THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-001452

Stokes-Craven Holding Corp.,
d/b/a Stokes-Craven Ford, ... Appellant,

v.

Scott L. Robinson and Johnson
McKenzie & Robinson; LLC, ... Respondents.

RESPONDENTS' JOINT MOTION TO STRIKE ISSUES NUMBERED FOUR, FIVE AND SIX IN APPELLANT'S INITIAL BRIEF

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Scott L. Robinson and Johnson McKenzie & Robinson, LLC ("Respondents"), by and through their counsel, move this Court, pursuant to Rule 240, SCACR, for an order striking three issues in the Statement of Issues on Appeal filed by Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford ("Appellant"), specifically Appellant's issues that are numbered four, five, and six. These issues are unappealable and/or unrelated to the final appealable ruling granting summary judgment to Respondents on statute of limitations grounds. Thus, pursuant to the South Carolina Appellate Court Rules and in the interests of judicial economy, Respondents respectfully request that the Court strike those portions of Appellant's Initial Brief and Designation of Matter on Appeal related to those issues. *See* Rule 209(b), SCACR ("A party shall not include any matter in his Designation [of Matter to be Included in the Record on Appeal] which is not relevant to the appeal.")

This legal malpractice action arises from an underlying case involving the fraud of a car dealership. Respondents represented Appellant in the underlying case, which resulted in a jury verdict against Appellant in August 2006. After an appeal, the Supreme Court issued an opinion on March 8, 2010, upholding the verdict against Appellant. *Austin v. Stokes-Craven Holding Corp.,* 387 S.C. 22, 691 S.E.2d 135 (2010). On August 26, 2010, Appellant filed this legal malpractice action against Respondents. On June 4, 2013, the Honorable George C. James, Jr., granted Respondents' motion for summary judgment based on an application of statute of limitations law. (Order Granting Defs.' Mot. for Summ. J., Ex. 1.)

As part of its appeal from the summary judgment order, Appellant has improperly included three issues, numbered four, five, and six in its Statement of Issues on Appeal, each of which is unappealable and/or unrelated to the final appealable ruling granting summary judgment to Respondents on statute of limitations grounds, and thus, should be stricken from the appeal in

the interests of judicial economy. In issue four, Appellant seeks review of the lower court's *statement* declining to rule on Appellant's motion for partial summary judgment. The court found it unnecessary to rule on this motion due to its order dismissing Appellant's case on statute of limitations grounds. (Order Granting Defs.' Mot. for Summ. J. p. 16, Ex. 1.) Appellant never requested reconsideration of the lower court's order in which it declined to rule on Appellant's motion, and thus, a specific ruling was never made. In issues five and six, Appellant seeks review of two interlocutory discovery orders that are wholly unrelated to the lower court's ruling on the statute of limitations issue. (Judge Newman's Order dated 5/18/12, Ex. 2; Judge Newman's Order dated 9/24/12, Ex. 3; Order Granting Defs.' Mot. for Summ. J., Ex. 1.) Thus, this Court should strike all three issues (issues four, five, and six) from Appellant's Initial Brief and Designation of Matter on Appeal for the reasons discussed herein.

I. A MOTION THAT IS NOT RULED UPON IS NOT APPEALABLE (ISSUE FOUR).

"Appeal may be taken, as provided by law, from any final judgment, appealable order or decision." Rule 201, SCACR. "A party cannot appeal a trial court's failure to rule on a motion or objection." 15 S.C. Jur. *Appeal & Error* § 14 (citing *Aetna Life Ins. Co. v. Lourie*, 201 S.C. 478, 23 S.E.2d 741, 743 (1942) ("There has been no ruling on this question, and it is not properly before this court.")).

Though Respondents' motions for summary judgment on statute of limitations grounds and Appellant's motion for partial summary judgment were both set for hearing on the same date, the lower court declined to issue a ruling on Appellant's motion for partial summary judgment. In the lower court's Order Granting Defendants' Motions for Summary Judgment, the lower court noted: "Because the claims asserted by Stokes-Craven against defendants are barred by the statute of limitations, *there is no need to address Stokes-Craven's motion for summary*

judgment." (Order, p. 16 (emphasis added).) Thus, the lower court never issued a ruling on Appellant's motion, nor did Appellant file a motion to reconsider asking the court to rule on its motion for partial summary judgment. In fact, Appellant concedes in its Initial Brief that the court did not rule on its motion[1]: "The lower court declined to consider Stokes-Craven's motion on the grounds that he granted the respondents[']motions for summary judgment as to the running of the statute of limitations." (Initial Br. of App. at p. 33). Despite this concession and despite the lower court's one sentence statement declining to issue a ruling, Appellant improperly argues its position on the malpractice claim for at least *seven* pages in its Initial Brief when the Order does not even consider the merits of the malpractice claims.

As provided by Rule 201 of the South Carolina Appellate Court Rules, there must be a decision by the court before an appeal may be taken. Moreover, a party must file a Rule 59(e) motion to reconsider "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Because the lower court's *statement* declining to rule on Appellant's motion is neither a ruling nor an order and because Appellant failed to file a motion to reconsider asking the court to issue a ruling on its motion, there is no order from which to appeal. Accordingly, the discussion in Appellant's Initial Brief on this issue should be stricken, including the cases cited, and the related Designation of Matter on Appeal.

[1] Appellant suggests that issue number four is nonetheless "ripe for this Court's review" because it "concerns the interpretation of this Court's order in *Austin v. Stokes-Craven*." (Initial Br. of App. at p. 33). This is incorrect. An interpretation of a case unrelated to the lower court's ruling is not properly before the Court on appeal. In this case, the lower court's ruling on the statute of limitations is unrelated to an interpretation of *Austin v. Stokes-Craven* and such an argument has no merit.

II. THE DISCOVERY RULINGS ADDRESSED IN ISSUES FIVE AND SIX ARE IMPROPERLY INCLUDED IN APPELLANT'S INITIAL BRIEF.

In its fifth and sixth issues on appeal, Appellant attempts to appeal two discovery rulings issued at two separate times by two judges in two separate orders. "Discovery orders...are interlocutory and are not immediately appealable."[2] *Hamm v. S. Carolina Pub. Serv. Comm'n,* 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). Though Appellant will attempt to argue that its appeal of these discovery orders falls within the scope of one of the limited categories of appealable judgments provided for in S.C. Code Ann. § 14-3-330, none of these categories apply as discussed more fully below.

Absent some specialized statute, the appealability of an interlocutory order depends on whether it falls within several categories of appealable judgments or orders listed in S.C. Code Ann. § 14-3-330. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995) (overruled on other grounds by *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002)). Pursuant to S.C. Code Ann. § 14-3-330(1), an interlocutory order may be appealable if the order "involves the merits" or if there is an appealable issue before the appellate court and a ruling on an interlocutory order will avoid unnecessary litigation. Under S.C. Code Ann. § 14-3-330(2), an interlocutory order may also be appealable if the order affects a substantial right. The two interlocutory discovery orders from which Appellant appeals do not fall within either of these categories.

A. The Discovery Orders Do Not Involve the Merits and a Ruling on the Orders Will Not Avoid Unnecessary Litigation.

Under S.C. Code Ann. § 14-3-330(1), "if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or

[2] Appellant recognizes the interlocutory nature of discovery orders in its Notice of Appeal, which states Appellant "appeals the interlocutory [2012 discovery] order of the Honorable Clifton Newman . . . ." (Notice of Appeal, Ex. 4.)

decree necessarily affecting the judgment not before appealed from." (emphasis added.) The court has found that the phrase "necessarily affecting the judgment" has the same meaning as the phrase "involving the merits" and that these two phrases are interchangeable. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990). An order "involves the merits" when it finally determines a substantial matter forming the whole or a part of some cause of action or defense. *Thornton v. S. Carolina Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011).

The discovery rulings appealed from in issues five and six do not affect the summary judgment order on the statute of limitations, nor does Appellant contend that the discovery orders involve the merits on appeal. In fact, Appellant's statements regarding the effect of these discovery orders are to the contrary.

1. Judge James' Discovery Order on Communications between Respondents and its Malpractice Carrier is Unrelated to the Statute of Limitations Issue.

In issue five, Appellant addresses Judge James' discovery order denying Appellant's motion to compel correspondence between Respondents and their malpractice carrier. (Order Granting Defs.' Mot. for Summ. J., Ex. 1.) Prior to the hearing on Respondents' motion for summary judgment, counsel for Appellant specifically stated that the motion to compel had no bearing on Respondents' motion for summary judgment on statute of limitations grounds. (Email dated 12/6/2012 from Epting to Judge James, Ex. 5.) Even the lower court acknowledges in its Order Granting Respondents' Motions for Summary Judgment on statute of limitations grounds that, "since it is granting summary judgment to the defendants, a ruling on the motion to compel is technically not necessary." (Order Granting Defs.' Mot. for Summ. J. p. 7, Ex. 1.) Because both the judge and counsel for Appellant concede that the motion to compel is unrelated

to the ruling on statute of limitations and does not "necessarily affect[] the judgment," the consideration of the fifth issue on appeal should be stricken from Appellant's Initial Brief.

2. Judge Newman's Discovery Order on Expert Discovery Issues is Unrelated to the Statute of Limitations Issue.

In issue six, Appellant addresses Judge Newman's discovery order denying Appellant's motion to compel and for sanctions on certain issues related to expert discovery. (Judge Newman's Order dated 5/18/12, Ex. 2; Judge Newman's Order dated 9/24/12, Ex. 3.) Again, just as Appellant acknowledged that the correspondence between Respondents and their malpractice carrier has no bearing on the statute of limitations issue, neither do the opinions of Respondents' experts. In its Initial Brief, Appellant does not even attempt to argue any connection to the summary judgment order. Thus, this Court should also strike issue number six from Appellant's Initial Brief for failure to comply with S.C. Code Ann. § 14-3-330(1).

3. Consideration of the Discovery Orders in Conjunction with the Grant of Summary Judgment on Statute of Limitations is a Waste of Judicial Resources.

Not only do the discovery orders have no bearing on the statute of limitations issue as required by S.C. Code Ann. § 14-3-330(1), the consideration by this Court of these two discovery matters results in judicial inefficiency rather than the promotion of judicial economy. The purpose of the rule allowing the appellate courts to consider unappealable issues along with appealable issues is to promote judicial economy. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (holding the appellate court will consider an issue that is not otherwise appealable when there is another appealable issue before the court and the consideration of the unappealable issue will avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy)); *Hite v. Thomas & Howard Co. of Florence, Inc.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991) overruled on other grounds by *Huntley v.*

Young, 319 S.C. 559, 462 S.E.2d 860 (1995) (emphasis added) ("an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation"). Because the consideration of these two discovery orders would not have the effect of avoiding unnecessary litigation, any ruling on the discovery issues would amount to an advisory ruling on an issue that may never arise. *See Morris v. Anderson County*, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002) (declining to rule on an unappealable issue where the ruling would be "advisory" and address an "issue which may never arise").

Even if this case were to proceed to trial and an adverse verdict returned, in order to successfully appeal the discovery issues, Appellant would have to show that the denial of the discovery motions substantially affected the outcome of the trial. Appellant could never satisfy its burden as to these two discovery rulings. Thus, a ruling at this time on these discovery orders will not promote judicial economy and the Court should decline to hear the appeal on issues five and six, particularly since review of these interlocutory discovery orders is not mandatory. *Pruitt v. Bowers*, 330 S.C. 483, 488, 499 S.E.2d 250, 253 (Ct. App. 1998) (electing not to entertain interlocutory order accompanying the appeal of a grant of summary judgment); *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 366, 559 S.E.2d 327, 341 (Ct. App. 2001) (declining to address an interlocutory order denying summary judgment even though appealed in conjunction with an appealable order granting summary judgment on statute of limitations grounds).

Accordingly, because the consideration of the two discovery orders addressed in issues five and six would waste judicial resources, the Court should exercise its discretion and decline to consider these discovery issues on appeal.

B. The Discovery Orders Do Not Affect a Substantial Right.

The discovery orders regarding communications with Respondents' malpractice carrier and expert discovery do not affect a substantial right of Appellant, nor has Appellant made the argument that the discovery orders affect a substantial right. If the orders had affected a substantial right, Appellant would have immediately appealed. Appellant did not do so. Judge Newman's order on expert discovery was issued in September 2012 and Judge James' order concerning communications with the malpractice carrier was only appealed in conjunction with the order granting Respondents' summary judgment on statute of limitations grounds. Appellant is simply attempting to piggyback the appeal of the discovery orders with the final, appealable order granting Respondents' summary judgment. Accordingly, any attempt by Appellant to argue that the discovery orders affect a substantial right necessarily fails.

III. CONCLUSION

For the reasons set forth, Respondents request this Court strike Appellant's Issues on Appeal numbered four, five, and six and strike all discussion and case citation related to such Issues from Appellant's Initial Brief and the Designation of Matter on Appeal, specifically numbers 3, 7, and 9 through 17, inclusive. In addition, pursuant to Rule 240(b), SCACR, Respondents respectfully request that the Court stay the deadline for Respondents to file their Initial Briefs pending a ruling on Respondents' Joint Motion to Strike.

Respectfully submitted,

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November 1, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2013-001452

Stokes-Craven Holding Corp.,
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v.

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McKenzie & Robinson, LLC, ... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on November 1, 2013, the foregoing **RESPONDENTS' JOINT MOTION TO STRIKE ISSUES NUMBERED FOUR, FIVE AND SIX IN APPELLANT'S INITIAL BRIEF** was served on all counsel of record via U.S. Mail, addressed as follows:

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STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)))	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
STOKES-CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD, Plaintiff, vs. SCOTT L. ROBINSON AND JOHNSON MCKENZIE & ROBINSON, LLC, Defendants.	)))))))))	C/A No.: 2010-CP-14-457 **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT by way of defendant Scott L. Robinson's motion for summary judgment filed on November 29, 2012 and defendant Johnson McKenzie & Robinson, LLC's motion for summary judgment filed on November 26, 2012. Also before the court was the plaintiff's motion to compel production of certain documents. After due notice, a hearing was held on January 9, 2013 in Clarendon County, South Carolina. Present at the hearing were counsel for all interested parties: Andrew K. Epting, Jr., for plaintiff Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford; Susan Taylor Wall, Esq., for defendant Scott L. Robinson ("Robinson"); and Warren C. Powell, Jr., Esq., for defendant Johnson McKenzie & Robinson, LLC ("Johnson McKenzie"). The Court has carefully considered the motions, arguments of counsel, and the law.

I. BACKGROUND

This case arises from an underlying action known as *Donald C. Austin v. Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford*, Case No. 2004-CP-14-135 ("Underlying Action"). Robinson and Johnson McKenzie represented Stokes-Craven Holding Corporation ("Stokes-Craven"), a car dealership, in the Underlying Action which was tried in Clarendon County in

August 2006. In August 2010, Stokes-Craven filed this legal malpractice action against defendants Robinson and Johnson McKenzie asserting that defendants were negligent in their representation of Stokes-Craven in the Underlying Action. After the completion of discovery, defendants filed motions for summary judgment on statute of limitations grounds.

II. PROCEDURAL HISTORY

On March 15, 2004, Donald Austin filed a lawsuit against Stokes Craven. The case was tried in Clarendon County for three days beginning on August 14, 2006. The jury awarded Austin $26,371.10 in actual damages and $216,600.00 in punitive damages. Following the verdict, Stokes-Craven and Austin filed cross-appeals. On March 8, 2010, the Supreme Court issued its opinion in *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) and upheld the jury's damages award.

On August 16, 2010, Stokes-Craven filed a legal malpractice action against Robinson and Johnson McKenzie claiming that defendants were negligent in their representation of Stokes-Craven both prior to and during the trial by allegedly failing to: conduct discovery, prepare a pretrial brief, prepare trial exhibits, prepare voir dire, notify plaintiff's insurance carrier, preserve certain issues for appeal or settle the case before the jury verdict. Stokes-Craven contends that as a result of these alleged failings, an adverse jury verdict was returned against the dealership.

On August 26, 2011, Stokes-Craven filed an amended complaint. All defendants timely answered the amended complaint asserting the statute of limitations as one of their affirmative defenses. Specifically, defendants maintain that the statute was triggered on August 17, 2006, the date the verdict was rendered against Stokes-Craven in the Underlying Action. For the reasons set forth herein, the defendants' motions for summary judgment are granted.

III. STANDARD OF REVIEW

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). While viewing the evidence in a light most favorable to plaintiffs, under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

IV. FACTS[1]

Stokes-Craven, located in Manning, South Carolina, is an automobile and truck dealership of new and used vehicles. Dennis Craven is part owner, officer of the company, principal of the dealership, and serves as on site manager. The Underlying Action, which gives rise to this legal malpractice action, arose from Stokes-Craven's sale of a used Ford truck to Donald Austin, the plaintiff in the Underlying Action. Austin was not told that the truck he purchased was previously owned by an individual named Gary Bailey who wrecked the truck, repaired it at an expense of $20,309.38 and traded it back in to Stokes-Craven in April 2002. On June 1, 2002, Austin purchased the truck for $26,371.10. Stokes-Craven knew the truck was wrecked when the dealership bought it back from Bailey but did not tell Austin even when Austin inquired about the truck's history before purchase. One of Stokes-Craven's salesmen, William Frierson, denied the truck had been wrecked and told Austin that it had a 5-year, 100,000 mile powertrain warranty.

[1] The facts set forth are stated in the light most favorable to plaintiff.

A few months after purchasing the truck, Austin discovered an oil leak at which time he was told by Dennis Craven that the truck was not covered by a 5 year, 100,000 mile powertrain warranty. Craven told him the dealership would cover this repair but that Austin would be responsible for any future repairs. In response, Austin asked Craven to return his purchase price and he would return the truck, but Craven rejected this request. Austin nevertheless scheduled the oil leak repair for September 13, 2002. Just before this appointment, Austin learned the truck had been previously wrecked. When Austin arrived at the dealership on September 13, 2002 for the repair on his truck, he met with Craven and again requested that he be allowed to return the truck given his new discoveries regarding the wreck and the lack of a powertrain warranty. In response to this demand, Craven showed Austin a Buyers Guide that was purportedly signed by Austin. The Buyers Guide stated the truck was covered only by a warranty of "up to 100,000 on diesel engine." Austin denied he signed the document.

When Austin returned to pick up his truck a week later, he again met with Craven to discuss the situation. Austin reiterated that he did not sign the Buyers Guide at which time Craven compared the signature on the signed document with Austin's driver's license. Craven admits that after comparing the signature contained on the warranty document with the signature contained on Austin's driver's license in 2002, he concluded that Austin's purported signature on the warranty document was a forgery. (Craven deposition, May 19, 2011, p. 105.) However, Craven again refused Austin's request to return the truck for a refund.

On February 18, 2003, Craven received a comprehensive letter from Austin's attorney, John Polito, which set forth the problems with the truck and the forgery and also included an analysis from two experts (one on auto body repair and one on the appraisal and valuation process). In the letter, Mr. Polito renewed Austin's request for a refund of the purchase price of the truck and, additionally, requested payment of Polito's fees in the sum of $1,500.00. Craven

claims he turned this letter over to his attorney, defendant Robinson, to handle. Craven, however, never agreed to the terms contained in the Polito letter.

On March 15, 2004, Austin filed suit against Stokes-Craven Ford alleging various causes of action including breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicles Dealer's Act, and violation of the South Carolina Unfair Trade Practices Act. Austin sought actual and punitive damages, prejudgment interest, attorney fees and costs. Stokes-Craven, represented by attorney Robinson, answered and denied each of Austin's material allegations.

After a three day trial, on August 16, 2006, the jury found in favor of Austin and awarded damages for negligence and fraud in the amount of $26,371.10 actual damages and $216,600.00 punitive damages. The jury also found Stokes-Craven had violated the Federal Odometer Act. The jury found in favor of Stokes-Craven on Austin's claim under the UTPA. Austin and Stokes-Craven then filed cross-appeals. Stokes-Craven was represented Young Clement Rivers, LLP, during the course of the appeal. Though Robinson was included as counsel of record on the appellate pleadings, he was not involved in the drafting of the appellate briefs or the oral argument, and had no input on the handling of the appeal. The Supreme Court issued the Austin opinion on March 8, 2010. Thereafter, on August 16, 2012, Stokes-Craven filed the subject legal malpractice action against defendants Robinson and Johnson McKenzie.

V. DISCUSSION

Statutes of limitations are designed to protect important public policy concerns.

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his [or her] rights. Another purpose of a statute of limitations is to protect potential defendants from

> protracted fear of litigation. Statutes of limitations are, indeed, fundamental to our judicial system.

Kelly v. Logan, Jolley, & Smith, LLP, 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009) (internal citations and quotations omitted).

It is well settled in South Carolina that claims for negligence and breach of fiduciary duty must be brought within three years. *See* S.C. Code Ann. § 15-3-530. The statutory period begins to run when the claimant could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his favor, rather than when the claimant obtains actual knowledge of either the potential claim or the facts giving rise thereto. *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 338, 356 S.E.2d 153, 156 (Ct. App. 1987). The discovery rule focuses upon whether the complaining party acquired knowledge of any facts "sufficient to put said party on inquiry, which, if developed, will disclose" the alleged conduct. *Burgess v. American Cancer Soc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (quoting W*alter J. Klein Co. v. Kneece*, 239 S.C. 478, 483, 123 S.E.2d 870, 874 (1962)).

It is not necessary that the claimant acquire precise information of the alleged wrongful conduct for the statute to begin to run, but merely acquire "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 103 S.E. 477, 478 (1920). South Carolina law requires a party to exercise reasonable diligence once he is on notice that some right of his has been affected. *See Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996); *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). "The fact that the injured party may not comprehend the full extent of the damage is immaterial." *Dean*, 321 S.C. at 364, 468 S.E.2d at 647; *see also Epstein v. Brown*, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005).

The standard as to when the limitations period begins to run is objective, rather than subjective. *Kelly,* 383 S.C. at 633, 4; *Kreutner v. David,* 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995); *Burgess,* 300 S.C. at 186, 386 S.E.2d at 800.

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case 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.

Moore v. Benson, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010) (quoting *Young v. SC Dept. Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)).

A. **Stokes-Craven's Motion to Compel**

The court notes that since it is granting summary judgment to the defendants, a ruling on the motion to compel is technically not necessary. However, the plaintiff has requested the court to rule on this motion in the event its decision on summary judgment is overturned. Stokes-Craven has requested production of (1) the defendant law firm's professional liability policy applications for the years 2002 through 2012, (2) all correspondence between the defendants' malpractice carrier and the defendants and the defendants or their attorneys, (3) all billing for computer research from any research providers to the defendant law firm from 2003 through 2006.

I conclude that the correspondence requested in (2) above is not discoverable, as it was at the least prepared in anticipation of or during litigation. See Rule 26(b) (3), SCRCP. There has been no showing that the plaintiff is in need of this information for any good reason, and there has been no showing that it cannot obtain the substantial equivalent by other means. The court has not received a privilege log of these communications but is of the view that one is not necessary. This information is simply not discoverable.

As for (1) above, the court has reviewed the applications submitted *in camera* to the court by the defendants for the years 2002 through 2006. The court concludes that the applications are

discoverable, but that any issues of ultimate admissibility will be left to the trial judge. The court concludes that personal financial information may be redacted, and that social security and tax identification numbers may also be redacted. The parties will either enter into a consent confidentiality order or the court will order that only the plaintiff's attorneys will have access to the applications pending further order of the court. None of the information shall be disclosed to any person other than counsel without further order of the court, and if anyone violates this order, he or she or it will suffer risk of being held in contempt of court.

B. Stokes-Craven's Claims are Barred by the Statute of Limitations.

Under South Carolina law, "[t]he statute of limitations begins to run at the time the [plaintiff] has inquiry or constructive notice [that a claim might exist]." *Berry v. McLeod*, 328 S.C. 435, 445, 492, S.E.2d 794, 800 (Ct. App. 1997) (emphasis added). Either form of notice is sufficient. *Id.* In viewing the facts in the light most favorable to Stokes-Craven, I find Stokes-Craven had both inquiry and constructive notice of the claim more than three years before the lawsuit was filed. The deposition testimony of Dennis Craven compels the conclusion that Stokes-Craven had inquiry notice of the claim against defendants by August 17, 2006, the date of the verdict in the Underlying Action. In addition, the testimony of Stokes-Craven's appellate attorney compels the conclusion that Stokes-Craven had constructive notice of the claim by May 2007 (at the latest), the date its appellate lawyers reviewed the transcript and identified issue preservation concerns.

1. Inquiry Notice.

Stokes-Craven contends, through its pleadings, deposition testimony, and/or written discovery and arguments in opposition to summary judgment, that defendants were negligent in the following respects:

1. failing to diligently investigate the facts (Craven 5/19/11 Dep. p. 33);

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2. failing to obtain a handwriting sample from Billy Frierson (Craven 5/19/11 Dep. p. 37);

3. failing to interview Kenny Craven sooner than two days before trial (Craven 5/19/11 Dep. p. 41);

4. failing to contact Barry Thornall to testify, which testimony, according to Mr. Craven, would have benefitted Stokes-Craven and would more than likely have led to a different result (Craven 5/19/11 Dep. p. 43);

5. failing to show Mr. Craven, or otherwise review with him, interrogatory answers prior to trial (Craven 5/19/11 Dep. pp. 44-46). Mr. Craven testified at trial and during his deposition that the first time he saw the answers to interrogatories was the day of his trial testimony and only then did he notice that some of the answers gave incorrect information. Mr. Craven claims that if he had seen the answers beforehand, he may have been better prepared, or would have been able to plan better, and the results of the trial would more than likely have been different;

6. failing to keep Stokes-Craven more informed and failing to prepare Mr. Craven for cross-examination. Mr. Craven testified that if Stokes-Craven had been more informed and if Mr. Robinson had better prepared him for cross-examination, the trial likely would have turned out more favorably to Stokes-Craven (Craven 5/19/11 Dep. pp. 53-54);

7. failing to settle the case. Stokes-Craven argued at the hearing that the failure to settle was the major failure on the part of defendants. In his deposition, Mr. Craven testified that Stokes-Craven was not confident of its position going into trial. He further stated in his deposition that he felt Stokes-Craven had done something wrong in its dealings with Mr. Austin (Craven 5/19/11 Dep. p. 56),and that he knew the forgery of the buyer's warranty was a major part of the case and had been an issue for some time (Craven 5/19/11 Dep. p. 57). Mr. Craven admitted that he concluded in 2002 that there had been a forgery (Craven 5/19/11 Dep. p. 105). Insofar as failure to settle is concerned, all of these factors were well within Mr. Craven's grasp at the time the verdict was rendered and it was then that he knew, or at least as a matter of law should have known, that Stokes-Craven **might** have a claim against its attorney for failing to settle the case.

With regard to points (1) – (6) above, Mr. Craven was asked the following by Johnson McKenzie's counsel:

> **Q.** Okay. And would it be a fair statement that the allegations, the specific things we were talking about, that is the failure to keep you advised and the other issues and that deficiencies that the plaintiff contends that the defendants made through the course of handling the case and at trial, when the verdict was handed down it became evident that that was a serious problem for the plaintiff?
>
> **A.** Correct.

(Craven 5/19/11 Dep. p. 61.) Defendants maintain that this exchange amounts to an admission on the part of Mr. Craven that he immediately knew the alleged negligence of Mr. Robinson had resulted in the adverse verdict. I do not agree this is an outright admission, at least for summary judgment purposes, because the quoted exchange is somewhat disjointed and the question to Mr. Craven was not clearly stated. I tend to agree with the plaintiff that Mr. Craven's "serious problem" testimony on page 61 can be interpreted to mean that he knew the verdict itself was a serious problem for Stokes-Craven.

Nevertheless, regardless of whether Mr. Craven's testimony on page 61 in and of itself amounts to an outright admission that he knew Stokes-Craven might have a claim against defendants, his testimony **as a whole** (points 1-6 above) compels the conclusion as a matter of law that Stokes-Craven knew or should have known it **might** have a claim on the date the verdict was rendered. S.C. Code Section 15-3-530 provides for a three year statute of limitations for legal malpractice actions. The statute amounts to a "discovery rule" under which the statute begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for wrongful conduct. As our Supreme Court has observed on more than one occasion, it has long been the law in South Carolina that "the exercise of reasonable diligence means simply that an injured party must act with some promptness 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,* 363 S.C. at 376, 610 S.E.2d at 818 (emphasis supplied by the Supreme Court) (citing *Berry v. McLeod*, 328 SC 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) quoting Supreme Court opinions of *Snell* at 303, 334 and *Mitchell v. Holler*, 311 S.C. 406, 429 S.E.2d 793 (1993);

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accord, *Dean*): *Rogers v. Efird's Exterminating Co., 284 S.C. 377, 379, 325 S.E.2d 541, 542 (1985)*. The *Epstein* Court also stated the rule in similar language that the statute "begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party may not comprehend the full extent of the damages is immaterial." *Id.* at 382, 821. The standard is an objective one, rather than a subjective one. *Kelly*, 383 S.C. at 633, 4, 682 S.E.2d at 7; *Kreutner*, 320 S.C. at 285, 90.

Following a line of Supreme Court opinions now spanning over thirty years, the *Epstein* Court's emphasis of the word "might" and the remaining bold-print language that emphasizes the duty to act even when no "advice from counsel is sought or a full blown theory of recovery developed." In *Epstein*, the facts leading to the grant and affirmation of summary judgment were clear insofar as the majority's application of the discovery rule was concerned. Epstein's lawyer in the underlying trial had allegedly done or not done certain things that were known to Epstein to such an extent that the evidence was rather clear that the client knew at the time the verdict was rendered he might have a claim against his attorney. Here, Mr. Craven stated in his deposition that when he testified at trial in the Underlying Action, he realized he had never seen the interrogatory answers prepared by his lawyer and that some of the answers were incorrect. He knew during trial that Mr. Robinson had not interviewed Kenny Craven until two days before trial. He knew during trial that forgery was an important issue and that no handwriting sample had been taken from Mr. Frierson. He knew during trial that Mr. Robinson had not attempted to locate and call Mr. Thornall as a trial witness. He knew during trial that he was of the opinion that Mr. Robinson had not adequately investigated the case. Mr. Craven was the principal Stokes-Craven contact for Mr. Robinson, and in essence was the Stokes-Craven "point man" for the underlying Austin litigation. His knowledge of these shortcomings is imputed to Stokes-Craven.

Stokes-Craven contends that Mr. Craven had never been involved in a trial before and that he was totally uneducated as to how litigation (pre-trial and during trial) should be conducted by an attorney. However, Mr. Craven, and therefore Stokes-Craven, knew at the time of the verdict (or at the least should have known) that Stokes-Craven **might** have a claim against defendants for their negligence in handling the case. The law does not permit the client to wait until he consults with other counsel to become educated and does not allow the client to wait until he has a full-blown theory of recovery.

Stokes-Craven maintains that the deposition testimony of Mr. Craven does not establish that he knew or should have known at the conclusion of the trial that a claim might exist against defendants. Stokes-Craven points to some rather generic testimony of Mr. Craven for this proposition. (Pl.'s Mem. in Opp. to Summ. J. pp. 6-8.) However, as noted above, the testimony of Mr. Craven as a whole establishes otherwise as a matter of law.

Stokes-Craven argues that the first time it was put on notice of a malpractice claim was at a meeting with its appellate counsel on June 9, 2009, when appellate counsel pointed out that Austin's attorneys were claiming that Mr. Robinson had made error preservation mistakes during trial. That may create a factual issue on that specific point, but this argument ignores the fact that Mr. Craven knew or should have known a claim might exist because of the other actionable errors he claims were made by Mr. Robinson as discussed above. In addition, this argument also ignores the fact that the knowledge of an attorney is imputed to his client. Here Stokes-Craven's appellate counsel knew that issue preservation was an issue as soon as counsel read the trial transcript, as further discussed below.

2. Constructive Notice.

The defendants claim that Stokes-Craven was also on constructive notice of its claim against defendants more than three years before it filed its claim. As set forth above, the statute

of limitations begins to run when a plaintiff has either inquiry or constructive notice. *Berry*, 328 S.C. at 445, 800. The defendants argue Stokes-Craven had constructive notice of the potential issue preservation concerns through its appellate lawyers at Young Clement Rivers, LLP. One of Stokes-Craven's appellate lawyers testified that issue preservation is one of the first items he evaluates when he is handling an appellate case, and he knew issue preservation was going to be an issue in this case. He testified that when he was reviewing the trial transcript in April and May of 2007, the issue preservation concern "jumped out" to him. (Brown Dep. pp. 65, 67; Young Clement Time Sheets). Thus, according to the defendants, Young Clement was aware of the potential issue preservation concerns in May 2007 (at the latest), more than three years before Stokes-Craven filed suit.

The defendants claim that Young Clement's knowledge of the issue preservation concerns on appeal is imputed as a matter of law to Stokes-Craven because Young Clement, as Stokes-Craven's appellate attorney, was Stokes-Craven's agent. "It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979); *see also Dorman v. Campbell*, 331 S.C. 179, 185, 500 S.E.2d 786, 789 (Ct. App. 1998) (holding that knowledge of information in letter to plaintiff's attorney was imputed to plaintiff for purposes of determining commencement of the statute of limitations even though plaintiff never saw the letter). The defendants claim Young Clement was acting within the scope of its authority when it reviewed the trial transcript and identified the potential issues on appeal. In addition, there is no dispute that the issue preservation concerns were material to the appeal. The court concludes there is an issue of fact as to whether Young Clement's knowledge is imputed to Stokes-Craven in this instance and therefore denies summary judgment on this ground.

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C. Equitable Estoppel and Equitable Tolling Do Not Bar Defendants' Statute of Limitations Defense.

I hold as a matter of law that the doctrines of equitable estoppel and equitable tolling do not apply to the facts of this case.

1. Equitable Estoppel

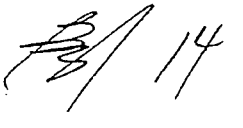
The doctrine of equitable estoppel rests on a general principle of fairness which prevents one party, with knowledge of the situation, from misleading another by words, conduct, or silence in such a way that the other party would be prejudiced if the first party were allowed to later take an inconsistent position. *See Kelly*, 383 S.C. at 638, 682 S.E.2d at 7.

> To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Id. at 638, 682 S.E.2d at 7 (internal citations omitted).

Estoppel by silence arises when the party estopped owes a duty to speak to the other party but refrains from doing so, thereby leading the other party to believe in an erroneous state of facts. A manifest intent to mislead is not required for estoppel by silence; it arises when the silence is intended or has the effect of misleading the other party, provided the other party acts reasonably. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006)

There is nothing in the record to support the conclusion that defendants did anything to mislead Stokes-Craven, or that Mr. Robinson engaged in conduct calculated to convey an impression that facts were inconsistent with those which Mr. Robinson subsequently attempted to assert. There is no evidence that Mr. Robinson engaged in any conduct to prevent Stokes-Craven from filing a malpractice action, nor is there any evidence that Stokes-Craven relied upon



any conduct or representation of Mr. Robinson in delaying suit. Also, Stokes-Craven did not lack the means of knowing of the alleged malpractice on the part or Mr. Robinson, as set forth above in Points 1 – 7 discussed on pages 7 – 8 of this order.

Much of Stokes-Craven's discussion about the trigger date of June 2009 is based on matters pertaining to issue preservation (failure to object to vehicle value testimony). Stokes-Craven claims there is evidence that Mr. Robinson knew all along that this issue would be raised on appeal, and that his failure to advise Stokes-Craven created an issue of fact on the issue of equitable estoppel. However, this again ignores the fact that Stokes-Craven knew of other alleged acts of negligence well before June 2009, and Stokes-Craven cannot use this one issue to excuse its failure to timely commence this action. Furthermore, it ignores the fact that Stokes-Craven's appellate counsel, Young Clement, knew of the issue as soon as they reviewed the trial transcript.

Stokes-Craven also argues that defendants failed to disclose breaches in their duty to Stokes-Craven, blamed the verdict on the unpredictability of juries, and continued to represent Stokes-Craven during the appeal. None of these points lead to any genuine issue of fact on the issue of equitable estoppel. Again, Stokes-Craven, through Mr. Craven, had knowledge on the day of the verdict that Stokes-Craven might have a cause of action against defendants. There is no evidence that defendants misled Stokes-Craven by words, conduct, or silence to the detriment of Stokes-Craven.

2. Equitable Tolling.

The statute of limitations should be tolled when, in view of all the circumstances, a party would otherwise suffer a gross wrong at the hand of the other party. *Hooper v. Ebenezer Sr. Services & Rehab. Ctr.*, 386 S.C. 108, 116-117, 687 S.E.2d 29, 33 (2009). In reviewing holdings from other jurisdictions, the *Hooper* Court noted that equitable tolling typically applies in cases

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in which a litigant was prevented from filing suit because of an extraordinary event beyond his control, but that other jurisdictions have considered the doctrine "in a variety of contexts and have developed differing parameters for its application." *Id.* at 116, 687 S.E.2d at 32. The *Hooper* court quoted with approval the ruling of a Texas appellate court that "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Id.* at 116-17, 687 S.E.2d at 33 (quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Our Supreme Court went on to say that equitable tolling may be applied where justified under all the circumstances, but that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Id.* at 117, 687 S.E.2d at 33.

Here, there were no extraordinary events beyond Stokes-Craven's control that prevented it from commencing its action within three years after the verdict was rendered. While Stokes-Craven need not establish that defendants did anything to mislead it, as that is a component of equitable estoppel and not necessarily equitable tolling, Stokes-Craven must present evidence that defendants prevented it from timely filing by an extraordinary event beyond its control. There is nothing in the record that would allow Stokes-Craven to invoke equitable tolling to escape the running of the statute of limitations.

D. Stokes-Craven's Motion for Summary Judgment.

Because the claims asserted by Stokes-Craven against defendants are barred by the statute of limitations, there is no need to address Stokes-Craven's motion for summary judgment.

VI. CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Stokes-Craven's motion to compel is granted in part and denied in part, and that Stokes-Craven's claims

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against defendants are barred by the applicable statute of limitations. Accordingly, defendant Scott L. Robinson's and defendant Johnson McKenzie & Robinson, LLC's motions for summary judgment are GRANTED and the case as to defendants is dismissed, with prejudice.

AND IT IS SO ORDERED.

George C. James, Jr.
Circuit Judge

June 4, 2013.

Sumter, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
STOKES-CRAVEN HOLDING CORP d/b/a STOKES-CRAVEN FORD, Plaintiff, vs. SCOTT L. ROBINSON and JOHNSON McKENZIE & ROBINSON, LLC, Defendants.	CASE NO. 2010-CP-14-457 **ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL**

THIS MATTER comes before this Court on Plaintiff's Motion to Compel filed on March 10, 2012. After reviewing the motion, the filings, supplemental submissions and the law, and after listening to oral arguments on April 4, 2012, I grant Plaintiff's motion.

I. Background – Plaintiff's Discovery Request and the Defendants' Responses:

While Plaintiff served Interrogatories and Production Requests on August 20, 2011, and received from Defendants answers and responses on or before December 12, 2011, and while Plaintiff argued that the responses were inadequate, the subject of this motion is Plaintiff's Supplemental Interrogatories and Request for Production served on December 05, 2011, and answered and responded to by Defendants on or before February 22, 2012.

Plaintiff's December 5, 2011, discovery requested the Defendants to:

a. List each opinion to be given by Defendants' experts and the basis for each opinion;

b. The information or data relied upon in support of each opinion;

c. Any exhibit that summarizes or supports each opinion;

EXHIBIT 2

d. The testifying expert's qualifications, including publications that support the claim of expertise;

e. A list of cases, during the last four years, in which the expert has testified at trial or by deposition;

f. The rate at which the expert is being compensated.

(See Exhibit 1, Plaintiff's Supplemental Discovery Requests).

Defendants answered "f" above and it is not the subject of this motion. In response to "e" above the Defendants provided Curriculum Vitae.[1] As to items "a" through "d" the Defendants generally responded by stating "... the experts are not agents of the Defendants (sic) and the Defendants (sic) are not in possession or control of the documents responsive to this request and therefore, in accordance with Rule 34(c) of the South Carolina Rules of Civil Procedure this request is outside the scope of discovery." Significantly the Defendants did provide to Plaintiff a listing of documents the Defendants provided to their experts. (See Defendant Scott Robinsons' Responses to Plaintiff's Supplemental Discovery Requests, Exhibit 2; Defendant Johnson McKenzie and Robinsons' Responses to Plaintiff's Supplemental Discovery Requests, Exhibits 3).

At the hearing on Plaintiff's Motion to Compel, Defendants advanced further arguments as to why the motion should be denied:

A. The Defendants' experts are not required to have prepared a report;

B. The experts' opinions have yet to be developed; and

[1] Defendants are ordered to answer this request more fully as the Vitae do not provide the information sought in the interrogatory.

C. Under the case of *Reiland* [2] the Defendants do not have to respond to Plaintiff's discovery.

II. The Law Related to Discovery

In considering Plaintiff's discovery motion, this Court is given broad discretion. *See Evening Post Pub Co. v. Berkeley School District*, 392 S.C. 76, 708 S.E.2d 745 (2011). Indeed the scope of discovery in South Carolina is very broad. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App 1997). The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Id.* at 114. The entire thrust of the discovery rules is to allow full and fair disclosure. *Id.* at 113.

III. Defendants' Arguments

A. <u>The experts are not required to prepare an Expert Report and the expert has not finalized a report</u>

These objections are not responsive. Plaintiff has not asked that the experts prepare a report; the Plaintiff has asked interrogatories that seek from the Defendant parties responses to specific questions. That the Plaintiff has used the questions permitted under the Federal Rules of Civil Procedure in order to standardize and legitimize the scope of the questions does not convert, as the Defendants contend, Plaintiff's discovery into a quest pursuant to the Federal Rules as opposed to the South Carolina Rules of Civil Procedure.

That the experts have yet to form their opinions is also not an appropriate objection. The Court notes that the Scheduling Order concludes discovery in this case on May 25, 2012, and that the information requested in the discovery on December 5, 2011, was essentially requested

[2] *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998), *abrogated on other grounds by Webb v. CSX Transp., Inc.*, 364 S.C. 639,615 S.E.2d 440 (2005)

in earlier discovery dated August 20, 2011. The Defendants are required by rule to provide full and responsive answers within 30 days of service of discovery. The Defendants argument that their experts have not formed opinions in the 8 months since the service of Plaintiff's initial requests with less than 2 months until the discovery deadline is not an appropriate response.

Objections of the Defendants on the grounds stated above are over-ruled.

B. The case of *Reiland v. Southland Equipment Services, Inc.*

In *Reiland* an expert, upon cross examination at trial, admitted to having certain documents that had not been turned over to counsel who retained him as an expert. The trial court was asked to strike the expert's testimony on the grounds that the documents in the expert's possession should have been turned over to counsel for the party which retained him pursuant to a SCRCP 34 request. The trial court denied the motion to strike and the South Carolina Court of Appeals affirmed, stating that SCRCP 34 requires the documents to be in the possession of the party in order to be subject to a SCRCP 34 request and hence the records were never given by the expert to the party that retained him. This case is the basis for the Defendants' objection as summarized infra by me. This objection falls for many reasons:

1. The documents are in the possession of the Defendants and their counsel. In *Reiland* the expert failed to send the documents to counsel. Here the documents were sent by counsel to their experts (See Exhibits 2 and 3) and are in possession of the parties.
2. Interrogatories. The information requested in the present case is requested by interrogatory. Here Plaintiff's Motion to Compel seeks answers to questions such as what are the experts' specific opinions; what documents does he rely upon; which documents support his opinions, etc. Unlike in *Reiland*, Plaintiff's motion

is not made pursuant to SCRCP 34; rather Plaintiff seeks answers to its interrogatories. Discovery of "facts known and opinions held by experts" may be obtained by "any discovery method", including SCRCP 33. (See SCRCP 26(b)(4)(A) annotated).

3. This is pre-trial discovery and not trial. The trial court in *Relland* was confronted with what to do about documents that had not been produced by an expert to even counsel that retained him in the context of an ongoing trial. There are not exigencies such as this present here. This is the discovery phase and Plaintiff is seeking to use the discovery tools available to it to prepare for trial and for the deposition of the experts. It is just for this reason that discovery exists.

C. SCRCP 26

South Carolina Rule of Civil Procedure 26(b)(4)(A) relates specifically to experts and provides:

> Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation for trial, may be obtained by any discovery method subject to subdivisions (b)(4)(B) and (C) of this rule, concerning fees and expenses.[3]

What does "by any discovery method" mean? SCRCP 26(b)(4)(A) provides:

> Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions.

[3] 26(b)(1) concerns relevance, and that test is met here.
26(b)(4)(B) concerning non-testifying experts is not applicable. Defendants experts are testifying experts.
26(b)(4)(C) governs the cost of an expert responding to discovery and is not applicable.

By a specific rule governing experts "discovery of facts known and opinions held by experts" may be obtained by interrogatory or request for production.

IT IS ORDERED that the Defendants comply with this Order within ten (10) days of service of this Order.

Plaintiff is given ten (10) days to provide this Court with fees and costs associated with this motion seeking response to the discovery of December 5, 2011.

AND, IT IS SO ORDERED.

Clifton Newman
Presiding Judge
Third Judicial Circuit

May 18, 2012

Lexington, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
STOKES-CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD, Plaintiff, vs. SCOTT L. ROBINSON AND JOHNSON MCKENZIE & ROBINSON, LLC, Defendants.	)	C/A No.: 2010-CP-14-457 **ORDER**

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 10/1/12
Beulah H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

THIS MATTER COMES BEFORE THE COURT on the Defendants' Motion for Reconsideration of the Court's Order of May 18, 2012 granting Plaintiff's Motion to Compel.

The Motion for Reconsideration was heard on July 11, 2012 with counsel for the parties in attendance.

The primary argument for reconsideration was the defense's contention that the Court's application of Rule 34 of the South Carolina Rules of Civil Procedure, compelling the Defendants to produce expert reports and other documents not in the Defendants' possession, is contrary to South Carolina law.

In reviewing the pleadings, arguments, and the prior order, I find that the Motion for Reconsideration should be granted to the extent that it can be interpreted to compel production of documents pursuant to Rule 34, SCRCP.

I find, however, that the Motion for Reconsideration should be denied as to compelling responses to interrogatories proposed under Rule 33, SCRCP.

EXHIBIT 3

I further find that due to the manner in which the plaintiff combined permissible interrogatories with impermissible requests for production, the Defendants had a substantial good faith basis for not responding to the Plaintiff's interrogatories and as a result no sanctions should be imposed.

Analysis

This case presents a classic tug of war between the applicability of state versus federal rules of procedure.

The Defendants vigorously argue that the Plaintiff is seeking to apply federal procedural rules to a state court proceeding through the use of standard federal interrogatories, particularly considering the fact that the interrogatories include requests for production of documents.

The Plaintiff argues that pursuant to Rule 26(b)(4)(A), SCRCP, the plaintiff is entitled to "facts known and opinions held by experts" and that this information may be obtained by "any discovery method," including Rule 33, SCRCP.

As expressed in my Order of May 18, 2012, I fully concur with Plaintiff's argument entitling Plaintiff to discovery of facts and opinions held by experts through the service of interrogatories. It appears, however, that the defense has essentially complied with the mandates of Rule 26, SCRCP, in the response to Plaintiff's supplemental interrogatories, except for providing the list of publications by William E. Durant, Jr., Esquire and the list of cases of Durant and Hugh Penny, CPA as requested in interrogatory 1d and 1e, respectively.

The remaining interrogatories and production requests sought by Plaintiff exceed the scope of discovery allowed by South Carolina discovery rules and treads in the impermissible

realm of seeking to compel the defense to produce, among other things, an expert report that is not in the possession of the defense in violation of Rule 34(c), SCRCP.

Based on the foregoing, the Motion for Reconsideration is denied to the extent that it orders that the Defendants provide, within in ten days of receipt of this order, the Plaintiff with a listing of all publications authored by expert William E. Durant within the last ten years and a list of all cases in which defense experts, Durant and Hugh Penny, have testified as experts at trial or deposition within the last four years.

The Motion for Reconsideration is otherwise granted and the Order dated May 18, 2012 is vacated except as ordered herein.

IT IS SO ORDERED.

Clifton Newman
Presiding Judge

This 24th day of September, 2012

Manning, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CLARENDON COUNTY
Court of Common Pleas

The Honorable Clifton Newman
The Honorable George C. James, Jr.

Case No. 2010-CP-14-457

STOKES-CRAVEN HOLDING CORP.,
d/b/a STOKES-CRAVEN FORD, Appellants,

v.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC, Respondents.

NOTICE OF APPEAL

Stokes-Craven Holding Corp., d/b/a Stokes-Craven Ford ("Stokes-Craven") appeals the interlocutory order of the Honorable Clifton Newman dated September 24, 2012 and filed on October 4, 2012. (Exhibit A). Stokes-Craven further appeals the judgment of the Honorable George C. James, Jr. dated June 4, 2013 and filed on June 6, 2013. (Exhibit B). Appellant received written notice of entry of Judge James' order on June 12, 2013.

June 27, 2013

ANDREW K. EPTING, JR., LLC

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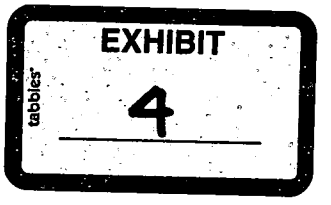

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	
	)	
STOKES-CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD,	)	C/A No.: 2010-CP-14-457
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	
SCOTT L. ROBINSON AND JOHNSON MCKENZIE & ROBINSON, LLC,	)	
	)	
Defendants.	)	
	)	

THIS MATTER COMES BEFORE THE COURT on the Defendants' Motion for Reconsideration of the Court's Order of May 18, 2012 granting Plaintiff's Motion to Compel.

The Motion for Reconsideration was heard on July 11, 2012 with counsel for the parties in attendance.

The primary argument for reconsideration was the defense's contention that the Court's application of Rule 34 of the South Carolina Rules of Civil Procedure, compelling the Defendants to produce expert reports and other documents not in the Defendants' possession, is contrary to South Carolina law.

In reviewing the pleadings, arguments, and the prior order. I find that the Motion for Reconsideration should be granted to the extent that it can be interpreted to compel production of documents pursuant to Rule 34, SCRCP.

I find, however, that the Motion for Reconsideration should be denied as to compelling responses to interrogatories proposed under Rule 33, SCRCP.

I further find that due to the manner in which the plaintiff combined permissible interrogatories with impermissible requests for production, the Defendants had a substantial good faith basis for not responding to the Plaintiff's interrogatories and as a result no sanctions should be imposed.

Analysis

This case presents a classic tug of war between the applicability of state versus federal rules of procedure.

The Defendants vigorously argue that the Plaintiff is seeking to apply federal procedural rules to a state court proceeding through the use of standard federal interrogatories, particularly considering the fact that the interrogatories include requests for production of documents.

The Plaintiff argues that pursuant to Rule 26(b)(4)(A), SCRCP, the plaintiff is entitled to "facts known and opinions held by experts" and that this information may be obtained by "any discovery method," including Rule 33, SCRCP.

As expressed in my Order of May 18, 2012, I fully concur with Plaintiff's argument entitling Plaintiff to discovery of facts and opinions held by experts through the service of interrogatories. It appears, however, that the defense has essentially complied with the mandates of Rule 26, SCRCP, in the response to Plaintiff's supplemental interrogatories, except for providing the list of publications by William E. Durant, Jr., Esquire and the list of cases of Durant and Hugh Penny, CPA as requested in interrogatory 1d and 1e, respectively.

The remaining interrogatories and production requests sought by Plaintiff exceed the scope of discovery allowed by South Carolina discovery rules and treads in the impermissible

realm of seeking to compel the defense to produce, among other things, an expert report that is not in the possession of the defense in violation of Rule 34(c), SCRCP.

Based on the foregoing, the Motion for Reconsideration is denied to the extent that it orders that the Defendants provide, within in ten days of receipt of this order, the Plaintiff with a listing of all publications authored by expert William E. Durant within the last ten years and a list of all cases in which defense experts, Durant and Hugh Penny, have testified as experts at trial or deposition within the last four years.

The Motion for Reconsideration is otherwise granted and the Order dated May 18, 2012 is vacated except as ordered herein.

IT IS SO ORDERED.

Clifton Newman
Presiding Judge

This 24th day of September, 2012

Manning, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON STOKES-CRAVEN HOLDING CORP. D/B/A STOKES-CRAVEN FORD, Plaintiff, vs. SCOTT L. ROBINSON AND JOHNSON MCKENZIE & ROBINSON, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT C/A No.: 2010-CP-14-457 **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 6/6/13
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

THIS MATTER CAME BEFORE THE COURT by way of defendant Scott L. Robinson's motion for summary judgment filed on November 29, 2012 and defendant Johnson McKenzie & Robinson, LLC's motion for summary judgment filed on November 26, 2012. Also before the court was the plaintiff's motion to compel production of certain documents. After due notice, a hearing was held on January 9, 2013 in Clarendon County, South Carolina. Present at the hearing were counsel for all interested parties: Andrew K. Epting, Jr., for plaintiff Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford; Susan Taylor Wall, Esq., for defendant Scott L. Robinson ("Robinson"); and Warren C. Powell, Jr., Esq., for defendant Johnson McKenzie & Robinson, LLC ("Johnson McKenzie"). The Court has carefully considered the motions, arguments of counsel, and the law.

I. BACKGROUND

This case arises from an underlying action known as *Donald C. Austin v. Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford*, Case No. 2004-CP-14-135 ("Underlying Action"). Robinson and Johnson McKenzie represented Stokes-Craven Holding Corporation ("Stokes-Craven"), a car dealership, in the Underlying Action which was tried in Clarendon County in

August 2006. In August 2010, Stokes-Craven filed this legal malpractice action against defendants Robinson and Johnson McKenzie asserting that defendants were negligent in their representation of Stokes-Craven in the Underlying Action. After the completion of discovery, defendants filed motions for summary judgment on statute of limitations grounds.

II. PROCEDURAL HISTORY

On March 15, 2004, Donald Austin filed a lawsuit against Stokes Craven. The case was tried in Clarendon County for three days beginning on August 14, 2006. The jury awarded Austin $26,371.10 in actual damages and $216,600.00 in punitive damages. Following the verdict, Stokes-Craven and Austin filed cross-appeals. On March 8, 2010, the Supreme Court issued its opinion in *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) and upheld the jury's damages award.

On August 16, 2010, Stokes-Craven filed a legal malpractice action against Robinson and Johnson McKenzie claiming that defendants were negligent in their representation of Stokes-Craven both prior to and during the trial by allegedly failing to: conduct discovery, prepare a pretrial brief, prepare trial exhibits, prepare voir dire, notify plaintiff's insurance carrier, preserve certain issues for appeal or settle the case before the jury verdict. Stokes-Craven contends that as a result of these alleged failings, an adverse jury verdict was returned against the dealership.

On August 26, 2011, Stokes-Craven filed an amended complaint. All defendants timely answered the amended complaint asserting the statute of limitations as one of their affirmative defenses. Specifically, defendants maintain that the statute was triggered on August 17, 2006, the date the verdict was rendered against Stokes-Craven in the Underlying Action. For the reasons set forth herein, the defendants' motions for summary judgment are granted.

III. STANDARD OF REVIEW

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). While viewing the evidence in a light most favorable to plaintiffs, under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

IV. FACTS[1]

Stokes-Craven, located in Manning, South Carolina, is an automobile and truck dealership of new and used vehicles. Dennis Craven is part owner, officer of the company, principal of the dealership, and serves as on site manager. The Underlying Action, which gives rise to this legal malpractice action, arose from Stokes-Craven's sale of a used Ford truck to Donald Austin, the plaintiff in the Underlying Action. Austin was not told that the truck he purchased was previously owned by an individual named Gary Bailey who wrecked the truck, repaired it at an expense of $20,309.38 and traded it back in to Stokes-Craven in April 2002. On June 1, 2002, Austin purchased the truck for $26,371.10. Stokes-Craven knew the truck was wrecked when the dealership bought it back from Bailey but did not tell Austin even when Austin inquired about the truck's history before purchase. One of Stokes-Craven's salesmen, William Frierson, denied the truck had been wrecked and told Austin that it had a 5-year, 100,000 mile powertrain warranty.

[1] The facts set forth are stated in the light most favorable to plaintiff.

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A few months after purchasing the truck, Austin discovered an oil leak at which time he was told by Dennis Craven that the truck was not covered by a 5 year, 100,000 mile powertrain warranty. Craven told him the dealership would cover this repair but that Austin would be responsible for any future repairs. In response, Austin asked Craven to return his purchase price and he would return the truck, but Craven rejected this request. Austin nevertheless scheduled the oil leak repair for September 13, 2002. Just before this appointment, Austin learned the truck had been previously wrecked. When Austin arrived at the dealership on September 13, 2002 for the repair on his truck, he met with Craven and again requested that he be allowed to return the truck given his new discoveries regarding the wreck and the lack of a powertrain warranty. In response to this demand, Craven showed Austin a Buyers Guide that was purportedly signed by Austin. The Buyers Guide stated the truck was covered only by a warranty of "up to 100,000 on diesel engine." Austin denied he signed the document.

When Austin returned to pick up his truck a week later, he again met with Craven to discuss the situation. Austin reiterated that he did not sign the Buyers Guide at which time Craven compared the signature on the signed document with Austin's driver's license. Craven admits that after comparing the signature contained on the warranty document with the signature contained on Austin's driver's license in 2002, he concluded that Austin's purported signature on the warranty document was a forgery. (Craven deposition, May 19, 2011, p. 105.) However, Craven again refused Austin's request to return the truck for a refund.

On February 18, 2003, Craven received a comprehensive letter from Austin's attorney, John Polito, which set forth the problems with the truck and the forgery and also included an analysis from two experts (one on auto body repair and one on the appraisal and valuation process). In the letter, Mr. Polito renewed Austin's request for a refund of the purchase price of the truck and, additionally, requested payment of Polito's fees in the sum of $1,500.00. Craven

claims he turned this letter over to his attorney, defendant Robinson, to handle. Craven, however, never agreed to the terms contained in the Polito letter.

On March 15, 2004, Austin filed suit against Stokes-Craven Ford alleging various causes of action including breach of contract, negligence, constructive fraud, common law fraud, violation of the South Carolina Motor Vehicles Dealer's Act, and violation of the South Carolina Unfair Trade Practices Act. Austin sought actual and punitive damages, prejudgment interest, attorney fees and costs. Stokes-Craven, represented by attorney Robinson, answered and denied each of Austin's material allegations.

After a three day trial, on August 16, 2006, the jury found in favor of Austin and awarded damages for negligence and fraud in the amount of $26,371.10 actual damages and $216,600.00 punitive damages. The jury also found Stokes-Craven had violated the Federal Odometer Act. The jury found in favor of Stokes-Craven on Austin's claim under the UTPA. Austin and Stokes-Craven then filed cross-appeals. Stokes-Craven was represented Young Clement Rivers, LLP, during the course of the appeal. Though Robinson was included as counsel of record on the appellate pleadings, he was not involved in the drafting of the appellate briefs or the oral argument, and had no input on the handling of the appeal. The Supreme Court issued the Austin opinion on March 8, 2010. Thereafter, on August 16, 2012, Stokes-Craven filed the subject legal malpractice action against defendants Robinson and Johnson McKenzie.

V. DISCUSSION

Statutes of limitations are designed to protect important public policy concerns.

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his [or her] rights. Another purpose of a statute of limitations is to protect potential defendants from

> protracted fear of litigation. Statutes of limitations are, indeed, fundamental to our judicial system.

Kelly v. Logan, Jolley, & Smith, LLP, 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009) (internal citations and quotations omitted).

It is well settled in South Carolina that claims for negligence and breach of fiduciary duty must be brought within three years. *See* S.C. Code Ann. § 15-3-530. The statutory period begins to run when the claimant could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his favor, rather than when the claimant obtains actual knowledge of either the potential claim or the facts giving rise thereto. *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 338, 356 S.E.2d 153, 156 (Ct. App. 1987). The discovery rule focuses upon whether the complaining party acquired knowledge of any facts "sufficient to put said party on inquiry, which, if developed, will disclose" the alleged conduct. *Burgess v. American Cancer Soc.*, 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989) (quoting W*alter J. Klein Co. v. Kneece*, 239 S.C. 478, 483, 123 S.E.2d 870, 874 (1962)).

It is not necessary that the claimant acquire precise information of the alleged wrongful conduct for the statute to begin to run, but merely acquire "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 103 S.E. 477, 478 (1920). South Carolina law requires a party to exercise reasonable diligence once he is on notice that some right of his has been affected. *See Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996); *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). "The fact that the injured party may not comprehend the full extent of the damage is immaterial." *Dean*, 321 S.C. at 364, 468 S.E.2d at 647; *see also Epstein v. Brown*, 363 S.C. 372, 382, 610 S.E.2d 816, 821 (2005).

The standard as to when the limitations period begins to run is objective, rather than subjective. *Kelly,* 383 S.C. at 633, 4; *Kreutner v. David,* 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995); *Burgess,* 300 S.C. at 186, 386 S.E.2d at 800.

> In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case 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.

Moore v. Benson, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010) (quoting *Young v. SC Dept. Corrections,* 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)).

A. **Stokes-Craven's Motion to Compel**

The court notes that since it is granting summary judgment to the defendants, a ruling on the motion to compel is technically not necessary. However, the plaintiff has requested the court to rule on this motion in the event its decision on summary judgment is overturned. Stokes-Craven has requested production of (1) the defendant law firm's professional liability policy applications for the years 2002 through 2012, (2) all correspondence between the defendants' malpractice carrier and the defendants and the defendants or their attorneys, (3) all billing for computer research from any research providers to the defendant law firm from 2003 through 2006.

I conclude that the correspondence requested in (2) above is not discoverable, as it was at the least prepared in anticipation of or during litigation. See Rule 26(b) (3), SCRCP. There has been no showing that the plaintiff is in need of this information for any good reason, and there has been no showing that it cannot obtain the substantial equivalent by other means. The court has not received a privilege log of these communications but is of the view that one is not necessary. This information is simply not discoverable.

As for (1) above, the court has reviewed the applications submitted *in camera* to the court by the defendants for the years 2002 through 2006. The court concludes that the applications are

discoverable, but that any issues of ultimate admissibility will be left to the trial judge. The court concludes that personal financial information may be redacted, and that social security and tax identification numbers may also be redacted. The parties will either enter into a consent confidentiality order or the court will order that only the plaintiff's attorneys will have access to the applications pending further order of the court. None of the information shall be disclosed to any person other than counsel without further order of the court, and if anyone violates this order, he or she or it will suffer risk of being held in contempt of court.

B. Stokes-Craven's Claims are Barred by the Statute of Limitations.

Under South Carolina law, "[t]he statute of limitations begins to run at the time the [plaintiff] has inquiry or constructive notice [that a claim might exist]." *Berry v. McLeod*, 328 S.C. 435, 445, 492, S.E.2d 794, 800 (Ct. App. 1997) (emphasis added). Either form of notice is sufficient. *Id.* In viewing the facts in the light most favorable to Stokes-Craven, I find Stokes-Craven had both inquiry and constructive notice of the claim more than three years before the lawsuit was filed. The deposition testimony of Dennis Craven compels the conclusion that Stokes-Craven had inquiry notice of the claim against defendants by August 17, 2006, the date of the verdict in the Underlying Action. In addition, the testimony of Stokes-Craven's appellate attorney compels the conclusion that Stokes-Craven had constructive notice of the claim by May 2007 (at the latest), the date its appellate lawyers reviewed the transcript and identified issue preservation concerns.

1. Inquiry Notice.

Stokes-Craven contends, through its pleadings, deposition testimony, and/or written discovery and arguments in opposition to summary judgment, that defendants were negligent in the following respects:

1. failing to diligently investigate the facts (Craven 5/19/11 Dep. p. 33);

2. failing to obtain a handwriting sample from Billy Frierson (Craven 5/19/11 Dep. p. 37);

3. failing to interview Kenny Craven sooner than two days before trial (Craven 5/19/11 Dep. p. 41);

4. failing to contact Barry Thornall to testify, which testimony, according to Mr. Craven, would have benefitted Stokes-Craven and would more than likely have led to a different result (Craven 5/19/11 Dep. p. 43);

5. failing to show Mr. Craven, or otherwise review with him, interrogatory answers prior to trial (Craven 5/19/11 Dep. pp. 44-46). Mr. Craven testified at trial and during his deposition that the first time he saw the answers to interrogatories was the day of his trial testimony and only then did he notice that some of the answers gave incorrect information. Mr. Craven claims that if he had seen the answers beforehand, he may have been better prepared, or would have been able to plan better, and the results of the trial would more than likely have been different;

6. failing to keep Stokes-Craven more informed and failing to prepare Mr. Craven for cross-examination. Mr. Craven testified that if Stokes-Craven had been more informed and if Mr. Robinson had better prepared him for cross-examination, the trial likely would have turned out more favorably to Stokes-Craven (Craven 5/19/11 Dep. pp. 53-54);

7. failing to settle the case. Stokes-Craven argued at the hearing that the failure to settle was the major failure on the part of defendants. In his deposition, Mr. Craven testified that Stokes-Craven was not confident of its position going into trial. He further stated in his deposition that he felt Stokes-Craven had done something wrong in its dealings with Mr. Austin (Craven 5/19/11 Dep. p. 56),and that he knew the forgery of the buyer's warranty was a major part of the case and had been an issue for some time (Craven 5/19/11 Dep. p. 57). Mr. Craven admitted that he concluded in 2002 that there had been a forgery (Craven 5/19/11 Dep. p. 105). Insofar as failure to settle is concerned, all of these factors were well within Mr. Craven's grasp at the time the verdict was rendered and it was then that he knew, or at least as a matter of law should have known, that Stokes-Craven **might** have a claim against its attorney for failing to settle the case.

With regard to points (1) – (6) above, Mr. Craven was asked the following by Johnson McKenzie's counsel:

> **Q.** Okay. And would it be a fair statement that the allegations, the specific things we were talking about, that is the failure to keep you advised and the other issues and that deficiencies that the plaintiff contends that the defendants made through the course of handling the case and at trial, when the verdict was handed down it became evident that that was a serious problem for the plaintiff?
>
> **A.** Correct.

(Craven 5/19/11 Dep. p. 61.) Defendants maintain that this exchange amounts to an admission on the part of Mr. Craven that he immediately knew the alleged negligence of Mr. Robinson had resulted in the adverse verdict. I do not agree this is an outright admission, at least for summary judgment purposes, because the quoted exchange is somewhat disjointed and the question to Mr. Craven was not clearly stated. I tend to agree with the plaintiff that Mr. Craven's "serious problem" testimony on page 61 can be interpreted to mean that he knew the verdict itself was a serious problem for Stokes-Craven.

Nevertheless, regardless of whether Mr. Craven's testimony on page 61 in and of itself amounts to an outright admission that he knew Stokes-Craven might have a claim against defendants, his testimony as a whole (points 1-6 above) compels the conclusion as a matter of law that Stokes-Craven knew or should have known it **might** have a claim on the date the verdict was rendered. S.C. Code Section 15-3-530 provides for a three year statute of limitations for legal malpractice actions. The statute amounts to a "discovery rule" under which the statute begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for wrongful conduct. As our Supreme Court has observed on more than one occasion, it has long been the law in South Carolina that "the exercise of reasonable diligence means simply that an injured party must act with some promptness 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,* 363 S.C. at 376, 610 S.E.2d at 818 (emphasis supplied by the Supreme Court) (citing *Berry v. McLeod,* 328 SC 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) quoting Supreme Court opinions of *Snell* at 303, 334 and *Mitchell v. Holler,* 311 S.C. 406, 429 S.E.2d 793 (1993);

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accord, *Dean*): *Rogers v. Efird's Exterminating Co., 284 S.C. 377, 379, 325 S.E.2d 541, 542 (1985)*. The *Epstein* Court also stated the rule in similar language that the statute "begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist. The fact that the injured party may not comprehend the full extent of the damages is immaterial." *Id.* at 382, 821. The standard is an objective one, rather than a subjective one. *Kelly*, 383 S.C. at 633, 4, 682 S.E.2d at 7; *Kreutner*, 320 S.C. at 285, 90.

Following a line of Supreme Court opinions now spanning over thirty years, the *Epstein* Court's emphasis of the word "might" and the remaining bold-print language that emphasizes the duty to act even when no "advice from counsel is sought or a full blown theory of recovery developed." In *Epstein*, the facts leading to the grant and affirmation of summary judgment were clear insofar as the majority's application of the discovery rule was concerned. Epstein's lawyer in the underlying trial had allegedly done or not done certain things that were known to Epstein to such an extent that the evidence was rather clear that the client knew at the time the verdict was rendered he might have a claim against his attorney. Here, Mr. Craven stated in his deposition that when he testified at trial in the Underlying Action, he realized he had never seen the interrogatory answers prepared by his lawyer and that some of the answers were incorrect. He knew during trial that Mr. Robinson had not interviewed Kenny Craven until two days before trial. He knew during trial that forgery was an important issue and that no handwriting sample had been taken from Mr. Frierson. He knew during trial that Mr. Robinson had not attempted to locate and call Mr. Thornall as a trial witness. He knew during trial that he was of the opinion that Mr. Robinson had not adequately investigated the case. Mr. Craven was the principal Stokes-Craven contact for Mr. Robinson, and in essence was the Stokes-Craven "point man" for the underlying Austin litigation. His knowledge of these shortcomings is imputed to Stokes-Craven.

Stokes-Craven contends that Mr. Craven had never been involved in a trial before and that he was totally uneducated as to how litigation (pre-trial and during trial) should be conducted by an attorney. However, Mr. Craven, and therefore Stokes-Craven, knew at the time of the verdict (or at the least should have known) that Stokes-Craven **might** have a claim against defendants for their negligence in handling the case. The law does not permit the client to wait until he consults with other counsel to become educated and does not allow the client to wait until he has a full-blown theory of recovery.

Stokes-Craven maintains that the deposition testimony of Mr. Craven does not establish that he knew or should have known at the conclusion of the trial that a claim might exist against defendants. Stokes-Craven points to some rather generic testimony of Mr. Craven for this proposition. (Pl.'s Mem. in Opp. to Summ. J. pp. 6-8.) However, as noted above, the testimony of Mr. Craven as a whole establishes otherwise as a matter of law.

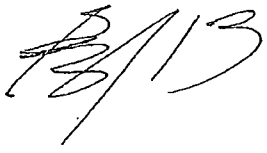
Stokes-Craven argues that the first time it was put on notice of a malpractice claim was at a meeting with its appellate counsel on June 9, 2009, when appellate counsel pointed out that Austin's attorneys were claiming that Mr. Robinson had made error preservation mistakes during trial. That may create a factual issue on that specific point, but this argument ignores the fact that Mr. Craven knew or should have known a claim might exist because of the other actionable errors he claims were made by Mr. Robinson as discussed above. In addition, this argument also ignores the fact that the knowledge of an attorney is imputed to his client. Here Stokes-Craven's appellate counsel knew that issue preservation was an issue as soon as counsel read the trial transcript, as further discussed below.

2. **Constructive Notice.**

The defendants claim that Stokes-Craven was also on constructive notice of its claim against defendants more than three years before it filed its claim. As set forth above, the statute

of limitations begins to run when a plaintiff has either inquiry or constructive notice. *Berry*, 328 S.C. at 445, 800. The defendants argue Stokes-Craven had constructive notice of the potential issue preservation concerns through its appellate lawyers at Young Clement Rivers, LLP. One of Stokes-Craven's appellate lawyers testified that issue preservation is one of the first items he evaluates when he is handling an appellate case, and he knew issue preservation was going to be an issue in this case. He testified that when he was reviewing the trial transcript in April and May of 2007, the issue preservation concern "jumped out" to him. (Brown Dep. pp. 65, 67; Young Clement Time Sheets). Thus, according to the defendants, Young Clement was aware of the potential issue preservation concerns in May 2007 (at the latest), more than three years before Stokes-Craven filed suit.

The defendants claim that Young Clement's knowledge of the issue preservation concerns on appeal is imputed as a matter of law to Stokes-Craven because Young Clement, as Stokes-Craven's appellate attorney, was Stokes-Craven's agent. "It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979); *see also Dorman v. Campbell*, 331 S.C. 179, 185, 500 S.E.2d 786, 789 (Ct. App. 1998) (holding that knowledge of information in letter to plaintiff's attorney was imputed to plaintiff for purposes of determining commencement of the statute of limitations even though plaintiff never saw the letter). The defendants claim Young Clement was acting within the scope of its authority when it reviewed the trial transcript and identified the potential issues on appeal. In addition, there is no dispute that the issue preservation concerns were material to the appeal. The court concludes there is an issue of fact as to whether Young Clement's knowledge is imputed to Stokes-Craven in this instance and therefore denies summary judgment on this ground.



C. **Equitable Estoppel and Equitable Tolling Do Not Bar Defendants' Statute of Limitations Defense.**

I hold as a matter of law that the doctrines of equitable estoppel and equitable tolling do not apply to the facts of this case.

1. **Equitable Estoppel**

The doctrine of equitable estoppel rests on a general principle of fairness which prevents one party, with knowledge of the situation, from misleading another by words, conduct, or silence in such a way that the other party would be prejudiced if the first party were allowed to later take an inconsistent position. *See Kelly*, 383 S.C. at 638, 682 S.E.2d at 7.

> To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts.

Id. at 638, 682 S.E.2d at 7 (internal citations omitted).

Estoppel by silence arises when the party estopped owes a duty to speak to the other party but refrains from doing so, thereby leading the other party to believe in an erroneous state of facts. A manifest intent to mislead is not required for estoppel by silence; it arises when the silence is intended or has the effect of misleading the other party, provided the other party acts reasonably. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006)

There is nothing in the record to support the conclusion that defendants did anything to mislead Stokes-Craven, or that Mr. Robinson engaged in conduct calculated to convey an impression that facts were inconsistent with those which Mr. Robinson subsequently attempted to assert. There is no evidence that Mr. Robinson engaged in any conduct to prevent Stokes-Craven from filing a malpractice action, nor is there any evidence that Stokes-Craven relied upon

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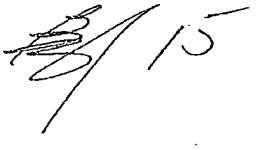
any conduct or representation of Mr. Robinson in delaying suit. Also, Stokes-Craven did not lack the means of knowing of the alleged malpractice on the part or Mr. Robinson, as set forth above in Points 1 – 7 discussed on pages 7 – 8 of this order.

Much of Stokes-Craven's discussion about the trigger date of June 2009 is based on matters pertaining to issue preservation (failure to object to vehicle value testimony). Stokes-Craven claims there is evidence that Mr. Robinson knew all along that this issue would be raised on appeal, and that his failure to advise Stokes-Craven created an issue of fact on the issue of equitable estoppel. However, this again ignores the fact that Stokes-Craven knew of other alleged acts of negligence well before June 2009, and Stokes-Craven cannot use this one issue to excuse its failure to timely commence this action. Furthermore, it ignores the fact that Stokes-Craven's appellate counsel, Young Clement, knew of the issue as soon as they reviewed the trial transcript.

Stokes-Craven also argues that defendants failed to disclose breaches in their duty to Stokes-Craven, blamed the verdict on the unpredictability of juries, and continued to represent Stokes-Craven during the appeal. None of these points lead to any genuine issue of fact on the issue of equitable estoppel. Again, Stokes-Craven, through Mr. Craven, had knowledge on the day of the verdict that Stokes-Craven might have a cause of action against defendants. There is no evidence that defendants misled Stokes-Craven by words, conduct, or silence to the detriment of Stokes-Craven.

2. Equitable Tolling.

The statute of limitations should be tolled when, in view of all the circumstances, a party would otherwise suffer a gross wrong at the hand of the other party. *Hooper v. Ebenezer Sr. Services & Rehab. Ctr.*, 386 S.C. 108, 116-117, 687 S.E.2d 29, 33 (2009). In reviewing holdings from other jurisdictions, the *Hooper* Court noted that equitable tolling typically applies in cases



in which a litigant was prevented from filing suit because of an extraordinary event beyond his control, but that other jurisdictions have considered the doctrine "in a variety of contexts and have developed differing parameters for its application." *Id.* at 116, 687 S.E.2d at 32. The *Hooper* court quoted with approval the ruling of a Texas appellate court that "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Id.* at 116-17, 687 S.E.2d at 33 (quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006). Our Supreme Court went on to say that equitable tolling may be applied where justified under all the circumstances, but that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Id.* at 117, 687 S.E.2d at 33.

Here, there were no extraordinary events beyond Stokes-Craven's control that prevented it from commencing its action within three years after the verdict was rendered. While Stokes-Craven need not establish that defendants did anything to mislead it, as that is a component of equitable estoppel and not necessarily equitable tolling, Stokes-Craven must present evidence that defendants prevented it from timely filing by an extraordinary event beyond its control. There is nothing in the record that would allow Stokes-Craven to invoke equitable tolling to escape the running of the statute of limitations.

D. Stokes-Craven's Motion for Summary Judgment.

Because the claims asserted by Stokes-Craven against defendants are barred by the statute of limitations, there is no need to address Stokes-Craven's motion for summary judgment.

VI. CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Stokes-Craven's motion to compel is granted in part and denied in part, and that Stokes-Craven's claims

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against defendants are barred by the applicable statute of limitations. Accordingly, defendant Scott L. Robinson's and defendant Johnson McKenzie & Robinson, LLC's motions for summary judgment are GRANTED and the case as to defendants is dismissed, with prejudice.

AND IT IS SO ORDERED.

George C. James, Jr.
Circuit Judge

June 4, 2013.

Sumter, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-14-457

Stokes Craven Holding Corp

PLAINTIFF(S)

Scott Robinson
Johnson McKenzie & Robinson

DEFENDANT(S)

CHECK ONE:

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[✓] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] ACTION DISMISSED (*CHECK REASON*): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____.

[ ] ACTION STRICKEN (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____.

IT IS ORDERED AND ADJUDGED: [✓] See attached order; [ ] Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20___.

_____
PRESIDING JUDGE

~~This judgment was entered on the ___ day of _____, 20___~~, and a copy mailed first class this 10th day of June, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Michelle Endemann
Andrew Epting, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Warren C. Powell, Sr.
Susan Wall
Amanda C. Williams

ATTORNEY(S) FOR THE DEFENDANT(S)

Deputy Sharon Briana
CLERK OF COURT – CLARENDON COUNTY

State of South Carolina
Third Judicial Circuit

GEORGE C. JAMES, JR.
CIRCUIT COURT JUDGE

141 NORTH MAIN STREET, SUITE 303
POST OFFICE BOX 1716
SUMTER, SOUTH CAROLINA 29151-1716
TELEPHONE: (803) 436-2150
FAX: (803) 436-2403
E-MAIL: gjamesj@sccourts.org

June 4, 2013

Honorable Beulah G. Roberts
Clarendon County Clerk of Court
Post Office Box 136
Manning, South Carolina 29102

RE: Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford v Scott L. Robinson and Johnson, McKenzie & Robinson, LLC (10-CP-14-457)

Dear Beulah:

I am enclosing an Order Granting Defendants' Motions for Summary Judgment for filing in the above matter. Please file the order and send **certified copies to all counsel of record.**

If you have any questions, please let me know.

Yours very sincerely,

George C. James, Jr.

GCJjr:djf

Enclosures

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 6/6/13
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CLARENDON COUNTY
Court of Common Pleas

The Honorable Clifton Newman
The Honorable George C. James, Jr.

Case No. 2010-CP-14-457

STOKES-CRAVEN HOLDING CORP.,
d/b/a STOKES-CRAVEN FORD, Appellants,

v.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC, Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all Respondents by depositing a copy of it in the United States Mail, Postage prepaid, on June 27, 2013, addressed to their attorneys of record as follows:

Susan Taylor Wall, Esquire Amanda C. Williams, Esquire McNair Law Firm, PA 100 Calhoun Street, Suite 400 Charleston, SC 29401 *Attorneys for Scott Robinson*	Warren Powell, Esquire Bruner Powell Wall & Mullins, LLC 1735 St. Julian Place (29204) PO Box 61110 Columbia, SC 29206 *Attorneys for Johnson McKenzie & Robinson*

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
843-377-1871; Fax: 843-377-1310
Attorneys for Appellant Stokes-Craven Holding Corp., d/b/a Stokes-Craven Ford

Williams, Amanda

From: Andrew K. Epting [AKE@epting-law.com]
Sent: Thursday, December 06, 2012 7:53 AM
To: Wall, Susan; James, George C.; Warren Powell; James, George C. Law Clerk (Benjamin H. Joyce)
Cc: Epting Office; Williams, Amanda; Michelle Endemann; Ann Lee; Michelle Endemann; Angela Gross
Subject: RE: Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford v Scott L. Robinson and Johnson McKenzie & Robinson, LLC; case number 2010-CP-14-457

Judge, each of us has tried to accommodate the others schedule throughout and if Susan cannot do it then I am ok with the week of the 7th.
You asked about the motions to compel, they will not have a bearing on either of the summary judgment motions. These motions are quite limited and could be argued by phone in 15 minutes.
I think this addresses all of your questions but if anything further is needed, please have your clerk advise.
Drew

Andrew K. Epting, Jr
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401
ake@epting-law.com
Phone: 843-377-1871
Fax: 843-377-1310

From: Harvey, Jeslyn [mailto:JHarvey@mcnair.net] **On Behalf Of** Wall, Susan
Sent: Wednesday, December 05, 2012 2:04 PM
To: 'James, George C.'; Warren Powell; James, George C. Law Clerk (Benjamin H. Joyce)
Cc: Epting Office; Andrew K. Epting; Wall, Susan; Williams, Amanda; Michelle Endemann; Ann Lee
Subject: RE: Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford v Scott L. Robinson and Johnson McKenzie & Robinson, LLC; case number 2010-CP-14-457

Dear Judge James,

As a follow-up to your December 4, 2012 email, we contacted the Clarendon County Clerk of Court's office and learned that Judge Young will only be in Manning on December 19, 2012 for a non-jury term. Unfortunately, we have a deposition scheduled on that day, which was specially designated by the court and cannot be rescheduled due to the deadlines in the scheduling order for that matter. As a result, the four outstanding motions cannot be heard before Judge Young during the December 19 term of court. Accordingly, we respectfully request that these motions be added to your January 7th term. The Court's ruling on Plaintiff's Motion to Compel should not have any impact on Defendants' respective Motions for Summary Judgment since the primary ground for these motions is statute of limitations. Thank you for your attention to this matter and your willingness to assist with these scheduling issues.

By copy of this email, I am notifying all counsel of record of my communication with the Court.

With highest professional regards,
Susan Taylor Wall

MCNAIR
ATTORNEYS

Jeslyn Harvey
Legal Assistant to Susan Wall
jharvey@mcnair.net | 843 973 6816 Direct

McNair Law Firm, P.A.
Charleston Office 100 Calhoun Street | Suite 400 | Charleston, SC 29404
843 723 7831 Main | 843 805 5733 Fax
Mailing Post Office Box 1431 | Charleston, SC 29402
VCard | Web site

From: James, George C. [mailto:GJamesJ@sccourts.org]
Sent: Tuesday, December 04, 2012 2:02 PM
To: Warren Powell; James, George C. Law Clerk (Benjamin H. Joyce)
Cc: Epting Office; Andrew K. Epting; Wall, Susan; Williams, Amanda; Michelle Endemann; Ann Lee; Harvey, Jeslyn
Subject: RE: Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford v Scott L. Robinson and Johnson McKenzie & Robinson, LLC; case number 2010-CP-14-457

Mr. Powell

Thank you for your letter. The next scheduled nonjury term is the week of December 17. Is there any reason why the motions cannot be added to that roster, especially since they evidently need to be heard as soon as possible? The reason I mention that is because there may not be a motion day in Clarendon County the week of January 7 if the bulk of pending motions in that county are heard in December. I believe Judge Young is presiding over the December term. I will do what I can to accommodate all of you, but if your goal is to have these heard as soon as you can, this month's term should be an option.

I note that one pending motion is a motion to compel. Will the plaintiffs be contending that the summary judgment motions can't be heard if the motion to compel is granted? Please advise on that, and in the meantime, consult with one another about the possibility of at least having the motion to compel heard the week of December 17. I have no idea which day is scheduled for Clarendon.

GCJ

From: Warren Powell [mailto:WPowell@brunerpowell.com]
Sent: Tuesday, December 04, 2012 12:19 PM
To: James, George C.; James, George C. Law Clerk (Benjamin H. Joyce)
Cc: Epting Office; Andrew K. Epting; Wall, Susan; Williams, Amanda; Michelle Endemann; Ann Lee; Harvey, Jeslyn
Subject: Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford v Scott L. Robinson and Johnson McKenzie & Robinson, LLC; case number 2010-CP-14-457

Dear Judge James, After counsel for the parties corresponded with Judge Cothran's office we were instructed to write either Judge Young or you concerning the scheduling of the outstanding motions in the above referenced Clarendon County action. I am writing Your Honor inasmuch as the next scheduled nonjury term in Clarendon County (week of January 7, 2013) has been assigned to you. I am attaching herewith a letter to you requesting that the outstanding motions in the above referenced case be scheduled before Your Honor during that nonjury term of court. I represent the former Manning law firm of Johnson McKenzie & Robinson, LLC, named as a defendant in this action. Susan Wall and Amanda Williams, both of the Charleston Bar, represent Scott Robinson individually, also named as a defendant. Andrew Epting of the Charleston Bar represents the plaintiff. I am copying all counsel of record and their assistants with this e-mail. The best estimate we have is that it will take approximately 2 hours for these motions to be heard. I thank you in advance for your consideration of this request. Please let me know if you require anything further from us at this time. With kindest regards, Warren Powell

Warren C. Powell, Jr.
BRUNERPOWELL
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