

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-10-03038

JON KANE,  
Plaintiff,

vs.

DARIEN APPEGATE, DARIEN E.  
APPEGATE TRUST, DARIEN E.  
APPEGATE, Successor in Partnership, BIG  
BLUE ALLURE, LLC, ALLURE OUTDOOR,  
LLC, ALLURE ADVERTISING, LLC,  
LAMAR OCI SOUTH CORP., LAMAR  
ADVERTISING

Defendants.

**RECEIVED**  
**Dec 03 2024**  
**SC Court of Appeals**

**ORDER**

This matter came before the Court on September 4, 2024 on the Motion to Dismiss in Lieu of Answer filed by Defendants Darien Applegate, individually and as Trustee of the Darien E. Applegate Trust, Big Blue Allure, LLC, and Allure Outdoor, LLC (collectively, the “Applegate Defendants”). Matthew Kelly of the firm Oyster Road Law Firm, LLC and Daniel Slotchiver of the firm Slotchiver & Slotchiver, L.L.P. appeared on behalf of Plaintiff; Jennifer M. Houti of the firm James, McElroy & Diehl, P.A. appeared on behalf of the Applegate Defendants; and Gaillard Dotterer, III of the firm Bybee & Tibbals appeared on behalf of Defendants Allure Advertising, LLC (“AALLC”), Lamar OCI South Corp. (n/k/a Lamar OCI South, LLC) (“Lamar OCI”), and Lamar Advertising (collectively, with AALLC and Lamar OCI, the “Lamar Defendants”). For the reasons set forth below, the Court grants the Applegate Defendants’ motion to dismiss the Complaint.

**FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

Plaintiff Jon Kane alleges he was a longtime friend of Joe Applegate, who he met when they worked together for an advertising company. Compl., ¶¶ 11-13. Plaintiff alleges that in 2015, he and

Joe Applegate agreed to form a partnership for the construction and operation of a billboard on property owned by Joseph Sharp in North Mount Pleasant along Highway 41. Compl., ¶¶ 13-19. According to Plaintiff, the parties agreed that Plaintiff would find a suitable location for a billboard, Joe Applegate would fund the construction of the billboard, and after Joe Applegate “was paid back for the construction outlay” the parties would evenly split all net proceeds generated by the billboard. Compl., ¶ 13. Plaintiff does not allege that the parties entered into any written agreement concerning a partnership. Plaintiff identified the site on Sharp’s property, Defendant Allure Advertising, LLC entered a lease for that site, and construction of the billboard began. Compl., ¶¶ 15, 19-20, 35. Construction of the billboard was complete in late 2016/early 2017. Compl., ¶¶ 35.

In April or May of 2019, Joe Applegate let Plaintiff know that his out-of-pocket expenses associated with the construction of the Billboard had been paid off. Compl., ¶ 51. Joe Applegate passed away on June 29, 2019. Compl., ¶ 52. “The Probate period for [Joe Applegate’s] estate commenced in late summer of 2019 and lasted for a period of one year.” Compl., ¶ 53. Plaintiff did not allege that he made any claim against the estate of Joe Applegate during the Probate period.

On December 30, 2021, Plaintiff alleges that Defendant Darien Applegate “without consulting Plaintiff executed a transfer and assignment of the lease for the land on which the billboard is located to Defendant Lamar OCI South Corporation.” Compl., ¶ 75. Defendant Allure Advertising, LLC was merged into Lamar OCI South Corporation effective May 5, 2022. Compl., ¶ 76.

On June 22, 2023, Plaintiff commenced this action by filing the Complaint. Plaintiff asserts sixteen claims against various defendants. On October 18, 2023, the Applegate Defendants timely filed their Motion to Dismiss in Lieu of Answer, seeking dismissal of all of Plaintiff’s claims against them pursuant to Rules 12(b)(6) and 12(b)(9) of the South Carolina Rules of Civil Procedure. That motion was heard before the undersigned on September 4, 2024 and taken under advisement.

## DISCUSSION

The Court finds that Plaintiff has failed to state facts sufficient to constitute causes of action against the Applegate Defendants, as Plaintiff's claims are time-barred by the statute of limitations.

As an initial matter, the Court disagrees with Plaintiff's argument that a motion to dismiss on the basis of a statute of limitations is not permitted prior to the filing of an answer. See Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) ("Under Rule 12(b)(6), SCRCPP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action."); id. at 208-09, 584 S.E.2d at 419 (affirming the circuit court's dismissal under Rule 12(b)(6), SCRCPP, because the South Carolina Tort Claims Act's statute of limitations barred the cause of action). The motion is properly before the Court at this time.

Pursuant to S.C. Code Ann. § 33-41-930(4), dissolution of a partnership is caused by the death of any partner. Here, all of Plaintiff's claims are based on and arise out of his allegations of a partnership between himself and Joe Applegate. As Joe Applegate died on June 29, 2019, the partnership dissolved as of that date. Accordingly, all of Plaintiff's claims began to accrue on June 29, 2019.

In this action, Plaintiff asserts claims against the Applegate Defendants and one or more of the Lamar Defendants for: declaratory judgment, breach of contract, breach of contract with fraud, breach of fiduciary duty, unjust enrichment, for an accounting, fraud, constructive fraud, constructive trust, unfair trade practices, quantum meruit, conversion, wrongful dissolution, civil conspiracy, interference with a contractual relationship, and negligent interference with a contractual relationship.<sup>1</sup> Each of these claims is governed by a three-year statute of limitations. S.C. Code Ann.

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<sup>1</sup> It does not appear that any cause of action is asserted against Defendant Lamar Advertising, nor is said entity referenced in the allegations of the "Parties" section of the Complaint (Compl., ¶¶ 1-8). Each of Plaintiff's claims is asserted against the now-defunct AALLC, while two claims are alleged against Lamar OCI based on it not discovering the alleged partnership between Plaintiff and Joe Applegate prior to Lamar OCI's purchase of AALLC.

§§ 15-3-530(1), -530(2), -530(4), -530(7). Although each of Plaintiff's claims began to accrue on June 29, 2019, Plaintiff's Complaint was filed more than three years later on June 22, 2023. Plaintiff's claims are therefore time-barred.

Plaintiff argues that his action was timely filed because Defendant Darien Applegate continued the business of operating the billboard, and the "continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership." S.C. Code § 33-41-560(2). This section does not apply to the partnership as alleged by Plaintiff and does not avoid application of the statute of limitations to bar the claims alleged by Plaintiff.

### **CONCLUSION**

In conclusion, the Court hereby GRANTS Defendants Darien Applegate, individually and as Trustee of the Darien E. Applegate Trust, Big Blue Allure, LLC, and Allure Outdoor, LLC's Motion to Dismiss in Lieu of Answer pursuant to Rule 12(b)(6), SCRPC, and finds that all claims asserted against them by Plaintiff ARE DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

*[Electronic Signature Page Follows]*



Charleston Common Pleas

**Case Caption:** Jon Kane VS Darien Applegate , defendant, et al

**Case Number:** 2023CP1003038

**Type:** Order/Dismissal

So Ordered

Jessica A. Salvini