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STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 Cynthia Griffis)
 Plaintiff)
 v.)
 Cherry Hill Estates, LLC, Eugene O'Neil)
 and Ronald Faulkner)
 Defendant(s))
 Cherry Hill Estates, LLC and Ronald)
 Faulkner,)
 Third Party Plaintiffs)
 v.)
 Anthony E. Griffis)
 Third Party Defendant)

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2009-CP-07-06054
)

ORDER ON MOTION
 FOR RECONSIDERATION
 AND ORDER GRANTING
 THIRD PARTY DEFENDANT'S
 SUMMARY JUDGMENT MOTION

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 COURT REPORTER
 COURT REPORTER

This matter came before the Court on August 14, 2012 upon Motion for Reconsideration by Third Party Defendant ("Mr. Griffis") of this Court's Order rendered on August 3, 2012 in which the Court applied "equitable tolling" to allow Third Party Plaintiffs additional time, outside the applicable statute of limitations, to obtain the expert affidavit required by S.C. Code Section 15-36-100(F) in support of its legal malpractice claims. Upon reconsideration, this Court finds that "equitable tolling" should not be applied to this case, and therefore grants Third Party Defendant's Motion for Summary Judgment as to the Third Party Plaintiffs' First, Second and Third Causes of Action.

Mr. Griffis seeks summary judgment on the Third Party Plaintiffs First, Second and Third Causes of Action which assert claims for breach of fiduciary duty and professional negligence.

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all arising out of a duty created by the attorney-client relationship. Mr. Griffis invokes South Carolina Code of Laws Section 15-30-100 which requires that an affidavit from an expert be filed with a Complaint asserting such causes of action, and that the within causes of action are barred by the applicable statute of limitations. This Court finds:

1. The applicable period of limitations for Third Party Plaintiffs' complaint expired on or before October 9, 2010 – three years after Third Party Plaintiffs' attorney and attorney-in-fact (John P. Qualey, Esq.) had actual notice of the personal guarantees on the loan obligations.

Dorman v. Campbell, 500 S.E.2d 786 at p 789 (S.C App. 1998); *Crystal Ice Co. v. First Colonial Corp.*, 273 S.C. 306 (1979); *Faulkner v. Millar*, 319 S.C. 216 (1995).

2. Third-Party Plaintiffs did not “have” the required expert affidavit until after expiration of the period of limitations, as evidenced by the notary date of November 11, 2010, on the expert affidavit. South Carolina Code section 15-36-100(F) provides, in pertinent part:

[I]f a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, **the complaint is not subject to renewal after the expiration of the applicable period of limitation** unless a court determines that the plaintiff **had** the requisite affidavit within the time pursuant to this section...” (emphasis added)

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

Although this Court on August 3, 2012, denied the subject Motion for Summary Judgment, based upon the doctrine of “equitable tolling”, this Court now recognizes that equitable tolling should not be invoked by the Court of it's own Motion, and should only be used

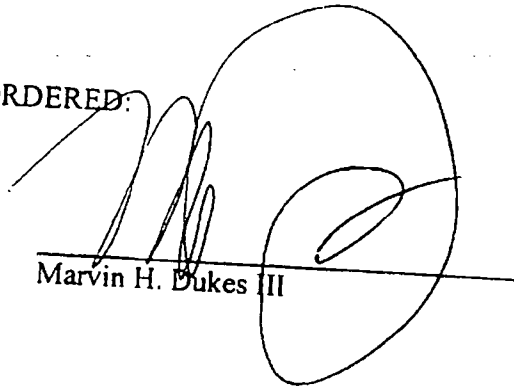
2013

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sparingly. *Hooper v. Ebenezer Senior Services and Rehabilitation Services*, 368 S.C.108 (SC 2009); *Kimmer v. Wright*, 719 S.E.2d 265 (S.C. App. 2011); *Holmes v. Marion School District*, 093011 SCDC (US District Court, Florence Division, September 30, 2011). Accordingly, equitable tolling does not apply to the instant case, and therefore Third Party Plaintiffs' First, Second, and Third Causes of Action are hereby dismissed with prejudice pursuant to S.C. Code Section 15-36-100(F).

IT IS SO ORDERED:



Marvin H. Dukes III

Beaufort, South Carolina
February 20, 2013

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Cynthia Griffis)

Plaintiff)

v.)

Cherry Hill Estates, LLC, Eugene O'Neil)
and Ronald Faulkner)

Defendant(s))

Cherry Hill Estates, LLC and Ronald)
Faulkner,)

Third Party Plaintiffs)

v.)

Anthony E. Griffis)

Third Party Defendant)

IN THE COURT OF COMMON PLEAS)
EIGHTH JUDICIAL CIRCUIT)

CIVIL ACTION NO.: 2009-CP-07-06054)

ORDER ON MOTION TO DISMISS)

10 OCT 27 AM 10:44
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before the Court on October 14, 2010 upon the Motion of Third Party Defendant Anthony Griffis seeking an Order pursuant to SCRCP 12(b)(6) dismissing the claims of Third Party Plaintiffs. Present were Mr. Griffis, representing himself, Michael W. Mogil for the Third Party Plaintiffs, and James O. Hale representing the Plaintiff, Cynthia Griffis. After hearing argument by all parties, I find as follows:

- 1) The Third Cause of Action of the Third Party Complaint, alleging professional negligence, is dismissed without prejudice provided that the Third Party Plaintiffs have thirty (30) days, or until November 14, to serve an Amended Complaint alleging this cause of action, supported by the affidavit of an expert witness as required by S.C. Code Ann. Section 15-36-100.
- 2) The First and Second Causes of Action, alleging breach of fiduciary duty, are dismissed without

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prejudice to the extent that as pled they may require the same affidavit, and the Third Party Plaintiffs have thirty (30) days, or until November 14, to serve an Amended Complaint alleging this cause of action, supported by the affidavit of an expert witness as required by S.C. Code Ann. Section 15-36-100 or to re-plead these matters so as not to require an expert affidavit.

3) The Fourth Cause of Action for Civil Conspiracy is dismissed, without prejudice, provided Plaintiff serves an Amended Complaint pleading special damages caused by or flowing from the civil conspiracy claim, as required by Todd v. S.C. Farm Bureau, 276 S.C.284, 278 S.E. 2d 607 (1985).

If Third Party Plaintiffs fail to serve an Amended Complaint on or before November 14, 2010, the above referenced causes of action shall be dismissed with prejudice.

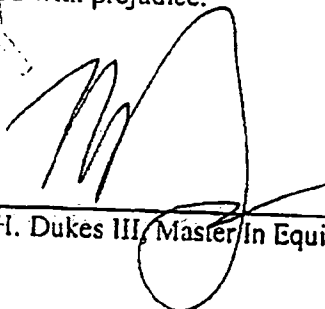
It is SO ORDERED:

Beaufort, South Carolina

October 26 2010

Beaufort

COPY


Marvin H. Dukes III, Master In Equity

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A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan			6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input checked="" type="checkbox"/> Conv. Unins.	CHERRYHI		BB
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
Cherry Hill Estates, LLC 5 Big Oak Street Hilton Head Island, SC 29926	Anthony E. Griffs Cynthia Griffs 1721 Cherry Hill Road Ridgeland, SC 29936	Woodlands Bank 135 Canal Street Pooler, GA 31322

G. Property Location	H. Settlement Agent	I. Settlement Date
1721 Cherry Hill Road Ridgeland, SC 29936 27.096 Acres Jasper County, SC	QUALEY LAW FIRM, P.A. Place of Settlement 32 Office Park Rd., Sta. 100 P.O. BOX 10 HILTON HEAD ISL, SC 29936	10/1/07

J. SUMMARY OF BORROWER'S TRANSACTION:		K. SUMMARY OF SELLER'S TRANSACTION:	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price	1,013,000.00	401. Contract sales price	1,013,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	17,449.06	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. Rental Taxes	to	406. Rental Taxes	to
107. County taxes	to	407. County taxes	to
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,030,449.06	420. GROSS AMOUNT DUE TO SELLER	1,013,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT TO SELLER	
201. Deposit or earnest money		501. Earnest Deposit (see instructions)	
202. Principal amount of new loan(s)	850,000.00	502. Settlement charges to seller (line 1400)	2,280.00
203. Existing loan(s) taken subject to		503. Existing loans taken subject to	
204.		504. Payoff of first mortgage loan	287,050.73
205.		SunTrust Bank	
206. Second Mortgage	200,000.00	505. Payoff of second mortgage loan	
207.		506. Second Mortgage	200,000.00
208.		507.	
209.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. Rental Taxes	to	510. Rental Taxes	to
211. County taxes	01/01 to 10/10	511. County taxes	01/01 to 10/10
212. Assessments	to	512. Assessments	to
213.		513.	
214. Mobil Home Taxes	295.27	514. Mobil Home Taxes	295.27
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY / FOR BORROWER	1,050,465.19	520. TOTAL REDUCTION AMOUNT DUE SELLER	489,835.92
300. CASH AT SETTLEMENT FROM OR TO BORROWER		600. CASH AT SETTLEMENT TO OR FROM SELLER	
301. Gross amount due from borrower (line 120)	1,030,449.06	601. Gross amount due to seller (line 420)	1,013,000.00
302. Less amounts paid by for borrower (line 220)	1,050,465.19	602. Less reduction amount due to seller (line 520)	489,835.92
303. CASH TO BORROWER	20,016.13	603. CASH TO SELLER	523,164.08

In the event a reproduction of this form is necessary when the tax bills for 2007 are prepared, the parties agree to handle said reproduction between themselves. SUBSTITUTE FORM 1000 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. Any person who files a return, a reporting requirement or other document with the IRS that is required to be reported and the IRS determines that it has not been reported, the Contract Sales Price disclosed on this form shall be deemed to be the Gross Proceeds of this transaction.

E6

between the parties required him to personally guarantee a note to Ms. Griffis. Rather, he alleges that he understood the agreement between the parties to not require any personal guarantee of the Purchaser obligations to Ms. Griffis.

12. Upon information and belief, Anthony Griffis did personally benefit from Cherry Hill Estate's purchase of the subject property, and from Mr. Faulkner's loan guarantees, to those Defendants' detriment and damage.

13. Anthony Griffis expressly reserved for himself an equity interest in Cherry Hill Estates, LLC and expressly declined to guarantee its debts.

For a First Cause of Action (Breach of Fiduciary Duty owed to Faulkner)

14. Defendant Ronald Faulkner re-alleges the allegations of paragraphs 1 through 13 above as though fully restated herein.

15. Anthony Griffis learned of Ronald Faulkner's financial situation and his financial and personal strengths, weaknesses and affairs in his unique position as Mr. Faulkner's attorney.

16. Anthony Griffis, whom had personally provided legal advice to Ronald Faulkner, and whom had confidential knowledge of Ronald Faulkner's financial affairs, owed Faulkner a fiduciary duty to protect Mr. Faulkner's best interests. Ronald Faulkner relied on Anthony Griffis in his capacity as his attorney.

17. Anthony Griffis owed Mr. Faulkner and Cherry Hill Estates a duty to expressly advise them in writing, individually and collectively, that prior to engaging in a business transaction with Mr. Griffis they should obtain independent advice of counsel, pursuant to Rules of Professional Conduct Rule 1.8.

18. Mr. Griffis did not at any point advise Mr. Faulkner in writing, or otherwise, that he should

obtain separate independent counsel as required by the Rules of Professional Conduct, Rule 1.8.

19. Mr. Griffis' failure to advise Mr. Faulkner as required by the Rules of Professional Conduct is a breach of his fiduciary duty owed to Mr. Faulkner. This breach is affirmed by the affidavit of Thomas Pendarvis, Esq., attached hereto.

20. As a result of the breach of fiduciary duty, Mr. Faulkner was connected as a loan guarantor to two loans which are vastly undersecured, and is potentially personally liable for note guarantees to Ms. Griffis and to Woodlands Bank.

21. The transaction to sell 27 acres at Cherry Hill Estates to Cherry Hill Estates, LLC, as structured by Mr. Griffis, is and was a transaction void against public policy because it required that the parties not disclose material events, such as the existence of the October 8, 2010 side agreement, and the disbursements to Mr. O'Neil from the sales proceeds, in order to complete the transaction with loan funding from Woodlands Bank.

22. Anthony Griffis owed Mr. Faulkner a fiduciary duty to not involve Mr. Faulkner in such a transaction that could potentially expose Mr. Faulkner to liability.

23. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Ronald Faulkner has been damaged by the potential liability he owes to Woodlands Bank and Cynthia Griffis, by loss of any his personal down payment funds used to purchase Cherry Hill Estates, by the damage to Ronald Faulkner's credit rating and standing, and for the costs and fees incurred in defending this lawsuit, in an amount to be proven at trial.

For a Second Cause of Action (Breach of Fiduciary Duty owed Cherry Hill Estates, LLC)

24. Defendant Cherry Hill Estates, LLC re-alleges the matters in paragraphs 1 through 23 above as though fully restated herein.

25. Anthony Griffis owed a fiduciary duty to his client, Cherry Hill Estates, LLC, the purchaser of his property. Mr. Griffis violated the Rule 1.8 of the Rules of Professional Conduct by engaging in a business transaction with his client, without first giving it express instruction to seek independent counsel, and by engaging in the conduct as alleged above. This is affirmed by the affidavit of Thomas Pendarvis attached hereto.

26. As a direct and proximate result of Third Party Defendant Griffis' breach(s), Defendant Cherry Hill Estates, LLC has been damaged by the potential liability it owes to Woodlands Bank and Cynthia Griffis, and for the costs and fees incurred in defendant this lawsuit, in an amount to be proven at trial.

For a Third Cause of Action (professional negligence claimed by Ronald Faulkner and Cherry Hill Estates, LLC)

27. Defendants re-allege the matters in paragraphs 1 through 26 as though fully restated herein.

28. As their attorney, Anthony Griffis owed Defendants a duty of care and duty of conduct.

29. Anthony Griffis conduct and actions in this matter are conduct and actions below the standard of care for an attorney in his community. This is affirmed by the affidavit of Thomas Pendarvis, attached hereto.

30. Upon information and belief, it is alleged that Anthony Griffis's conduct and actions did not meet the standards set forth in the Rules of Professional Conduct governing attorneys in South Carolina. This allegation is affirmed by the affidavit of Thomas Pendarvis, attached hereto.

31. As a direct and proximate result of Third Party Defendant Griffis' breach(s) of the duty of care and duty of conduct, Defendants Ronald Faulkner and Cherry Hill Estates, LLC have been damaged by the potential liability they owe to Woodlands Bank and Cynthia Griffis, by loss of their down