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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the 11th Judicial Circuit

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2024-000020

GLENNA GRAY; AND MICHAEL W. GRAY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH S. GRAY,

Petitioners,

v.

LAROUSSE LAMUR; LAMUR TRANSPORTATION SERVICES, LLC; AND PHOENIX GRAND, LLC,

Respondent.

APPELLANTS' PETITION FOR REHEARING

Come now Petitioners Glenna Gray and Michael W. Gray as Personal Representative of the Estate of Joseph S. Gray and do respectfully submit this Petition for Rehearing pursuant to Rule 221(a), SCACR on the basis that the Court overlooked or misapprehended the points described below.

Glenna and Michael Gray were seriously injured in a motor vehicle wreck between their car and a large commercial truck. Petitioners sued the truck's driver and others in federal court. The parties litigated the case in federal court for twenty-three months – exchanging discovery, taking depositions, conducting mediation, filing pre-trial disclosures, etc. – and were approaching trial when, after twenty-three months of active litigation, the federal court *sua sponte* dismissed the case for lack of jurisdiction.

Petitioners filed a motion to reconsider, which was denied, and four days later Petitioners filed suit in state court. Respondents moved to dismiss on the basis of the statute of limitations, and Petitioners argued that the statute should be equitably tolled. The trial court granted the motion to dismiss, and Petitioners appealed.

On February 26, this Court affirmed the trial court in a short unpublished Rule 220(b), SCACR-style opinion consisting of a page and half of legal citations, but only one sentence of analysis as follows:

> We hold the circuit court did not err in refusing to apply the doctrine of equitable tolling because Appellants failed to establish sufficient facts to justify the use of the doctrine; thus, the circuit court properly dismissed Appellants' action due to the expiration of the statute of limitations.

Respectfully, this single sentence is conclusory, overlooks the myriad of facts that justify equitable tolling, and affirms an order that is inconsistent with South Carolina jurisprudence. As demonstrated by the list of facts below, Petitioners brought a comprehensive set of undisputed facts before the trial court that present a textbook example of when to invoke equitable tolling.[1]

Listed below are the facts brought before the trial court and before this court. These facts are not disputed.

a) On March 30, 2021, Appellant Glenna Gray filed a Complaint in the Federal District Court for the District of South Carolina against Respondents. (R. pp. 020).

b) All Respondents were properly served.

c) Respondents filed an Answer on June 2, 2021, and an Amended Answer on June 9, 2021, neither of which raised venue or subject matter jurisdiction defenses. (R. pp. 029-032, R. pp. 034-038).

d) In both the Answer and Amended Answer, Respondents *admitted* that the District Court had jurisdiction over the action.

[1] Petitioners submit that it is not readily apparent what additional facts might be needed, nor does the opinion shed light on what facts are lacking to justify equitable tolling.

e) 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 as an additional Plaintiff to the action, asserting causes of action for wrongful death and survival. (R. pp. 039-041).

f) In opposing the amendment, Respondents did not raise any argument related to lack of subject matter jurisdiction. (R. pp., 054-0056).

g) On January 7, 2022, in a written Opinion and Order, the District Court stated that it "reviewed and thoroughly considered" the proposed Amended Complaint and granted Appellant's Motion to Amend. (R. pp. 001-005).

h) In granting leave to amend, the District Court determined Appellant's Amended Complaint was not futile. (R. pp. 002-004).

i) Appellants filed their Amended Complaint on January 10, 2022. (R. pp. 069-081).

j) The three-year statute of limitations ran on February 13, 2022.

k) 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).

l) Multiple sets of discovery were exchanged and several depositions were taken.

m) Appellants identified expert witnesses. (R. p. 135).

n) Respondents moved for Summary Judgment and Appellants timely responded. (R. pp. 135-136).

o) The matter was mediated to an impasse between August 31, 2022 and September 2, 2022.

p) Jury selection deadline was set for December 8, 2022. (R. pp. 135).

q) Appellants filed record custodian affidavits. (R. p. 135).

r) Respondents filed a motion in limine. (R. p. 136).

s) On September 19, 2022 and September 20, 2022, Respondents and Appellants (respectively) filed Rule 26(a)(3) Pre-Trial Disclosures. (R. p. 136).

t) On February 16, 2023, the District Court issued an Order *sua sponte* dismissing the case for lack of subject matter jurisdiction. (R. pp. 006-010).

The above-listed facts were brought before both the trial court and this court and are not in dispute.

Our Supreme Court in *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116, 687 S.E.2d 29, 32–33 (2009) tells us that circumstances meriting equitable tolling include but are not limited to:

1) tolling the statute of limitations while a party pursues one of multiple legal remedies;
2) where the plaintiff has actively pursued his or her legal remedies by filing a timely but defective pleading; and
3) where the plaintiff has timely raised the same claim in the wrong forum.

The facts listed above bear directly upon one or more of the circumstances described by our Supreme Court in *Hooper*. Indeed, the third scenario meriting equitable tolling described in *Hooper* – where the plaintiff has timely raised the same claim in the wrong forum – is precisely the circumstances shown by the undisputed facts above.

An example of a trial court properly applying this straightforward analysis to a set of circumstances very similar to those at bar and applying equitable tolling as a result, may be found in an order signed by Judge Alex Kinlaw in 2018. *Scanwell Logistics Chi v. Vis*, 2018 S.C. C.P. LEXIS 1602 (filed Nov. 30, 2018) (attached hereto for the convenience of the Court and incorporated by reference). Judge Kinlaw observed as follows:

> The interests of justice and fairness, as well as the purpose of the statute of limitations itself, favor allowing Plaintiff's claim to proceed at this stage of the litigation. According to the United States Supreme Court, "[s]tatutes of limitations are primarily designed to assure fairness to defendants." *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 428 (1965). "Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* In the present action, Defendant was clearly on notice of this lawsuit, as it was party to each of the timely previous actions filed in the wrong forums. Accordingly, the instant lawsuit did not catch Defendant off guard, and the purpose of the statute of limitations is not served by enforcing it here while equity suggests that it should be tolled.

> Defendant has not shown prejudice to its ability to defend. However, Plaintiff would certainly be prejudiced by the harsh penalty of dismissal at this stage. As can be seen by the prompt filing of each earlier action in succession, Plaintiff did not sit on its rights but diligently attempted, in good faith, to enforce them. *See Pelzer*, 378 S.C. at 521. Based on the facts and in the interest of fairness, equitable tolling of the statute of limitations is appropriate in the instant case.

The same is true here. Here, the facts brought before this Court show that Respondents litigated this matter for nearly two years; it was fully factually developed and ready for trial in the federal court when it was dismissed *sua sponte*. Respondents were in no way caught off guard or otherwise prejudiced, and a rigid application of the statute of limitations would serve no legitimate purpose.

The Court's conclusion that "Appellants failed to establish sufficient facts to justify the use of the doctrine" overlooks or misapprehends the undisputed facts and is inconsistent with South Carolina jurisprudence. Indeed, the cases that the Court cited, as evidence from the parentheticals following them, *support* Petitioners.

As to this Court's finding that the issue of the trial court applying the wrong standard was not preserved, Petitioners must respectfully disagree. Petitioners discussed *Hooper* in their memo to the trial court, the trial court made its decision. A Rule 59(e) motion was not required since the issue was raised, and ruled on, by the trial court. Moreover, Respondents' brief to this Court argued the trial court applied the correct standard ***and said nothing about the issue being unpreserved***. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in part and dissenting in part) (acknowledging although an appellate court is not precluded from finding an issue unpreserved sua sponte, "the silence of an adversary should serve as an indicator to the court of the obscurity of the purported procedural flaw").

As demonstrated above, the conclusory statement that Petitioners "failed to establish sufficient facts to justify the use of the doctrine [of equitable tolling]" is inconsistent with the undisputed facts and contrary to case law. Accordingly, in the interest of justice and pursuant to Rule 221, SCACR, Petitioners request the Court grant rehearing in which the facts are fully considered.

Respectfully Submitted,

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March 13, 2025
Charleston, SC

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2018-CP-23-04175

SCANWELL LOGISTICS (CHI), INC.,

Plaintiff,

v.

VIS, LLC,

Defendant.

ORDER

Plaintiff Scanwell Logistics (CHI), Inc. ("Plaintiff") filed this action on August 7, 2018, alleging breach of contract, account stated, quantum meruit, and unjust enrichment. Before the court is Defendant VIS, LLC's ("Defendant") Motion to Dismiss, filed on October 9, 2018. Defendant filed an accompanying memorandum in support of its Motion to Dismiss on November 12, 2018. Plaintiff filed a Response to Defendant's Motion to Dismiss on November 12, 2018. A hearing was held on the motion on November 15, 2018, and all parties were represented.

I. Background/Procedural History

Plaintiff is a freight forwarder who arranges the shipment of goods from abroad that entered into a contractual relationship with Defendant, an importer of automotive tools. Plaintiff and Defendant have conducted numerous transactions together since 2012. This case concerns thirty-four invoices spanning from January 2015 through April 2016, a period during which Plaintiff alleges that it provided work for Defendant for an agreed upon price of $119,058.48 pursuant to a valid, enforceable agreement but was never paid. Plaintiff filed the instant complaint in the Greenville County Court of Common Pleas on August 7, 2018, asserting that it performed work

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for Defendant pursuant to an Application for Credit and Customer Agreement ("Agreement") but was never paid in violation of the Agreement. According to Plaintiff, between July 2015 and May 2016, agents of Plaintiff and Defendant consistently communicated through e-mail and meetings regarding payment of the invoiced amount and about resolving the dispute without litigation.[1]

Plaintiff first filed a claim against Defendant regarding the alleged failure to pay in a New York County Supreme Court on May 31, 2016, which was dismissed for forum non conveniens on July 18, 2017.[2] *See Scanwell Logistics (CHI) Inc., v. VIS, LLC*, Index No. 652891/2016 (N.Y. Sup. Ct. N.Y. Cnty. 2016). On August 1, 2017, Plaintiff filed the same action in the United States District Court for the Northern District for Illinois, which was dismissed for lack of subject matter jurisdiction on January 16, 2018. *See Scanwell Logistics (CHI) Inc., v. VIS, LLC*, C.A. No. 1:17-cv-05647 (N.D. Ill. 2018). On January 18, 2018, Plaintiff again filed this action in the Circuit Court of Cook County, Illinois, which was dismissed on July 11, 2018, pursuant to the Illinois long-arm statute. *See Scanwell Logistics (CHI) Inc., v. VIS, LLC*, No. 18 L 992 (Ill. Cir. Ct. Cook Cnty. 2018). Finally, Plaintiff filed suit in this Court on August 7, 2018.

Defendant filed the instant Motion to Dismiss on October 9, 2018, alleging that Plaintiff's claims are time-barred pursuant to S.C. Code Ann. § 15-3-530. Defendant argues that the

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[1] See footnotes 4-5, infra.

[2] It is widely accepted that courts may take judicial notice of matters of public record when considering a motion to dismiss. *See Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 508 (4th Cir. 2015) (Stating that a court deciding a motion to dismiss "may properly take judicial notice of 'matters of public record' and other information that, under Federal Rule of Evidence 201, constitute adjudicative facts.'"); *see also Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004) (observing that a court does not convert a motion to dismiss to a motion for summary judgment when it takes judicial notice of public records). South Carolina courts state, "To be subjected to judicial notice, a fact must be of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability." *S.C. Dep't of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E. 2d 463, 467 (Ct. App. 2009); *see also Wise v. Wise*, 394 S.C. 591, 601, 716 S.E. 2d 117, 122 (Ct. App. 2011) (stating that, "A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records," and, "It is not error for a judge to take judicial notice of what was stated in [a] former opinion in [a] prior action of the same case."). The orders cited in the above paragraph ruled on Plaintiff's pleadings relating to this matter in other courts prior to the filing of the present Complaint and qualify for judicial notice as they are public records and their accuracy is indisputable.

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Plaintiff's causes of action arise from contract and are therefore subject to a three-year statute of limitations period. *See* S.C. Code Ann. § 15-3-530. Defendant further alleges that the statute of limitations period began to run on May 24, 2015 (the latest invoice due date), and expired for each cause of action brought by Plaintiff on May 25, 2018. Plaintiff argued that Defendant's motion should be denied pursuant to the principles of equitable tolling and equitable estoppel. The court finds that the circumstances in this action warrant denial of Defendant's motion for the following reasons.

II. Discussion

In considering a motion to dismiss, "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 617 (2010) (quoting *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112–113, 659 S.E.2d 158, 161 (2008)). The court will not sustain the motion if the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *Stiles v. Onorato,* 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

A. Equitable Tolling of Statute of Limitations

Plaintiff first argues the statute of limitations should be tolled based on equitable tolling. In South Carolina, a statute of limitations may be tolled pursuant to statute or pursuant to the doctrine of equitable tolling. "[I]n 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. Services & Rehab. Ctr.*, 386 S.C. 108, 115 (2009) (internal quotations omitted). "Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands

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it." *Id.* "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Id.* (internal quotations omitted). The party seeking to toll the statute of limitations bears the burden of establishing facts sufficient to justify its use. *See id.*

According to the South Carolina Court of Appeals, "The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff," and, "Equitable tolling has been deemed available where—the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period. . . ." *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E. 2d 618, 620 (Ct. App. 2008). In this case, it is evident that Plaintiff did not sleep on its rights while letting the statute of limitations run, but rather timely filed suit first in New York and then twice in Illinois as described above. All three of these pleadings were dismissed for issues relating to the forum and jurisdiction.

Plaintiff timely raised its claims mistakenly in the wrong forums. In addressing the applicability of the doctrine of equitable tolling, the South Carolina Supreme Court has affirmatively cited and quoted cases granting equitable tolling in situations akin to the present facts. "Equitable tolling applies where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or *where the plaintiff has timely raised the same claim in the wrong forum.*" *Hooper*, 386 S.C. at 116 (emphasis added) (quoting *Kaplan v. Morgan Stanley & Co.*, 186 Vt. 605 (2009)). Further, the Court quoted, "Federal precedent equitably tolls the limitations period . . . where the

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plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading . . . ." *Id.* (quoting *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999)).[3]

Furthermore, the Court went on to say that "the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling." *Id.* Rather, a court's equitable power "is not bound by cast-iron rules but exists to do fairness . . . [and] may be applied where it is justified under all the circumstances." *Id.* at 116-17

The interests of justice and fairness, as well as the purpose of the statute of limitations itself, favor allowing Plaintiff's claim to proceed at this stage of the litigation. According to the United States Supreme Court, "[s]tatutes of limitations are primarily designed to assure fairness to defendants." *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 428 (1965). "Such statutes promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* In the present action, Defendant was clearly on notice of this lawsuit, as it was party to each of the timely previous actions filed in the wrong forums. Accordingly, the instant lawsuit did not catch Defendant off guard, and the purpose of the statute of limitations is not served by enforcing it here while equity suggests that it should be tolled.

Defendant has not shown prejudice to its ability to defend. However, Plaintiff would certainly be prejudiced by the harsh penalty of dismissal at this stage. As can be seen by the prompt filing of each earlier action in succession, Plaintiff did not sit on its rights but diligently attempted, in good faith, to enforce them. *See Pelzer*, 378 S.C. at 521. Based on the facts and in

[3] Additionally, numerous courts outside of South Carolina have addressed this issue and determined the same result. *See In re Comm. Bank of N. Va. Mortg. Lending Practices Litigation*, 795 F.3d 380 (3d Cir. 2015) ("Equitable tolling permits a plaintiff to sue after the statutory time period for filing has expired if the plaintiff has timely asserted his or her rights mistakenly in the wrong forum."); *Smith v. American President Lines, Ltd.*, 571 F.2d 102 (2d Cir. 1978); *see also U.S. Equal Employment Opportunity Comm'n v. PC Iron, Inc.*, 316 F. Supp. 3d 1221, 1230 (S.D. Cal. 2018).

the interest of fairness, equitable tolling of the statute of limitations is appropriate in the instant case.

B. Claims for Quantum Meruit and Unjust Enrichment

Secondly, in its memorandum in support of its motion to dismiss, Defendant argues that Plaintiff may not recover under the quasi-contractual theories of quantum meruit and unjust enrichment if it also seeks to recover under breach of contract. However, "[m]odern procedure generally permits a plaintiff to *assert* all viable causes of action, consistent or not." *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990) (emphasis added). "The restriction is not on the potential theories of recovery a plaintiff might pursue, but instead, on the recovery itself . . . there can be no double recovery for a single wrong." *Id.* Considering the facts before the court in the light most favorable to the nonmoving party, the court declines to dismiss any of Plaintiff's theories of recovery at this early stage of the litigation. Plaintiff may eventually have to elect a particular theory of relief, but at this preliminary stage Plaintiff is permitted to plead all causes of action.

C. Equitable Estoppel

Finally, the Court also finds that Defendant's statute of limitations argument is barred by equitable estoppel. The "[e]lements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589 (2001). Further, the "[e]ssential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Id.* "Estoppel cannot exist if

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the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 15 (2000).

> Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct. Such inducement may consist of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary. The defendant's conduct may also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue.

Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136–137 (2000) (quotations and citations omitted). An intentional misrepresentation is not required for the application of equitable estoppel. *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 361 (Ct. App. 2001).

Plaintiff argues that between July 2015 and May 2016, Plaintiff was in communication with Jypsie Etris, Logistics Manager for Defendant, as well as other agents, through e-mail and meetings regarding payment of the invoiced amount. The Court has reviewed e-mails to its Response to Defendant's Motion to Dismiss, allegedly demonstrating the aforementioned communication.[4] Plaintiff asserts that throughout the discussion, Defendant's agents made assurances that Defendant intended to pay the invoices, asserted days by which the invoices would be paid, and expressed commitment that the parties' business relationship continue. Finally, Plaintiff alleges that in January 2016, amid the invoice payment and settlement discussions, Plaintiff was informed that Etris, who had been Defendant's lead correspondent with Plaintiff on

[4] In its Memorandum in support of its Motion to Dismiss, Defendant challenges the introduction of the e-mails solely for the reason that Plaintiff's Response lacked any authenticating affidavit in support of the e-mails. At the hearing, Plaintiff presented affidavits from Scanwell participants of each e-mail in which the Scanwell employees identified each e-mail and stated that the e-mail conversations as presented were true and unaltered.

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the billing issue, was out indefinitely on medical leave and that the bill payment issue would have to stay on hold unless the parties could reach a settlement.[5]

According to Plaintiff, the above described communications induced it to believe that a lawsuit might be unnecessary due to Defendant's continuous promises to pay the amount owed in the near future and the expressed desire to resolve the dispute without litigation in order to continue the parties' business relationship. Plaintiff asserts that Defendant's representations caused it to delay the filing of Plaintiff's Complaint nearly one year and that the delay in filing was caused by Defendant.

According to Defendant's Motion to Dismiss, the deadline for Plaintiff to file this action was May 25, 2018, while Plaintiff filed the present action on August 7, 2018. Pursuant to the principles of equity and in the interest of fairness, the court is disinclined to punish Plaintiff for attempting to resolve this dispute before resorting to litigation and subsequently pursuing its rights diligently throughout the alleged limitations period. *See Maher v. Titex Corp.*, 331 S.C. 371, 380-81 (Ct. App. 1998) ("[I]n situations involving settlements in civil cases, one will be equitably estopped to defend with the statute of limitations by either (a) expressly representing that the claim will be settled without litigation, or (b) conduct which suggests that a lawsuit is not necessary."). Accordingly, Defendant is estopped from asserting the defense of statute of limitations in this situation.

[5] To the extent that the South Carolina Rules of Civil Procedure necessitate conversion of Defendant's Motion to Dismiss to a motion for summary judgment on this issue (due to the presentation of e-mails on the equitable estoppel defense), the Court's reasoning and conclusion do not change. According to the circumstances before the court and pursuant to the reasoning laid out above, it is not equitable that Plaintiff suffer the drastic consequence of dismissal on statute of limitations grounds, especially at this early stage. Thus, if the Rules require that, on this narrow issue of equitable estoppel, the motion be treated as a motion for summary judgment, the Court finds that such motion should nonetheless be denied. Defendant has presented nothing to demonstrate that, as a matter of law under Rule 56, it is entitled to summary judgment on the issue of equitable estoppel or on the statute of limitations defense as a whole.

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III. Conclusion

After a thorough review of the parties' submissions before the court and oral arguments at the hearing, based on the foregoing reasoning, it is **ORDERED** that Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

s/
Honorable Alex Kinlaw, Jr.

November 29, 2018
Greenville, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No.: 2024-000020

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

v.

Larousse Lamur; Lamur Transportation
Services, LLC; and Phoenix Grand, LLC……Respondents.

PROOF OF SERVICE OF APPELLANTS' PETITION FOR REHEARING

Pursuant to Rule 262(c), SCACR, I certify that I have served a true and correct copy of Appellants' Petition for Rehearing upon counsel of record in this action, by electronic mail on April 13, 2025, addressed to Respondents' attorneys of record: Phillip Florence, Jr., Everett A. Kendall, II, and Richard C. Stephenson

[SIGNATURE ON FOLLOWING PAGE]

April 13, 2025

Respectfully submitted,

POULIN | WILLEY

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