibit 4 to Amended Verified Complaint, stating, "Your original Deed and Final Title Policy will be forwarded to you as soon as we receive the same from the Courthouse."). Still further, Defendant Raymond had a duty to explain to the Plaintiff the contents of the deed and to ensure it was consistent with his contract with the seller, Defendant Janet Gochenour. However, as noted above, this duty was delegated to Mr. Inabnit's office.

Next in attempting to rely upon *Fuller-Ahrens*, Defendants argue, "Because the deed was filed of record, the Court of Appeals determined the plaintiff's claims were time-barred." *Id.* at 5 (apparently citing back to *Fuller-Ahrens*, 427 S.E.2d at 922). However, those are not the facts of this case. In this case, the deed was not recorded until on or after March 6, 2020, and the record shows Plaintiff did not receive a copy of the deed or an explanation of why it deviated greatly

from the contract with Defendant Gochenour and the plat relied upon by the Plaintiff (and the lender, Flagstar Bank, N.A.) at and prior to the closing. See Exhibits 1 and 2 to Verified Complaint, filed April 19, 2023).

Plaintiff herein incorporates by reference his Motion to Amend Compliant, filed Dec. 5, 2023, and its accompanying Exhibits 1-4, wherein Exhibits 2-4 of the Motion are proposed Exhibits 4 to 6 to the proposed Amended Verified Complaint. These documents were also filed Dec. 5, 2023, and all such documents are already of record in this case.

For all the reasons set forth herein and in the documents and filings of record incorporated herein, Plaintiff respectfully requests an order altering and amending the order / judgment entered on Sept. 8, 2023, and permitting all of his previously dismissed claims to remain in the case.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Dec. 6, 2023

EXHIBIT D

RESPONDENTS' REPLY MEMORANDUM IN
SUPPORT OF THE MOTION TO DISMISS APPEAL

Court of Appeals Case No. 2024-000440

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)
)
)
Plaintiff,)

Case No: 2023-CP-26-02475

vs.)

**NOTICE OF MOTION AND
MOTION TO AMEND VERIFIED
COMPLAINT**

Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; R&G Corp.,)
d/b/a Century 21 The Harrelson Group; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; Sonia M. Raymond;)
Raymond Law Firm, P.A.;)
)
Defendants.)

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff respectfully move before presiding Judge of the 15th Judicial Circuit for an order granting Plaintiff under Rule 15, SCRPC, to file the attached proposed Amended Verified Complaint. Grounds in support of this motion include the following:

“Rule 15, SCRPC, provides that the complaint may only be amended by leave of the court and ‘leave to amend shall be freely given when justice requires and does not prejudice any other party.’” *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (1999). “A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.” *Id.* (citing *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993)).

In *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019), our Supreme Court held, “A circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a).”). On September 8, 2023, this court granted two separate motions to dismiss the Plaintiff’s Verified Complaint without considering or addressing “whether to allow leave to amend under Rule 15(a).”

The Supreme Court in *Skydive* further stated, a “complaint is not subject to dismissal with prejudice unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations.” *Id.* at 592-593 (citing *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006).

As set forth in the proposed Amended Verified Complaint at Para. 43 and in Exhibits 4 and 5 to the same, Plaintiff has produced written correspondence from Defendant Sonia Raymond to establish that she did not provide him with a copy of the deed from the March 6, 2020 property closing until she sent it to him by regular USPS mail on May 7, 2020 (Exhibit 5). Defendant Raymond has purportedly provided Plaintiff with her entire file related to her representation of him (475 pages), however, Exhibits 4 and 5 to the proposed Amended Verified Complaint were not included.

Plaintiff filed this action on April 19, 2023. Therefore, a 3-year statute of limitations would not be a bar to any of his claims.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests an order permitting him to file the attached proposed Amended Verified Complaint, and its accompanying Exhibits 4 to 6 to supplement the three other exhibits already in the record.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

December 5, 2023
Greenville, South Carolina

EXHIBIT E

RESPONDENTS' REPLY MEMORANDUM
IN SUPPORT OF THE MOTION TO
DISMISS APPEAL

Court of Appeals Case No. 2024-000440

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

NICHOLAS F. WILSON,
Plaintiff,

vs.

JANET P. GOCHENOUR, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2023-CP-26-02475

**ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

This matter came before the undersigned on Plaintiff's Motion to Amend the Complaint filed December 6, 2023. The Court conducted a hearing on the motion on February 27, 2023. For the reasons set forth below, the Court denies Plaintiff's Motion to Amend.

PROCEDURAL HISTORY

Plaintiff filed his complaint on April 19, 2023. Defendants Sonia M. Raymond and the Raymond Law Firm P.A. (hereafter, the "Lawyers") filed a motion to dismiss the complaint on May 24, 2023. Defendant Janet P. Gochenour, individually and as trustee, filed a motion to dismiss the complaint on June 14, 2023. By Order dated September 8, 2023, the Court, the Honorable Benjamin Culbertson presiding, granted the motions to dismiss, citing the statute of limitations barred the Plaintiff's claims against the Lawyers and Gochenour. Plaintiff filed a motion for reconsideration on September 18, 2023. Judge Culbertson denied the motion for reconsideration by Order dated February 17, 2024.

Plaintiff filed his motion to amend the complaint on December 5, 2023.

DISCUSSION

In his memorandum in support of his motion to Amend, Plaintiff cites to Judge Culbertson's two orders. Plaintiff asserts that Judge Culbertson's orders are not clear as to whether they dismiss the complaint with prejudice. Plaintiff's Memorandum at 2. Citing *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), the Plaintiff argues *Judge Culbertson's* orders were unclear and the statute of limitations defense is fact based inquiry.

Plaintiff's memorandum in support of his Rule 59(e) motion incorporated his motion to amend the Complaint and the memorandum in support. See Plaintiff's Supplemental Memorandum in Support filed December 6, 2023 at 4. Plaintiff cited the *Skydive* case in support of his Motion to Reconsider. Motion filed September 18, 2023 at 2. And Plaintiff argued that Judge Culbertson's September 8, 2023 was unclear as to whether the court dismissed the complaint with prejudice. *Id.* at 2. In short, all of the grounds set forth in Plaintiff's Motion to Amend the complaint were argued in support of Plaintiff's Motion to Reconsider. Which Judge Culbertson denied by Order dated February 17, 2024.

Plaintiff requests this Court to essentially ignore or set aside Judge Culbertson's two orders. Plaintiff asks this court to interpret Judge Culbertson's orders as dismissals without prejudice, even though Judge Culbertson himself denied that very relief by Order dated February 17, 2024.

"One Circuit Court Judge does not have the authority to set aside the order of another." *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). In fact, "one circuit judge has no power to review, revise or reverse the action of another circuit judge." *Ex parte State*, 263 S.C. 363, 368, 210 S.E.2d 600, 602 (1974). "If the prior ruling addresses a substantive point of law, or if nothing of significance has

changed, the second judge should consider the previous judge's ruling to be final.” *Rice v. Doe*, Op. no. 28190 (S.C. Sup. Ct. filed Jan. 24, 2024)(Howard Adv. Sh. No. 3 at 19). Plaintiff has not argued different grounds from those argued to Judge Culbertson, and nothing of significance has changed from the facts, law, and circumstances considered by Judge Culbertson. And where the effect of the court’s ruling would be to reverse a prior circuit court’s order without such change of circumstances, the second judge would be committing “an impermissible act.” *Enoree Baptist Church*, 287 S.C. at 604, 340 S.E.2d at 547.

For these reasons, the Court denies Plaintiff’s Motion to Amend. To the extent Plaintiff contends Judge Culbertson erroneously ruled, Plaintiff’s remedy lies with the appellate courts.

AND IT IS SO ORDERED.

[Electronic Signature(s) on following page]



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al

Case Number: 2023CP2602475

Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

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Jul 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Hon. Benjamin H. Culbertson, Circuit Court Judge

Case No. 2023-CP-26-02475
Ct. App. No. 2024-000440

Nicholas F. Wilson,

Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour
Trustee; James B. Parker, Sr.; Mary Ann Parker;
Kenneth Gregory Moore; R&G Corp. d/b/a
Century 21 The Harrelson Group; Patton
Development SC, LLC; Flagstar Bank, N.A.;
Sonia M. Raymond; Raymond Law Firm, P.A,

Respondents.

PROOF OF SERVICE

I certify that I have served the foregoing Reply Memorandum in Support of Respondents' Motion to Dismiss Appeal on the following counsel of record using the primary email address listed in the Attorney Information System and via US mail.

Wesley D. Few
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5906
wes@wesleyfew.com
cc: Cassy Young cassy@wesleyfew.com
Attorney for Appellant

William James Luse
Law Office of William J. Luse
917 Broadway Street
Myrtle Beach, SC 29577
(843) 839-4975
bill@getlusenow.com

Attorney for Respondents Janet P. Gochenour; Janet P. Gochenour Trustee

James B. Parker (Pro se)
James B. Parker, Sr. (Pro se)
Mary Ann Parker (Pro Se)
919 Waterton Avenue
Myrtle Beach, SC 29579

Claude Townsend Prevost, III
Joseph Lucas Richardson
Collins & Lacy, PC
P. O. Box 12487
1330 Lady Street
Columbia, SC 29201
(803) 256-2660
cprevost@collinsandlacy.com
lrichardson@collinsandlacy.com

*Attorneys for Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21
The Harrelson Group*

Alexander Hray
389 E. Henry Street, Suite 107
Spartanburg, SC 29302
(864) 342-1111
lex@lexhray.com

Attorney for Respondent Patton Development SC, LLC

Matthew Douglas Patterson
Blake T. Williams
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor (29201)
P. O. Box 11070
Columbia, SC 29201
(803) 799-2000
Matt.patterson@nelsonmullins.com
Blake.williams@nelsonmullins.com

Attorneys for Flagstar Bank, N.A.

s/Bruce Wallace

Bruce Wallace, SC Bar No. 11653

Rhett D. Ricard, SC Bar No. 102353

Maynard Nexsen, PC

205 King Street, Suite 400

Charleston, SC 29401

Telephone: 843.720.1760

Email: BWallace@maynardnexsen.com

RRicard@maynardnexsen.com

*Attorneys for Respondents Sonia M. Raymond
and Raymond Law Firm, P.A.*

June 26, 2024



RECEIVED

Jul 26 2024

SC Court of Appeals

Anne M. Johnson
Legal Practice Assistant

July 26, 2024

VIA U.S. MAIL

James B. Parker, *Pro Se* Defendant
Mary Ann Parker, *Pro Se* Defendant
919 Waterton Avenue
Myrtle Beach, SC 29579

Re: *Nicholas F. Wilson v. Janet P. Gochenour, et al.*
South Carolina Court of Appeals Case No. 2024-000440

Good Day:

Enclosed for service upon you, please find a copy of Respondents Sonia M. Raymond and Raymond Law Firm, P.A.'s Reply Memorandum in Support of Respondents' Motion to Dismiss Appeal for the above-referenced matter.

Sincerely Yours,

Anne M. Johnson

Anne M. Johnson
Assistant to R. Bruce Wallace

Enclosure

cc w/encl.: Wesley D. Few, Esq.
William J. Luse, Esq.
Claude Townsend Prevost, III, Esq. & Joseph Lucas Richardson, Esq.
Alexander Hray, Esq.
Matthew Douglas Patterson, Esq. & Blake T. Williams, Esq.