

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A. No.: 2011-CP-10-400

Jacquelin S. Bennett, Genevieve S. Felder
and Kathleen S. Turner, individually, as
Co-Trustees and beneficiaries of the
Marital Trust and the Qualified Terminable
Interest Trust created by the Thomas
Stevenson Will, and Jacquelin S. Bennett,
and Kathleen S. Turner, as Co-Personal
Representatives on behalf of the Estate of
Jacquelin K. Stevenson,

Plaintiffs,

v.

T. Heyward Carter, Jr.; Evans, Carter;
Kunes & Bennett, P.A.; Dixon-Hughes f/k/a
Pratt-Thomas Gumb & Co., P.A.; and
Lynne L. Kerrison.

Defendants.

AMENDED ORDER ON PLAINTIFFS'
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRP

FILED
2013 AUG 20 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

This matter is before the court on plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e), SCRP (the "Motion to Alter or Amend"). The court has considered the memoranda, arguments, authorities, and supporting material submitted in writing by the parties. After review and consideration, the court finds that the motion should be denied for the following reasons.

PROCEDURAL HISTORY

On July 13, 2012, defendants Dixon Hughes and Lynne Kerrison filed a motion for summary judgment in their favor an all claims asserted by the plaintiffs in this action. The court heard oral argument on the motion for summary judgment on April 29, 2013. On June 10, 2013, the court informed the parties that it had decided to grant the defendants' motion for summary judgment. On June 13, 2013, defendants submitted a proposed Order and Judgment. On June 19, 2013, plaintiffs submitted their Objections

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to Proposed Order of Defendants Lynne Kerrison and Dixon Hughes, or in the Alternative, Motion to Amend a Response to a Request to Admit. On July 3, 2013, the court entered its Order Granting Defendants Dixon Hughes PLLC and Lynne Kerrison's Motion for Summary Judgment (the "Order"). In their Motion to Alter or Amend, plaintiffs state that they received written notice of the entry of the Order on July 12, 2013. On July 22, 2013, plaintiffs filed their Motion to Alter or Amend. Plaintiffs ask the court to grant their Motion to Amend a Response to a Request to Admit; amend the Order to eliminate the finding that plaintiffs' claims were barred April 19, 2009, in consequence of an admitted communication to Kathleen S. Turner on April 19, 2006; and amend the Order to eliminate the finding that defendants owed plaintiffs no duty because they were not clients.

FINDINGS OF FACT

Plaintiffs did not bring their Motion to Amend a Response to a Request to Admit until after the court heard the defendants' motion for summary judgment and informed the parties that it had decided to grant that motion for summary judgment. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so.

The Motion to Alter or Amend addresses one of the bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. The Motion to Alter or Amend raises no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations.

In their Motion to Alter or Amend, plaintiffs offer an argument in support of their objection to the court's finding that defendants owed plaintiffs no legal duty because they were not clients. Plaintiffs raised this argument when the court heard and decided the motion for summary judgment, and it was previously addressed by the court.

A handwritten signature or set of initials, possibly 'R', written in black ink.

CONCLUSIONS OF LAW

A court's decision on a motion to alter or amend a judgment under Rule 59 is committed to the court's discretion. *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 723 S.E.2d 835 (S.C. Ct. App. 2012). A party cannot use a motion to alter or amend a judgment pursuant to Rule 59(e) to present an issue the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (S.C. Ct. App. 2009).

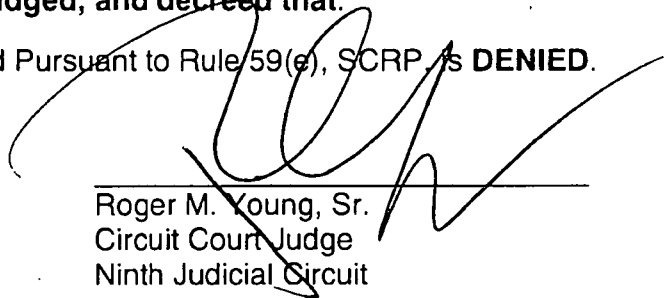
Plaintiffs' request that they be permitted to amend a response to a request to admit is untimely. Plaintiffs could have brought the Motion to Amend a Response to a Request to Admit before the court heard the motion for summary judgment, but did not do so. See *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993). In addition, were the court to grant plaintiffs' Motion to Amend a Response to a Request to Admit, this would not avail the plaintiffs. The Motion to Amend a Response to a Request to Admit bears upon only one of the several bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. In their Motion to Alter or Amend, plaintiffs raise no objection to the other bases on which the court found that plaintiffs brought this lawsuit outside the applicable statute of limitations. Because of the lateness of the request, and because the ultimate result would not be changed, the court concludes that the Motion to Amend a Response to a Request to Admit should be denied.

Also untimely and substantively unavailing is the legal argument that plaintiffs advance in support of their objection to the court's finding that defendants owed plaintiffs no legal duty. Plaintiffs' argument relies upon no new facts, nor was there any surprise in defendants' argument or the court's ruling. Plaintiffs raised this argument before the court heard and decided the motion for summary judgment. This argument was previously considered and rejected by the court, and is substantively unavailing. If a duty was owed to plaintiffs, it had to be owed as a result of the relation between

defendants and one or more plaintiffs, not as a result of a relation between defendants and Jacquelin Stevenson. The evidence was uncontested that there was no relationship between defendants and plaintiffs. The court specifically finds that defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson. Because defendants owed no duty to plaintiffs by virtue of Kathleen Turner's status as attorney-in-fact for Jacquelin Stevenson, the court concludes that the Motion to Alter or Amend should be denied.

THEREFORE, it is ordered, adjudged, and decreed that:

Plaintiffs Motion to Alter or Amend Pursuant to Rule 59(e), SCR.P. is **DENIED**.



Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

8/20, 2013
Charleston, SC