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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Cindy Barnette Camp,)
Plaintiff,)
)
v.)
)
)
Christopher Miller,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2025-CP-23-01271

ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE

This matter came before me on June 17, 2025, on Defendant's motion to dismiss based upon the statutes of limitations and the failure to state a claim upon which relief can be granted.

Both parties appeared, prepared and presented briefs and made oral arguments of their respective positions. The Defendant argued that the date of injury generally controls the determination of the applicable statutes of limitation. In addition, the Defendant contended that "false light" is not a recognized cause of action in this jurisdiction, and that the public disclosure of private facts must pertain to a matter of legitimate public concern to be actionable.

Plaintiff's Amended Complaint filed on May 23, 2025 alleges the following dates relevant to the causes of action:

1. January 2020, "Miller was aware of a runoff between Hobart Lewis and A.T. Smith . ." (¶3 Amended Complaint)

2. "Between January 7, 2020, and January 12, 2020 Miller" allegedly posted false statements about Camp to other members of the ATS Private Supporters."(¶6 Amended Complaint)

3. "On or about January 12, 2020, Miller" allegedly "posted the following:..."(¶7 Amended Complaint)

4. "…on January 12, 2020 contacted (or was contacted by) A.T. Smith or Kerry Wood" Miller allegedly "provided the information contained in his January 12, 2020 post.." (¶8 Amended Complaint)

5. “On January 13, 2020, Kerry Wood prepared two flyers that incorporated the information” allegedly “provided by Miller…” (¶9 Amended Complaint.)

6. “As a result, many people knew the flyer that said ‘Hobart, who is Cindy B?’ was referring to Camp. . “ (¶14)

7. Allegedly, “Camp did not discover Miller’s role as the ultimate source of the false statement about her until January 16, 2025. She previously brought an action C.A. No., 2021-CP-21-05802, which recently settled. …” (¶17 Amended Complaint.)

8. “Miller’s” alleged “statements about Camp were defamatory and, because they were made in writing, actional per se.” (¶19 Amended Complaint.)

9. “Miller’s statements” allegedly “gave publicity to a matter concerning Camp that placed her before the public in a false light.” (¶23 Amended Complaint.)

10. “Miller” allegedly “conspired and agreed with A.T. Smith and/or Kerry Wood to give publicity to a matter that placed her before the public in a false light.” (¶29 Amended Complaint.)

11. “Miller” is alleged to have “publicly disclosed a private matter concerning Camp.”(¶37 Amended Complaint.)

12. “Miller” is alleged to have “conspired and agreed with A.T. Smith and Kerry Wood to publicly disclose a private matter concerning Camp.” (¶43 Amended Complaint.)

13. “Miller” allegedly “owed Camp a duty to not publish matter concerning her private life or to negligently and recklessly make statements about her, especially false statements.” (¶50 Amended Complaint.)

Most courts allow affirmative defenses to be raised in a motion to dismiss under Rule 12(b)(6) “when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense....” Wright and Miller Practice , § 1277. This view accords with the pleading and discovery system established by the Rules of Civil Procedure, which allows a party to raise Rule 12(b) defenses in a pre-answer motion at option of the pleader. See Rule 12(b), SCRCP and accompanying notes (allowing certain defenses to be raised by pre-answer motion at option of pleader) and Rule 12(a), SCRCP (altering deadline for defendant’s

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answer when defendant serves a pre-answer motion) "When it appears on the face of the complaint that the limitation period has run, a defendant may properly assert a limitations defense through a Rule 12(b)(6) motion to dismiss." *Miller v. Pacific Shore Funding et. al.* , 224 F.Supp.2d 977 (2002). See also, *Spence v. Spence ex rel. Spence*, 368 S.C. 106, 628 S.E.2d 869 (S.C. 2006) "When the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint and opposing party has not shown that further facts could be developed by pretrial discovery then it is proper for the trial court to consider the motion."

This court would note multiple references in the record as to the phrase(s) "discovery rule". The phrase "the discovery rule," standing alone, can be misleading because certain statutes of limitations have their own built-in "discovery rules." (See, South Carolina Tort Claims Act, which is set forth in section 15-78-110 and states, in pertinent part, "Except as provided for in [s]ection 15-3-40, any action brought pursuant to [the Act] is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered . . . ."

"Loss" is defined in the Act as follows:

> bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions.

See also, S.C. Code Ann. § 15-3-530(7) (2005) states certain fraud claims are "not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud"; S.C. Code Ann. § 15-3-530(9) (2005) states that certain actions against directors or stockholders of a "monied corporation" or a banking association do not accrue "until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized"; S.C. Code Ann. § 15-3-545(A) (2005) requires most medical malpractice actions to be "commenced

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within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered"; *See, Santee Portland Cement Co. v. Daniel Int'l Corp*., 299 S.C. 269, 272, 384 S.E.2d 693, 694-95 (1989). Also see, S.C. Code 15-3-545 created a special "discovery rule" for medical malpractice actions. The courts previously applied the discovery rule under section 15-3-535 of the South Carolina Code (2005) to determine when a cause of action arising under the Tort Claims Act accrues. *See Logan v. Cherokee Landscaping & Grading Co*., 389 S.C. 611, 617-18, 698 S.E.2d 879, 883 (Ct. App. 2010); *Joubert v. S.C. Dep't of Soc. Servs*., 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000)

In *Gattis v. Chavez*, 413 F. Supp. 33 (D.S.C. 1976), U.S. District Judge Robert W. Hemphill traced the history of the statutory and judicially-created discovery rules stating "Although the South Carolina statutes establish specific time limitations on the maintenance of many different types of actions, they are generally silent on the question of when a cause of action accrues." Judge Hemphill went on to state; "The statutory 'discovery' rules in [the Code] however, have existed in essentially identical form since at least 1870. See S.C.Code of Procedure of 1870 §§ 114 and 132, 14 S.C.Stat. 447, 450." and "it cannot be disputed that adoption of the 'discovery' rule is a modern and growing trend in the law." Judge Hemphill stated "a substantial majority of all the states now adhering to the "discovery" rule adopted it no earlier than 1960."

Indeed, one year later in *Mills v. Killian*, 273 S.C. 66, 254 S.E.2d 556 (1976) the South Carolina Supreme Court adopted the "discovery rule" as it "represents the more equitable and rational view" of the statute of limitations.

In South Carolina, these principles appear paramount—our state policy-making courts have consistently favored applying the discovery rule to the statutes of limitation for numerous

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causes of action. See, *Tollison v. B & J Mach. Co*., 812 F. Supp. 618 (D.S.C. 1993) (breach of warranty); *Gattis v. Chavez*, supra. (medical malpractice); *Santee Portland Cement Co. v. Daniel Int'l Corp*., suprs, (breach of contract.) ; *Mills v. Killian*, 273 S.C. 66, 70, 254 S.E.2d 556, 558 (1979) (legal malpractice); *Turner v. Milliman*, 381 S.C. 101, 110-11, 671 S.E.2d 636, 640-41 (Ct. App. 2009) (fraud); *Majstorich v. Gardner*, 361 S.C. 513, 519, 604 S.E.2d 728, 732 (Ct. App. 2004) (professional negligence); *Martin v. Companion Healthcare Corp*., 357 S.C. 570, 575-76, 593 S.E.2d 624, 627-28 (Ct. App. 2004) (subrogation); *Rumpf v. Mass. Mutual Life Ins. Co*., 357 S.C. 386, 395-96, 593 S.E.2d 183, 187-88 (Ct. App. 2004) (insurance bad faith and others); and *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010) (conversion).

The Defendant contends that the discovery rule applies to all of Plaintiff's causes of action except defamation. As to defamation the Defendant contends the statute of limitations begins to run when the defamatory statement is made. In *Harris v. Tietex Int'l Ltd*., 417 S.C. 533, 790 S.E.2d 411 (S.C. App. 2016) the court determined that there is a two-year statute of limitations for libel and slander causes of action. S.C.Code Ann. § 15-3-550 (Supp.1995). A cause of action accrues at the moment when the plaintiff has a legal right to sue on it. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962). However, when the discovery rule applies, the statute of limitations does not begin to run until the plaintiff knew or should have known of the alleged wrongful acts.

As to the defamation, Plaintiff's counsel noted that although case law appears to provide for the limitations period to run from when the statement is made, he argued against that interpretation and alleged that it should run from the time Plaintiff allegedly discovered Defendant Miller's statement to the ATS private support group in 2025.

In *Santee Portland Cement Co. v. Daniel Int'l Corp*., 299 S.C. 269, 384 S.E.2d 693 (1989); overruled on other grounds by *Atlas Food Sys. & Servs. v. Crane Nat'l Vendors*, 319 S.C. 556, 462

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S.E.2d 858 (1995) the court applied the "discovery rule" to contract actions but did not adopt the discovery rule for all causes of action. *Santee Portland*, 299 S.C. at 269, 384 S.E.2d at 693; see *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991). Cf. *Austin v. Torrington Co*., 611 F.Supp. 191, 195 (D.S.C.1985) (district court applied the "discovery rule" to an action for defamation but the ruling was limited to the facts of the case and stated its holding "does not abrogate the date of utterance rule which applies in the traditional slander case"); rev'd on other grounds, 810 F.2d 416 (4th Cir.), cert. denied, 484 U.S. 977, 108 S.Ct. 489, 98 L.Ed.2d 487 (1987).

Therefore, it is abundantly clear that the limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement. *Harris*, supra. (citing *Jones v. City of Folly Beach*, supra.) This makes logical sense because the injury arises directly from the utterance or publication of the statement. Since defamation is a "publication-based" tort the defamation is considered to occur upon publication and the harm to the party begins at that moment. Therefore, the cause of action accrues when the statement is first made public.

As noted in 2018 in *Danielson v. USAA Fed. Sav. Bank* , Civil Action No.: 6:17-cv-02849-AMQ (D. S.C. Jun 01, 2018);

> Under South Carolina law, defamation claims are subject to a two-year statute of limitation. S.C. Code Ann. § 15-3-550. The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement. *Harris v. Tietex Int'l Ltd*., 417 S.C. 533, 542, 790 S.E.2d 411, 416 (Ct. App. 2016) (citing *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) (affirming the trial court's grant of summary judgment as to the plaintiff's defamation claim because South Carolina has not adopted the discovery rule in libel or slander cases)).

Even if the statute of limitations "discovery rule" did apply to the defamation cause of action, the Plaintiff knew or should have known that her legal rights had been invaded when the flyers were published in January of 2020. Therefore, applying the broad "discovery rule" to

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defamation rather than the date of issuance of the statement is equally unavailing to the viability of Plaintiff's claims.

Plaintiff filed her original suit against A.T. "Tommy" Smith on December 7, 2021. Therefore, she clearly knew of her injury by December 7, 2021. Applying a two year statute of limitations to the latest possible date that she knew of her injury means the statute of limitations ran out on December 7, 2023 for two year statutes and for three years statutes they ran out at the latest on December 7, 2024.

Therefore, as to the other non-defamatory causes of action, the discovery rule certainly applies. This means the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989); see S.C. Code Ann. § 15-3-535 (2005). "[T]he statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Burgess*, supra. In the present case that time period is clearly in January of 2020 when allegedly "Miller posted false statements about Camp to members of ATS private supporters" or when "A.T. Smith and Kerry Wood" issued flyers containing the allegations in January of 2020 and the at the very possible latest when she filed suit against Smith on December 7, 2023.

"The courts of South Carolina have consistently applied the 'discovery rule' in non-defamation cases to determine when a cause of action accrues under [the Act]."; *Gillman v. City of Beaufort,* 368 S.C. 24, 27, 627 S.E.2d 746, 748 (Ct. App. 2006)

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Under the "discovery rule", the statutory limitations period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.". *Bayle v. S.C. Dep't of Transp*., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001).

The Courts typically focus on the date of injury as a starting point to determine when a plaintiff could or should have known he had a cause of action to start the statute of limitations clock. See, *Dillon Cty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc*., 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985), overruled on other grounds by *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.,* 319 S.C. 556, 462 S.E.2d 858 (1995)

"The fact that the injured party may not comprehend the full extent of the damage is immaterial." *Allwin v. Russ Cooper Assocs*., 426 S.C. 1, 13, 825 S.E.2d 707, 713 (Ct. App. 2019) (quoting *Dean*, 321 S.C. at 363-64, 468 S.E.2d at 647). Consequently, "the 'discovery rule' does not 'require absolute certainty [that] a cause of action exists before the statute of limitations begins to run.'" *Bayle,* 344 S.C. at 126, 542 S.E.2d at 741.

The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed. *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (S.C. 2005) *Snell v. Columbia Gun Exchange, Inc*., 276 S.C. 301, 278 S.E.2d 333 (1981); *Brown v. Pearson*, 326 S.C. 409, 483 S.E.2d 477 (Ct.App.1997).

Further, the plaintiff need not know that his injury is permanent to be on notice he might have a claim against another party. In *Young v. South Carolina Department of Corrections*, this

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court held that the plaintiff was not required to know the sight in his right eye was *permanently* lost to be put on notice the Department of Corrections had caused him injury through the delay in diagnosis and treatment. When he was told of the scar tissue by two separate doctors, who both displayed concern over the delay in diagnosis and treatment, Young discovered or should have discovered *potential damage* to his sight. 333 S.C. 714, 721, 511 S.E.2d 413, 417 (Ct. App. 1999) (second emphasis added); see also *Knox v. Greenville Hosp. Sys*., 362 S.C. 566, 571-72, 608 S.E.2d 459, 462-63 (Ct. App. 2005) (holding a "reasonably diligent person of common knowledge and experience, under the admitted facts, would have been aware" when a nurse improperly inserted an intravenous needle into the plaintiff's wrist "that a claim against the [h]ospital might exist, even though the full extent of the injury was only subsequently discovered.".

The date on which discovery should have been made is an objective rather than subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. *Burgess,* supra.

"[O]nce a plaintiff has reason to know that she has been injured, she is obliged to conduct a reasonably diligent investigation under the circumstances and is charged for limitations purposes with constructive knowledge of the facts that such an investigation would have uncovered." *Hartnett v. Schering Corp*., 2 F.3d 90, 92 (4th Cir. 1993). The statute of limitations begins to run at this point when reasonable diligence would have put the aggrieved party on notice that some right has been or was invaded.

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Furthermore, under South Carolina law, the date upon which a plaintiff learns of a potential new Defendant has absolutely no bearing on the timing of the statute of limitations. Such was the explicit holding of the South Carolina Supreme Court in *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994):

> [T]he focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer: The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

Here, the statute of limitations began to run in January of 2020 when the Plaintiff was made aware of the flyers published by the A.T. Smith campaign and at the latest date possible when she filed suit against Smith on December 7, 2021. Regardless of which statute of limitations applies, the injury was discovered in January of 2020 and unquestionably the injury was known by December 7, 2021 when the Plaintiff filed her first suit. Therefore, it is not necessary for this court to rule on the viability of the "false light" claims and the matter of public concern since the result as to the statute of limitations analysis is a dismissal of Plaintiff's Complaint with prejudice.

Based upon the foregoing, I find that the facts alleged and inferences reasonably deducible from the Plaintiff's complaint do not entitle the Plaintiff to relief on any theory of the case. The amended complaint is well plead, detailed and specifically states that that the Defendant allegedly posted to the ATS Private Supporter members at the latest on January 12, 2020, where he allegedly said that the candidate had "an affair with a subordinate that more than 1 person has recollection of he admitted to it during polygraph at County." (¶7 Amended Complaint). The amended complaint further states that on January 13, 2020 a campaign manager for Smith issued two flyers on January 13, 2020 (¶9 Amended Complaint) and "As a result, many people knew the flyer that said 'Hobart, who is Cindy B?' referred to Camp." (¶14 Amended Complaint) and "Camp was

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understandably upset and distressed by the actions of Miller, A.T. Smith and Kerry Wood. (¶16 Amended Complaint). The alleged 2025 discovery of "the ultimate source of the false statement about her." (¶7 Amended Complaint) was clearly not the date the Plaintiff discovered her injury nor the date she was put on notice that someone invaded her rights. "Once a plaintiff knows or should know of the cause of action, "under South Carolina law, the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations." *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371, 597 S.E.2d 27, 29 (Ct. App. 2004)

The Statute of Limitations requires a party to "act with some promptness" when the circumstances "would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993). "The statute of limitations begins to run from this point and not when advice of counsel is sought or full-blown theory of recovery is developed." Id. "The date of discovery is not when the plaintiff discovers a witness to support or prove his case." Id. at 64-65, 437 S.E.2d at 47. "Moreover, the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer[.]" *Wiggins* supra.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) and it's progeny are controlling in this case and it cannot be disputed that the date of discovery was in January of 2020 when the Plaintiff was upset and distressed by the flyers of the Smith campaign as shown by the Amended Complaint. Furthermore, even if the date of discovery was not in January of 2020, the absolute latest date of discovery in this case would have been by December 7, 2021 when the Plaintiff filed suit against A.T. "Tommy" Smith. That case was filed more than 3 years before this suit was filed.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is dismissed with prejudice based upon the applicable discovery rule pursuant to the statute of limitations for each individual cause of action set forth in Plaintiff's Amended Complaint. All other issues are moot.

IT IS SO ORDERED!

____
Judge Patrick C. Fant III

Date: ____________

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Greenville Common Pleas

Case Caption: Cindy Barnette Camp vs. Christopher Miller

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Type: Order/Dismissal

So Ordered

Patrick C. Fant, III