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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2024-000020
Trial Court Case No. 2023-CP-32-01750

Glenna Gray; and Michael W. Gray as Personal Representative of the Estate of Joseph S. Gray,

Appellants,

v.

Larousse Lamur, Phoenix Grand, LLC, and Lamur Transportation Services, LLC

Respondents.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in failing to toll the Statute of Limitations pursuant to the Equitable Tolling Doctrine and, Therefore, in Granting Respondents' Motion to Dismiss?

STATEMENT OF THE CASE

This case originates from a February 13, 2019, motor vehicle collision on I-26 in Lexington County. Joseph S. Gray, the husband of Appellant Glenna Gray, was operating a 2010 Chevrolet Malibu and Respondent Larousse Lamur, was operating a 2015 Freightliner 18-wheeler during the subject collision. Ms. Gray was seriously injured in the collision and her husband, Joseph, later died. (R. p. 020).

On March 30, 2021, Appellant Glenna Gray filed a Complaint in the Federal District Court for the District of South Carolina against Respondents (hereinafter the "Federal Court Action"). (R. pp. 020). In the Federal Court Action, Appellant Glenna Gray asserted causes of action for negligence, gross negligence, and negligence *per se*. (*Id.*) It is undisputed that all Respondents were properly served. Respondents filed an Answer on June 2, 2021, and an Amended Answer on June 9, 2021. (R. pp. 029-032, R. pp. 034-038). Neither the Answer or Amended Answer raised Venue or Subject Matter Jurisdiction defenses.[1] On June 22, 2021, Appellant moved to amend the Complaint to add Appellant Michael W. Gray, as Personal Representative of the Estate of Joseph S. Gray (hereinafter "Appellant Michael Gray"), as an additional Plaintiff to the action, asserting causes of action for wrongful death and survival. (R. pp. 039-041). Although Respondents opposed the amendment, Respondents' opposition was in no measure based upon any argument related to lack of subject matter jurisdiction. (R. pp., 054-0056).

[1] Moreover, in both documents, Respondents admitted that the District Court had jurisdiction over the action. *See*, Fed. Ans. ¶ 4 and Fed. Amend. Ans. ¶ 4 (each admitting ¶ 11 of the Federal Complaint, which alleged "[t]hat this Court has jurisdiction over the parties and the subject matter of this action."

On January 7, 2022, in a written Opinion and Order, the District Court granted Appellant's Motion to Amend. (R. pp. 001-005). In so doing, the Court "reviewed and thoroughly considered" the respective arguments and the proposed Amended Complaint. With leave of the Court secured, Appellants filed their Amended Complaint on January 10, 2022. (R. pp. 069-081). Thus, it is undisputed that the action was commenced as of January 10, 2022, more than a month ahead of the February 13, 2022 statute of limitations. Respondents answered the Amended Complaint on January 13, 2022, again admitting that the Court "[had] jurisdiction over the parties and the subject matter of [the] action." (R. pp. 082-086).

Following commencement of the action, the parties actively litigated the matter. Multiple sets of discovery were exchanged and several depositions were taken. Appellants identified expert witnesses. (R. p. 135). Respondents moved for Summary Judgment and Appellants timely responded. (R. pp. 135-136). The matter was mediated to an impasse between August 31, 2022 and September 2, 2022. The parties were prepared for trial, with the case on a jury selection deadline of December 8, 2022. (R. pp. 135). Appellants filed record custodian affidavits. (R. p. 135). Respondents filed a motion *in limine*. (R. p. 136). On September 19, 2022 and September 20, 2022, Respondents and Appellants (respectively) filed Rule 26(a)(3) Pre-Trial Disclosures. (R. p. 136). The case was ready for trial.

Then, on February 16, 2023, the District Court issued an Order *sua sponte* dismissing the case, without prejudice, for lack of subject matter jurisdiction. (R. pp. 006-010). Appellants filed a timely Motion to Reconsider, which was denied by the District Court on May 2, 2023. (R. p. 136).

Promptly thereafter, on May 8, 2023, Appellants filed the present action in the Lexington County Court of Common Pleas. (R. pp. 088-100). Respondents moved to dismiss Appellant

Glenna Gray's cause of action for negligence and Appellant Michael Gray's survival action on July 20, 2023, citing the applicable statue of limitations. (R. pp. 101-103). Appellants responded that the Statute of Limitations should be tolled pursuant to the Equitable Tolling Doctrine. (R. pp. 111-117). By Order dated December 7, 2023, the trial court granted Respondents' motion to dismiss. (R. pp. 011-019). This appeal was timely filed on January 3, 2024.

ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO TOLL THE STATUTE OF LIMITATIONS PURSUANT TO THE EQUITABLE TOLLING DOCTRINE AND, THEREFORE, IN GRANTING RESPONDENTS' MOTION TO DISMISS.

"In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009)(quoting 54 C.J.S. *Limitations of Actions* § 115 (2005)). "The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use." *Id.* (citing *Ocana v. Am. Furniture Co.,* 135 N.M. 539, 91 P.3d 58, 66 (2004).

Although equitable tolling is to be used sparingly, it may be applied where it is justified under all the circumstances. *Id.* at 386 S.C. 117, 687 S.E.2d 33. "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Id.* quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex.App.2006).

In the present action, the trial court should have applied the equitable tolling doctrine and denied Respondents' Motion to Dismiss. However, in considering the tolling issue, the trial court misconstrued the applicable standard. Analysis of the issue under the proper standard necessitates

a different result – the application of the doctrine and denial of the Motion to Dismiss. Accordingly, the trial court erred and should be reversed for the following reasons.

A. The Trial Court Applied an Erroneous Standard

In analyzing the tolling issue, the trial court concludes "…this Court finds no allegation that the Defendants caused or contributed to the circumstances whereby the Plaintiffs filed this lawsuit after the running of the Statute of Limitations. Therefore, the Court finds that the Statute of Limitations should not be equitably tolled" (R. p. 015). In explaining this result, the trial court goes even further, twice finding that "Defendants did not act with fraud or deceit…" (R. p. 017).

This analysis is incorrect and erroneous. As an initial matter, although the record does not suggest that Respondents acted in bad faith, Appellants do allege that Respondents "contributed" to the circumstances at bar. Indeed, even the District Court "contributed." The parties litigated the matter for nearly 23 months – so thoroughly that the case was ready to be tried. At no time during that period did Respondents ever question the subject matter jurisdiction of the District Court. For that matter, neither did the District Court, at least not until February 16, 2023. Up until that point, the Court exercised jurisdiction on multiple occasions, including the entry of an Order allowing the filing of an Amended Complaint which the Court had thoroughly reviewed and found to be meritorious. Appellants do not mean to suggest that anybody did anything wrong, or that anybody is to blame, but the failure of Respondents to raise the jurisdictional issue earlier was certainly a contributing factor to the timeline in which the underlying litigation unfolded.

Although that fact is apparent, it is wholly immaterial. While bad faith, fraudulent, or deceitful conduct from the defendant may be among the circumstances that warrant equitable tolling, a defendant's conduct (or lack thereof) is not a standalone element in the analysis. *See Hooper*, 386 S.C. 116, 687 S.E.2d 33 ("[T]he doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to

ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits.")(citing *Machules v. Dep't of Admin.*, 523 So.2d 1132, 1134 (Fla.1988)); *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012).

Stated differently, a lack of bad faith conduct from the defendant does not automatically foreclose application of the equitable tolling doctrine because such conduct is not required to invoke the doctrine. In this regard, the trial court erred in holding that lack of deceit or fraud was necessarily fatal to equitable tolling in the present matter. Indeed, as discussed below, the South Carolina Supreme Court has cited with approval multiple applications of the equitable tolling doctrine that have nothing at all to do with a defendant's conduct.

B. This Action Fits Squarely Within the Appropriate Standard

In *Hooper*, the South Carolina Supreme Court cites with approval a number of circumstances in which the equitable tolling doctrine might apply. Those include 1) tolling the statute of limitations while a party pursues one of multiple legal remedies;[2] 2) where the plaintiff has actively pursued his or her legal remedies by filing a timely but defective pleading;[3] and 3) where the plaintiff has timely raised the same claim in the wrong forum.[4]

Each of those scenarios is analogous, if not directly on point, with the factual pattern that led to the present matter. But the Supreme Court went even further, holding that such scenarios "do not constitute an exclusive list of circumstances that justify the application of equitable

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[2] *Hooper*, 386 S.C., 116, 687 S.E.3d 33(*Irbyv. Fairbanks Gold Mining, Inc.,* 203 P.3d 1138, 1143 (Alaska 2009)).
[3] *Id.* (quoting *Abbott v. State,* 979 P.2d 994, 998 (Alaska 1999)).
[4] *Id*. (quoting *Kaplan v. Morgan Stanley & Co.,* 186 Vt. 605, ——, 987 A.2d 258, 264 (2009) (2009 WL 2401952)).

tolling." *Id.* at S.C. 116, S.E.2d 33. Rather, as noted above, the doctrine of equitable tolling should be applied when justified under all the circumstances.

It is hard to imagine a set of circumstances that would justify equitable tolling more clearly than those in the present matter. It is undisputed that a lawsuit was timely filed and served prior to the expiration of the statute of limitations. The parties vigorously litigated the matter, to such an extent that the case is essentially ready for trial. And always throughout said litigation, the parties, including and specifically the Respondents, were prepared for and expecting a trial. And at no time did Respondents ever raise concerns about the District Court's jurisdiction. Instead, Respondents caught what was essentially a lucky (and wholly unexpected) break, when the District Court *sua sponte* dismissed the claims on the eve of trial.

The jurisprudence does not appear to require a balancing test wherein it is necessary to weigh the factors in favor of equitable tolling against any prejudice it might cause to the Defendant. But even if it did, that balance, too, would fall in favor of equitable tolling in this matter. If the purposes underlying the Statute of Limitations in the first place are to "promote justice by forcing parties to pursue a case in a timely manner,"[5] to "relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights,"[6] and "to protect potential defendants from protracted fear of litigation,"[7] then allowing equitable tolling in the present matter would do nothing to upset those notions and, if anything, affirming the dismissal would offend them. Appellants pursued this case in a timely and vigorous manner. The court system (and the parties)

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[5] *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct. App. 2004)(quoting *State ex rel. Condon v. City of Columbia,* 339 S.C. 8, 19, 528 S.E.2d 408, 413–14 (2000)).
[6] *Id*. (citing *McKinney v. CSX Transp., Inc.,* 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct.App.1989)).
[7] *Id.* (citing 51 Am.Jur.2d *Limitation of Actions* § 17, at 602–03 (1970)).

has already incurred the burdens of litigating the claims through discovery and substantially through motions practice. And the best way to assuage Respondents' fear of protracted litigation is to give them their day in court. Everything that was going to happen in this case has already happened. The only thing left to do now is empanel a jury.

CONCLUSION

If ever there was a justification to apply equitable tolling "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits" this is it. The trial court's dismissal should be vacated, and this matter remanded for such trial on the merits.

Respectfully submitted,

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