THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Court of Common Pleas

The Honorable Patrick C. Fant, III

Appellate Case No. 2024-000925

Richard Smith,

Appellant,

v.

Dr. Srikanth Pilla and Clemson University International Automotive Research (CUICAR),

Respondents.

INITIAL BRIEF OF RESPONDENTS

James P. Walsh (SC Bar# 15180)
P. Christopher Smith, Jr. (SC Bar# 74086)
Matthew J. Algino (SC Bar# 106853)
CLARKSON, WALSH & COULTER, P.A.
P.O. Box 6728
Greenville, SC 29606
Phone: (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com
matthew.algino@clarksonwalsh.com

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

ISSUES ON APPEAL

a. Whether the Circuit Court erred or abused its discretion in granting Respondents' Motion for Summary Judgment.

b. Whether Appellant was prejudiced by not receiving a copy of Respondents' Memorandum in Support of their Motion for Summary Judgment prior to the Motion for Summary Judgment hearing conducted by the Circuit Court on April 12, 2024.

STATEMENT OF THE CASE

Richard Smith (hereinafter "Appellant") and Roding Technology North America, LLC, filed a Summons and Complaint on June 30, 2022, naming Dr. Srikanth Pilla and CUICAR as Defendants. See Appellant's Summons and Complaint. Appellant essentially argued that he "created and strategically planned the composite center concept…" on the Clemon University International Automotive Research (hereinafter "CUICAR") campus and that CUICAR had stolen his intellectual property and know-how, using it to obtain millions of dollars of grants from the federal government. Id. at p. 2. He specifically alleged that after his knowledge was obtained, he was expelled from the CUICAR campus and, as a result, suffered financial hardship which led to him closing down his business. Id. Appellant claims that he is seeking damages for intentional fraud, racial discrimination/violation of civil rights, theft of intellectual properties, and false advertising. Id. He also claims that he is seeking restitution and compensatory damages in the amount of $75,000,000.00. Id. On October 10, 2022, Respondent Srikanth Pilla (hereinafter "Respondent Pilla") filed an Answer and Counterclaim primarily denying the allegations set forth by Appellant, asserting, *inter alia*, affirmative defenses arising under Rule 12(b)(6), SCRCP, and bringing a counterclaim against Appellant for filing frivolous pleadings. See Respondent Pilla's Answer and Counterclaim.

On February 3, 2023, Respondent Pilla and CUICAR (collectively "Respondents") filed a Motion to Dismiss pursuant to Rules 3, 12(b)(2), (4), (5), and (6), SCRCP, seeking dismissal of the case for lack of jurisdiction over the person, insufficiency of process, insufficiency of service of process, and failure to state facts sufficient to constitute a cause of action. See Respondents' Motion to Dismiss. More specifically, Respondents argued, *inter alia*, that: (1) Appellant is not a licensed attorney and cannot represent Robing Technology North America, LLC, (2) the case is

barred by the applicable statute of limitations based on the fact that Appellant's lawsuit is based on events that transpired between 2012 and 2016, and (3) Appellant failed to timely served Defendant CUICAR, which is also a non-existent entity. Id.

On April 20, 2023, Appellant filed an Amended Summons and Complaint, without the Circuit Court's approval, naming Rob Krulac as a Defendant. See Appellant's Amended Summons and Complaint. On May 3, 2023, Respondents filed a Motion to Strike or Dismiss the Amended Complaint arguing that Appellant improperly filed his Amended Complaint under Rule 15(a), SCRCP, as he did not seek leave of court or receive written consent from Respondents. See Respondents Motion to Strike or Dismiss Appellant's Amended Complaint. The Greenville County Court of Common Pleas (hereinafter the "Circuit Court") conducted a motion hearing on August 2, 2023, and issued an Order on August 3, 2023, with the consent of both parties, that continued the motion hearing until a later date so Appellant could have an opportunity to retain an attorney. See Circuit Court Order dated August 3, 2023. On September 15, 2023, Appellant filed a Second Amended Summons and Complaint voluntarily removing Roding Technology North America, LLC, as a Plaintiff due to the fact that Appellant admitted that he is not a licensed attorney and is therefore barred from representing a company in court. See Appellant's Second Amended Summons and Complaint.

On September 15, 2023, the Circuit Court conducted a motions hearing and issued an Order on September 21, 2023, granting Respondents' Motion to Strike the Amended Complaint, which removed Robert Krulac as a Defendant, and denying Respondents' Motion to Dismiss. See Circuit Court Order dated September 21, 2023. Regarding Respondents' Motion to Dismiss, the Circuit Court held:

> As to the Motion to Dismiss, the Court first notes that a ruling on a 12(b)(6) must be based solely on the allegations in the complaint. State Bd. of Medical Examiners

> v. Fenwick Hall, 300 S.C. 274 (1990). Documents were submitted by Plaintiff at the hearing in opposition to the motions, but the Court did not consider any of the documents as required by the rule. Consequently, the decision was based solely on allegations set forth in Plaintiff's complaint. Defendants argue the action is barred by the statute of limitations. Although, the complaint states that Roding Technology North America LLC was the only company that existed on the CUICAR campus from 2012 to 2016 working in the area of advanced composite engineering and advance composite manufacturing, it did not state nor does it necessarily infer that this time frame is when the Plaintiff knew or should have known that his intellectual property had been stolen and thus he was injured. All reasonable inferences must be decided in the light most favorable to the plaintiff in a rule 12(b)(6) motion. Doe v. Marion, 373 S.C 390 (2007). That issue may very well be determined in a summary judgment motion, but that cannot be deduced for purposes of this motion based on the complaint before the Court. Therefore, the motion is denied.

Id.

On September 29, 2023, Respondents filed an Answer to Appellant's Amended Complaint stating that Appellant's Second Amended Complaint failed to comply with Rule 15(a), SCRCP, and admitting that Roding Technology North America, LLC, should be dismissed as a party to this case. See Respondents' Answer to Appellant's Amended Complaint. Respondents also stated that Respondent CUICAR is a non-existent entity which was never served with the original Complaint and that the attempt to name Robert Krulac as an additional Defendant through the prior attempt at an Amended Complaint was improper, as recognized by the Circuit Court's September 21, 2023 Order. Id.

On October 11, 2023, Appellant submitted "Exhibit List #4084" with the following items included as Appellant's Exhibit 1: "Answer of Defendants Motion to Dismiss and for Appropriate Relief with circles on the front page; Clemson News print out; Emails; Excel print out #1; Copy of the Certificate of Service; Clemson News print out #2; Clemson News print out #3 (29 pages)." See Appellant's Exhibit List #4084.

On February 20, 2024, Respondents filed a Motion for Summary Judgment on the following grounds:

> that there is no genuine issue as to any material fact in that the Plaintiff's claims are barred by the applicable statute of limitations, the Plaintiff does not have a viable cause of action against the Defendants or anyone else for that matter pertaining to the allegations made in his pleadings, and that the Plaintiff's own deposition testimony supports the granting of summary judgment in this case.

Respondents' Motion for Summary Judgment p. 1. On February 27, 2024, Appellant filed a Response to Respondents' Motion for Summary Judgment essentially arguing that the lawsuit is not barred by the statute of limitations. See Appellant's Response to Respondent's Motion for Summary Judgment. On April 9, 2024, Respondents filed a Memorandum in Support of their Motion for Summary judgment stating, *inter alia*, that (1) the lawsuit is barred by the statute of limitations; (2) Appellant's claims for intentional fraud, theft of intellectual properties, and false advertising are all baseless; and (3) Appellant's own deposition testimony reveals he has no proof of any racial discrimination or violation of civil rights. See Respondents' Memorandum in Support of Summary Judgment.

On April 12, 2024, the Circuit Court conducted a motion hearing and on April 26, 2024, it issued an Order granting Respondents' Motion for Summary Judgment and held, *inter alia*:

> [T]here is no genuine issue of material fact and summary judgment must be granted in favor of the Defendants. The evidence summarized above and attached as exhibits to the Defendants' Memorandum in support of the Motion for Summary Judgment clearly demonstrate that the Plaintiff's claims are time-barred. In addition, the evidence clearly demonstrates that Dr. Pilla was tasked with developing a Composites Center on the CUICAR campus, that Mr. Smith fully understood that Dr. Pilla was in charge and that Mr. Smith was part of a group submitting a competing bid to sell equipment for the Center. Mr. Smith did not have any contracts to support his claims and acknowledged that all prior contracts with his company were fulfilled by CUICAR/Clemson. The evidence demonstrates that Mr. Smith knew the Composites Center was going forward at the time and after he left the campus. The evidence also demonstrates that he monitored the progress to ensure that the Krauss Maffei equipment sale went through so he could follow up on his commission with that company.
>
> There is no evidence to support Mr. Smith's contention that the Composites Center should be named after him or that he should receive portions of the grant money awarded to Clemson/CUICAR. In addition, Mr. Smith admitted that he

> knew the day he was evicted from the CUICAR campus that he would no longer have any involvement with the Composites Center or with his vision of building a manufacturing facility in South Carolina. As a result, summary judgment must be granted in the Defendants' favor.

Circuit Court Order dated April 26, 2024 pp. 12, 13. On May 17, 2024, Appellant filed a Motion to Reconsider essentially arguing that he did not receive Respondents' Motion for Summary Judgment in its entirety prior to the motion hearing conducted on April 12, 2024. See Appellant's Motion to Reconsider. Specifically, Appellant alleges that he never received an "affidavit" and the first time he received this "affidavit" was by Judge Patrick Fant III on April 19, 2024. Id. This issue was not raised at the hearing on the Motion for Summary Judgment and the Appellant did not ask for additional time to respond at the hearing. See Transcript of April 12, 2024, Motion for Summary Judgment Hearing. Counsel for the Respondents was not aware that Appellant did not have a copy prior to the hearing.

In addition, Appellant admits that he was served with the Circuit Court's Order granting Respondents' Motion for Summary Judgment and Respondents' Memorandum and Affidavit on April 19, 2024. See Appellant's Motion to Reconsider p. 2. Appellant filed his Motion to Reconsider on May 17, 2024, and pursuant to Rule 59, SCRCP, he had 10 days, or until April 29, 2024, to file his Motion to Reconsider. Therefore, Appellant's Motion to Reconsider was untimely. On June 4, 2024, the Circuit Court denied Appellant's Motion to Reconsider and held: "Based on a review of Plaintiff's Motion . . . [t]he Court stands by its original decision to Grant Defendant's Motion for Summary Judgment." Circuit Court Order dated June 4, 2024. On June 5, 2024, Appellant filed a Notice of Appeal.

In his Brief filed with this Court, Appellant argues that this Court should reverse the Circuit Court's grant of Respondents' Motion for Summary Judgment due to Respondents not providing him with a copy of Respondents' Memorandum in Support of their Motion for Summary Judgment

(hereinafter "Respondents' Memorandum"). Appellant reiterated his original claims against Respondents and further alleged that Respondents misled the Circuit Court and breached a fiduciary duty owed to Appellant. Appellant also claims that Judge Fant should not have presided over the case due to a conflict of interest. Respondents now file this Brief in response.

STATEMENT OF THE FACTS

Appellant testified that he is seeking $150,000,000.00 in this case based upon a claim that he is responsible for the CUICAR Composites Center, that it should be named after him, and that he is entitled to grant money that Defendant Dr. Srikanth Pilla secured for Clemson University's research. See Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 39-47; 65-83; 103-106; 143-149. Appellant previously played football for Clemson University and NFL Europe, among other organizations. Id. pp. 7-9. After his football career ended, Appellant had a successful career as a music artist and subsequent producer in Europe. Id. pp. 9-12. He performed under the name RasMaTaz. Id. He was also in the groups E-Rotic, S.E.X. Appeal, and Magic Affair. Id. He was the producer for the girl group Four Colourz. Id.

While in Germany, his now wife introduced him to Ferdinand Hendimyer, the CEO of Roding in Germany. Id. pp. 12-17. Roding manufactures automobiles out of carbon fiber. Id. Appellant subsequently hatched a plan with Mr. Hendimyer to open a North American headquarters of Roding in hopes of ultimately building a manufacturing facility in the United States. Id. Appellant rented a small office space at CUICAR. Id. pp. 22-30.

On the CUICAR campus, Appellant entered into several contracts to perform engineering services for CUICAR on Deep Orange projects, which involve designing vehicles. Id. pp. 49-52. The engineering services were actually performed by engineers in Germany on behalf of Roding

North America. Roding North America was fully paid for the work performed on behalf of the company. Id. pp. 59-60. A separate small contract was also performed. Id. pp. 31-32, 60-61.

On February 3, 2014, questions were asked about whether Roding would be interested in sponsoring a research project independent of Deep Orange or participating in one of the Deep Orange Projects. See Exhibit A to Respondents' Memorandum in Support of Summary Judgment p. 49, 123. These discussions are what lead to Roding participating in the projects mentioned above.

Separate from the Deep Orange projects, other discussions were being held. A "Roding Need Statement" was circulated. See Exhibit B to Respondents' Memorandum in Support of Summary Judgment. That Need Statement reflects that Roding was focused on the development and manufacturing of lightweight structures made of carbon fiber reinforced plastic (CFRP). Id. Proposed areas of collaboration with CU-ICAR toward research & innovation targeted for:

- Vacuum infusion – existing Roding Technology
- Light RTM (LRTM) – existing Roding Technology
- Carbon Surface Bonding – adhesive/resin industry 3rd party partner opportunity (Dow). Id.

The Need Statement lists Roding's Target Objective as: "Utilizing an existing business relationship, Richard Smith (Roding) along with Stacy Fields (Dow Chemical), have jointly approached CU-ICAR about the possibility of establishing a Center for Composites Research & Innovation relative to the automobile/transportation industry sectors." Id. Targets were listed as: CFRP market innovation and R&D for joining dissimilar materials, scalable manufacturing, workforce training and education." Id.

CU-ICAR's Fit/Scope was Component, Fabrication, Joining & Testing. The Need Statement states, "This research area focuses on component level fabrication of composites, distinct and hybrid materials joining and component assembly. The work encompasses development on engineered methods for component fabrication; innovative joining methods as well as optimization of existing methodologies including mechanical adhesive, welding, etc.; modeling and simulation of joining and assembly test methods; and testing of joining characteristics including wear, peel, joint strength, etc." Id.

At a later date, Appellant was advised by Roding GmbH that the company was splitting and that no one would be funding his North American operation any longer. Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 35-37. He was advised that engineering services could be provided to him as needed. Id. Appellant was hoping to secure federal grants to start a manufacturing facility in Bamberg. Id. pp. 35-38. However, the date he was evicted from the CUICAR campus, he knew his ties to the industry were severed and that the manufacturing facility would never become a reality. Id. p. 38, lines 10-19; pp. 56-57; pp. 79-80; pp. 98-99. Appellant and Roding subsequently provided feedback on a proposed presentation to be made by Defendant Dr. Srikanth Pilla. Exhibit C to Respondents' Memorandum in Support of Summary Judgment ¶¶ 18-20. Further, Appellant attended the conference where the presentation was made to many industry partners and potential partners. Id.

Respondent Pilla subsequently solicited bids from equipment manufacturers to supply the Composites Center with the requisite equipment. Id. ¶¶ 21-23. Krauss Maffei and Engel provided competing quotes. Id. Ultimately, the decision was made to go with the Krauss Maffei bid because it was more financially competitive and provided other critical benefits. Id.

Appellant was working with people at Krauss Maffei. Id. ¶ 24. Unbeknownst to Respondent Pilla at the time, Appellant had made a secret business arrangement with Krauss Maffei whereby he received a commission in the amount of approximately $100,000.00 as part of Krauss Maffei's sale of an RTM press to Clemson. Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 39-40; Exhibit C to Respondents' Memorandum in Support of Summary Judgment ¶ 24. Respondent Pilla only learned of this arrangement by reading Appellant's deposition transcript. Id.

A series of emails on July 6, 2016 demonstrate that CUICAR was still considering competing bids for equipment suppliers and that Respondent Pilla had questions regarding items contained in Krauss Maffei's quote. See Exhibit D to Respondents' Memorandum in Support of Summary Judgment. On July 7, 2016, Appellant sent an email to Respondent Pilla and others reconfirming the commitment of Krauss Maffei, Alpex, Roding Technology and Forward Engineering to CUICAR indicating they were committed to a virtual or physical presence at the new composite center. See Exhibit E to Respondents' Memorandum in Support of Summary Judgment. On July 12, 2016, a Co-investment letter was sent by Krauss Maffei Corporation to CUICAR indicating that Krauss Maffei, along with select business partners Alpex and Roding Technologies N.A./Forward Engineering, were proposing to invest $650,000.00 in alleged co-investment value toward the establishment of the Clemson Composites Center. See Exhibit 5 to Exhibit C to Respondents' Memorandum in Support of Summary Judgment. This investment was through proposed discounts on the sale of equipment and services. As stated above, Krauss Maffei was ultimately awarded the bid.

Importantly, the $62 million in funding Respondent Pilla has secured is for projects that do not in any way use the RTM press. Exhibit C to Respondents' Memorandum in Support of

Summary Judgment ¶ 25. The RTM press (for which Appellant was apparently paid a commission) is the primary basis of Appellant's lawsuit. Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 39-41. In addition, none of Clemson's industry partners, whether on the CUICAR campus or not, have been directly paid any of the funding Respondent Pilla secured for Clemson. Exhibit C to Respondents' Memorandum in Support of Summary Judgment at ¶ 26. There were no contracts entered into and no promises made to share grants or funding with anyone. Id. None of the other people and/or companies involved in the initial presentations pertaining to the Composites Center or its subsequent construction have made claims like Appellant has made and none of them expected to profit from grants made to Clemson through Respondent Pilla's efforts. The only funds paid out were paid pertaining to the design and construction of the Composites Center and for the equipment installed in the Center and services provided pursuant to agreed upon contracts. Appellant acknowledged he and/or Roding did not have any contracts with Clemson pertaining to the construction of the Composites Center or the equipment installed therein. Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 63-73, 78-83, 94-106, 122-132, 151.

Once Respondent Pilla moved forward with the Composites Center, Appellant had no meaningful involvement. Exhibit C to Respondents' Memorandum in Support of Summary Judgment ¶ 27. Appellant did email Respondent Pilla from time to time asking about the status of the Composites Center, both before and after he left the CUICAR campus. Id. ¶ 28; Exhibit 4 to Exhibit C to Respondents' Memorandum in Support of Summary Judgment. Respondent Pilla now realizes that Appellant was indirectly inquiring about the status of the delivery of the RTM press so that he could reach out to Krauss Maffei to ensure he was paid his negotiated commission. Id. ¶ 29.

Appellant testified that all contracts he entered into on behalf of Roding with Clemson were fully performed by Roding and fully paid by Clemson. Exhibit A to Respondents' Memorandum in Support of Summary Judgment pp. 63-73, 78-83, 94-106, 122-132, 151. Appellant was evicted from CUICAR's campus for failure to pay rent and failure to secure the proper insurance in April of 2017. Id. p. 64. The applicable statute of limitations clearly started that day for any challenges to the eviction. In addition, any challenges to actions which occurred between Appellant and anyone on the CUICAR campus would have accrued on or before that day, because there were no interactions after that date.

Appellant testified that once he was kicked off the CUICAR campus, he knew he would have no more business interactions with Clemson or the partners on that campus. Id. p. 80. Further, Appellant's emails make it abundantly clear that he knew the Composites Center was going forward. Exhibit C to Respondents' Memorandum in Support of Summary Judgment ¶ 30; Exhibit 4 to Exhibit C to Respondents' Memorandum in Support of Summary Judgment. These emails contradict his deposition testimony where he claims he did not know the Composites Center was being built until he read a news article about it in 2020. Exhibit A to Respondents' Memorandum in Support of Summary Judgment p. 89. In addition, the fact that Appellant is vaguely inquiring about the status of the Composites Center demonstrates his lack of involvement and understanding of the status of the Composites Center. Exhibit C to Respondents' Memorandum in Support of Summary Judgment ¶ 30; Exhibit 4 to Exhibit C to Respondents' Memorandum in Support of Summary Judgment. Further, this lack of knowledge demonstrates Appellant's lack of involvement in the process going forward, further undercutting his claim that he is entitled to $150,000,000.00.

Appellant's actions through the date of reading the 2020 news article demonstrate that he also did not believe he had any claim pertaining to the Composites Center. However, once he saw the amount of money involved in the grants and other funding, it appears he subsequently decided to claim he was entitled to those funds and apparently more than those funds based on the amount of the demand.

While Appellant was undeniably a talented football player and musician, his shortcomings in this endeavor are summed up succinctly in then CUICAR's Executive Director Frederic Cartwright's May 29, 2015 email discussing Respondent Pilla's proposal for a Center to compete with other similar centers:

> We should put Roding, KM [Krauss Maffei] and other industry partners on the hook for defining what they would like to see in SC….Richard [Smith] is notorious for generating "excitement" but bringing little to the table in capability or $$. Roding is by far our worst tenant on campus when it comes to paying rent and constantly trying to negotiate their way out of having to do so!! This said – some version of a Composite Center in CMI makes sense. It has always planned to be part of our 10,000 sq ft of floor space.

See Exhibit F to Respondents' Memorandum in Support of Summary Judgment. This email actually demonstrates that Clemson was seeking financial contributions and other support from Roding and Appellant, and not proposing any financial compensation to them. Id.

In his deposition, Appellant admitted that as of November 22, 2016, he was no longer under any contract to perform services to Clemson. Id. pp. 63-64. He was asked to leave the CUICAR campus in April of 2017. Id. Appellant had plans to create a consortium with other companies on the CUICAR campus, with plans to manufacture products in Bamberg and sell them through the consortium. Id. pp. 65-83. The consortium never came to fruition. Id. He never built his manufacturing facility. Id. He knew once he was no longer part of CUICAR, his plans were over. Id. Appellant testified that if he had remained part of the CUICAR campus, it would have made

his company more valuable to market to others to obtain funding. Id. pp. 118-119. He also believes his name would have been in articles rather than Respondent Pilla's name. Id. This testimony demonstrates that Appellant was fully aware that his statute of limitations started in April of 2017 for any claims he wanted to make against anyone connected with Clemson, CUICAR, or the Composite Center.

Appellant falsely testified that he did not know the Composites Center would go forward after he left the CUICAR campus. Id. pp. 93-94. However, his own emails sent after he left the CUICAR campus following up on the status of the delivery of the RTM press for which he was receiving a commission contradict his testimony and demonstrate he clearly knew the Center was going forward. See Exhibit G to Respondents' Memorandum in Support of Summary Judgment; see also Exhibit 4 to Exhibit C to Respondents' Memorandum in Support of Summary Judgment. Appellant's November 28, 2018 email to Respondent Pilla specifically references projects he would like to discuss to be done parallel to the Center, and also asks how the KM (Krauss Maffei) deal is going (the deal he is secretly going to receive a commission on). Exhibit G to Respondents' Memorandum in Support of Summary Judgment. Appellant testified about going back and forth for three to four years to get his commission. Exhibit A to Respondents' Memorandum in Support of Summary Judgment p. 113. However, he falsely claimed that he did not know the Center was going forward. The Center is where the equipment through the "KM deal" was being placed.

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Lanham v. Blue Cross and Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002)). "A grant of summary judgment is proper when there is no genuine issue as

to any material fact and the moving party is entitled to judgment as a matter of law." Town of Summerville v. City of N. Charleston, 378 S.C. at 109-110, 662 S.E.2d at 41 (citing Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)). A party opposing a motion for summary judgment must raise more than a "mere scintilla" that there may be an issue of material fact to overcome a motion for summary judgment. See Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (holding "We now clarify that the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule"). Appellate courts review questions of law *de novo*. Town of Summerville v. City of N. Charleston, 378 S.C. at 110, 662 S.E.2d at 41 (citing Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)).

"As a general rule, a party must establish prejudice as the result of another's failure to comply with Rule 7(b)(1), SCRCP." Chastain v. Hiltabidle, 381 S.C. at 517, 673 S.E.2d at 831 (citing M & M Group, Inc. v. Holmes, 379 S.C. at 474, 666 S.E.2d at 265). "To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case." Chastain v. Hiltabidle, 381 S.C. at 517, 673 S.E.2d at 831 (citing Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 14 577 S.E.2d 190, 197 (2003)).

ARGUMENT

This Court should uphold the Circuit Court's Order granting Respondents' Motion for Summary Judgment because the Circuit Court did not err or abuse its discretion in granting said motion. The statute of limitations began to run around the Spring of 2017, as Appellant acknowledged he and his company were evicted from the CUICAR campus during this time. Pursuant to S.C. Code §15-78-110, Appellant had two years from the date the cause of action accrued to bring his action.

As such, Appellant had until the end of 2019, at the latest, to commence this action. Appellant filed his Complaint on June 30, 2022, or more than two years after the statute of limitations deadline had passed. Thus, Appellant is time barred from bringing this action.

In addition, the fact that Appellant was not served with Respondents' Memorandum and Affidavit prior to the Summary Judgment hearing conducted by the Circuit Court on April 12, 2024, is not grounds for reversing the Circuit Court's Order granting Respondents' Motion for Summary Judgment, given that: (1) Appellant failed to allege that he was prejudiced by not being served with Respondents' Memorandum and Affidavit; (2) Appellant failed to preserve the issue of prejudice for appeal; and (3) any prejudice argument still fails on the merits.

1. THE CIRCUIT COURT DID NOT ERR OR ABUSE ITS DISCRETION IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

Appellant was evicted from the CUICAR campus around the Spring of 2017, and based on Appellant's deposition testimony, he knew that "any business relations [he] had with anyone on that campus ended at that time." Exhibit A to Respondents' Memorandum in Support of Summary Judgment p. 87, lines 4-13. The last communications with Respondent Pilla occurred on February 1, March 16, and June 7, 2018. Exhibit C to Respondents' Memorandum in Support of Summary Judgment p. 6, ¶ 30. Even favorably construing that Appellant discovered that "fraud" had occurred through his last communication with Respondent Pilla on June 7, 2018, and liberally interpreting Appellant's cause of action and using the three-year statute of limitations for claims arising from fraud pursuant to S.C. Code § 15-3-530, Appellant still would have only had until June 7, 2021, *at the latest*, to bring his claim. However, as stated above, he should have discovered that his cause of action accrued when he was evicted from the CUICAR campus around the Spring of 2017. Exhibit A to Respondents' Memorandum in Support of Summary Judgment p. 57, lines 2-4. Further, pursuant to S.C. Code §15-78-110, Appellant only had two years to bring his action.

As such, Appellant only had until sometime around the Spring of 2019 to bring his cause of action. Appellant filed his Complaint on June 30, 2022, outside both potential statute of limitations' deadlines. If the Court uses either statute or either date listed above, Appellant's cause of action is still time-barred by the applicable statute of limitations. Thus, this Court should uphold the Circuit Court's Order granting Respondents' Motion for Summary Judgment.

Appellant's Complaint was filed on June 30, 2022. On the face of his Complaint, Appellant alleges that his lawsuit is based on events that transpired between 2012 and 2016. This case is barred by the applicable statute of limitations. Pursuant to S.C. Code §15-78-110, Appellant had two years after the date of loss was or should have been discovered within which to bring his action.

In addition to failing to timely file his Complaint within the applicable statute of limitations, Appellant failed to timely serve "Clemson University International Automotive Research" within the applicable statute of limitations and/or 120 days after filing his Complaint. In fact, "Clemson University International Automotive Research" has never been served with the Complaint. Further, "Clemson University International Automotive Research" is a non-existent entity. Further, Appellant has failed to allege, because he cannot allege, that he exhausted administrative remedies before attempting to assert alleged discrimination as a basis for a cause of action.

Respondent Pilla, as an employee of a governmental entity performing duties within the scope of his employment, is not a proper Defendant in the underlying case pursuant to S.C. Code §15-78-70(a). This is an additional ground for affirming the Circuit Court's granting of summary Judgment.

Appellant submitted a document titled "Answering of Defendants motion to dismiss and for Appropriate Relief" at the hearing on our Motion to Dismiss. See Exhibit H to Respondents' Memorandum in Support of Summary Judgment. In that document, Appellant acknowledges he and his company were evicted from the CUICAR campus in 2017. This document also acknowledges and admits Appellant's shortcomings regarding process and service of process. Id.

Appellant's own admissions support the Circuit Court's decision to grant Respondents summary judgment. In addition, the emails referenced above clearly demonstrate that Appellant knew the Composites Center was going forward in 2017 and 2018, and the start date for the statute of limitations in this case is based upon that knowledge. All of Appellant's claims are based upon events that transpired while he was on the CUICAR campus through early 2017 and/or are based upon the date he was evicted from that campus in April of 2017. As a result, all of his claims are barred, whether by a 2-year statute of limitations or even a 3-year statute of limitations.

Appellant states he became aware in July of 2020 that Respondent Pilla was promoting himself as the founder of the Clemson Composites Center. Id. That is the real driver of Appellant's lawsuit as admitted in his deposition. However, there is no viable cause of action against Respondent Pilla for him holding himself out as the founder of the Composites Center. Appellant's claims for intentional fraud, theft of intellectual properties, and false advertising are all based upon Respondent Pilla holding himself out as the founder and due to the Composites Center being named after him. The deposition testimony summarized above reveals these claims are baseless. In addition, the emails referenced above also demonstrate Appellant's comparative minimal involvement, the lack of any discussions of the Composites Center being named for Appellant, and his lack of any expectation of such.

Separately, Appellant's very limited involvement when compared to Respondent Pilla's involvement, along with the millions of dollars spent on the Composites Center and the voluminous plans, drawings and construction that went into the Composites Center negate Appellant's claims. See Exhibit I to Respondents' Memorandum in Support of Summary Judgment (for general marketing materials). The architect's Project Manual is 906 pages and demonstrates the extensive design work involved in the Composites Center. Circuit Court Order dated April 26, 2024 p. 11. There are 50 pages of detailed architectural drawings associated with the Composites Center. Id.

Further, Appellant's testimony summarized above and the Affidavit of Respondent Pilla demonstrate that Appellant has no evidence of fraud, theft of intellectual properties and/or false advertising. It appears that Appellant was involved in a presentation with Krauss Maffei where a layout plan for proposed machinery supplied by someone else was part of the presentation. Exhibit J to Respondents' Memorandum in Support of Summary Judgment. Making a marketing presentation in hopes to sell machinery that contains a generic room drawing in no way equates to being entitled to have a Composites Center named after you and to be paid from the research grants awarded to Clemson University for projects to be performed at the Composites Center.

As admitted by Appellant, all contracts Appellant's company had entered into with CUICAR were fulfilled. There were no outstanding contracts. Specifically, there was no contract regarding planning, designing or constructing the Composites Center or performing any work for the Center. As a result, Respondents respectfully request that this Court affirm the Circuit Court's Order granting Respondents' Motion for Summary Judgment in this case.

2. THE FACT THAT APPELLANT WAS NOT SERVED WITH RESPONDENTS' MEMORANDUM AND AFFIDAVIT PRIOR TO THE SUMMARY JUDGMENT HEARING IS NOT GROUNDS FOR REVERSING THE CIRCUIT COURT'S ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT.

Appellant's argument that he was not served with Respondents' Memorandum prior to the Motion for Summary Judgment hearing is best construed as an argument that Respondents failed to adhere to the requirements of Rule 7(b)(1), SCRCP. See Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009); M & M Grp., Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262 (Ct. App. 2008). "As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure." Gardner v. S.C. Dep't of Revenue, 353 S.C. at 14, 577 S.E.2d at 197 (2003) (citing Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997); Porter v. South Carolina Public Serv. Comm'n, 338 S.C. 164, 525 S.E.2d 866 (2000)). "Where a party receives inadequate notice, **he must demonstrate prejudice resulting from the insufficient notice**." Gardner v. S.C. Dep't of Revenue, 353 S.C. at 14–15, 577 S.E.2d at 197 (citing Ballenger v. South Carolina Dep't of Health and Envtl. Control, 331 S.C. 247, 500 S.E.2d 183 (Ct. App. 1998); Long v. Bd. of Governors of the Federal Reserve Sys., 117 F.3d 1145 (10th Cir. 1997)) [emphasis added]. "Even where a party receives no notice, he must establish that, had he received notice, **he would have taken pertinent action.**" Gardner v. S.C. Dep't of Revenue, 353 S.C. at 15, 577 S.E.2d at 197 (2003) (citing Boley v. Brown, 10 F.3d 218 (4th Cir.1993)) [emphasis added].

a. Appellant failed to allege that he was prejudiced by not being served with Respondents' Memorandum and Affidavit.

Appellant argues in his Initial Brief that Respondents did not provide him with their Memorandum and Affidavit prior to the motion for summary judgment hearing conducted by the Circuit Court on April 12, 2024. Respondents admit that they failed to provide Appellant with a copy of their Memorandum and Affidavit. Respondents were unaware that Appellant had not been served with these papers but would have provided Appellant copies of the same at the hearing if they had been made aware. Appellant never raised this issue during the motion for summary judgment hearing.

See Transcript of April 12, 2024, Motion for Summary Judgment Hearing. Appellant never requested that the hearing be continued for an opportunity to prepare a defense against Respondents' Memorandum. See Transcript of April 12, 2024, Motion for Summary Judgment Hearing. He also did not ask for additional time to submit a response. Id. Indeed, the only time Appellant raised this issue was through his Motion to Reconsider which was filed on May 17, 2024, over a month after the motion hearing on April 12, 2024.

It should be highlighted that, while Appellant's Initial Brief to this Court and Motion to Reconsider argued that he was not served with Respondents' Memorandum and Affidavit, **Appellant never alleged that he was prejudiced in any way by not receiving these papers**. In fact, the only mention of any "prejudice" is in Appellant's Response to Respondents' Motion for Summary Judgment where he indicated that "[i]t is highly prejudicial and unfair to bring a motion for summary judgment . . . at the same time he (Appellant) is required to present his case to a jury." See Appellant's Response to Respondents' Motion for Summary Judgment.

In addition, Appellant admitted that he had received at least a portion of Respondents' Memorandum as Appellant Motion to Reconsider cites an email to the Circuit Court dated April 10, 2024 where he states: "Are we still having court on Friday 11:30 a.m.? We did not receive the motion **in its entirety**, which means we have no idea of the motion at hand." Appellant's Motion to Reconsider p. 1. Although in the alleged email he claims that he had no idea of the grounds for the motion, Appellant's Response to Respondents' Motion for Summary Judgment clearly indicates that he was aware of the contents because he argued that the statute of limitations had not passed. See Appellant's Response to Respondents' Motion for Summary Judgment. It should be highlighted that this email referenced by Appellant has not been entered as an exhibit and it is unknown whether this email even exists.

Even if Appellant's Initial Brief to this Court had alleged that he was prejudiced by not receiving Respondents' Memorandum and Affidavit, the issue of prejudice would not be preserved for appeal. Again, Appellant never alleged that he was prejudiced in his Initial Brief, Motion to Reconsider, or any of his papers, only that he was not served with Respondents' Memorandum and Affidavit. Further, throughout all of his arguments at hearings, submissions to the Circuit Court, and submissions to this Court, Appellant has never provided any evidence to contradict Respondent's evidence or *any* evidence that creates a genuine issue of material fact.

b. Appellant failed to preserve the issue of prejudice for appeal.

"It is well-settled that an issue cannot be raised for the first time on appeal, but must have been **raised to and ruled upon by** the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997)) [emphasis added]. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" Staubes v. City of Folly Beach, 339 S.C. at 412, 529 S.E.2d at 546 (quoting I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)); (citing State v. Nelson, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998); 4 C.J.S. Appeal and Error § 213 (1993)). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

While Respondents admit that Appellant raised the service issue regarding the Memorandum and Affidavit through his Motion to Reconsider, he never raised this issue at the hearing. See Transcript of April 12, 2024, Motion for Summary Judgment Hearing. In addition, Appellant still never raised or preserved the issue of prejudice regarding the same. Id. Indeed, violation of a notice

provision does not constitute prejudice in and of itself. See Gardner v. S.C. Dep't of Revenue, 353 S.C. at 15, 577 S.E.2d at 197.

c. Any prejudice argument still fails on the merits.

Even if this Court finds that Appellant, as a *pro se* individual, was not required to preserve the prejudice argument for appeal, any prejudice argument still fails on the merits as Appellant was aware of Respondents grounds for the motion for summary judgment, as Respondents' Motion for Summary Judgment reads:

> [T]here is no genuine issue as to any material fact in that the Plaintiff's claims are barred by the applicable statute of limitations, the Plaintiff does not have a viable cause of action against the Defendants or anyone else for that matter pertaining to the allegations made in his pleadings, and that the Plaintiff's own deposition testimony supports the granting of summary judgment in this case.

Indeed, it is clear that Appellant received and reviewed Respondents' Motion for Summary Judgment, as Appellant's Response specifically argues the statute of limitations issue and reads: "Plaintiff's Complaint was timely filed and did not fall outside of the statute of limitations." As such, Appellant was aware of the argument that Respondents would present at the motion hearing and, further, was also aware that he had to raise an issue of material fact to demonstrate why the motion should not be granted.

In the Motion to Reconsider, Appellant did not provide any evidence to contradict the Respondents' evidence or any arguments or evidence that creates a genuine issue of material fact. Appellant pasted what he claimed to be information and quotes from articles, claiming the quotes provide confirmation in his favor or claiming that statements made by Respondent Pilla were false. See Appellant's Motion to Reconsider. The pasted information does not support Appellant's claim. It is simply evidence of purported publications. Id. In addition, the other information included in the Motion to Reconsider does not demonstrate any evidence that Clemson was going to name the facility

at issue for the Appellant, provide him any financial compensation, or designate him the founder. Id. The information pasted in the Motion to Reconsider actually further demonstrates that Appellant's timeframe of involvement with limited work at CUICAR through Roding and Krauss-Maffei mostly occurred prior to 2017. As evidenced above, Appellant was asked to leave the CUICAR campus in April of 2017. Appellant has never presented any documentation to support his claims in this case. Even if his Motion to Reconsider had been presented as a Memorandum in Opposition to the Motion for Summary Judgment, which was filed to address the evidence and arguments presented in support of the Motion for Summary Judgment Motion, there has been no evidence presented that creates a genuine issue of material fact to survive summary judgment. Thus, Appellant was not prejudiced by not receiving Respondents' Memorandum and Affidavit prior to the Motion for Summary Judgment hearing conducted on April 12, 2024.

CONCLUSION

Based on the foregoing, Appellant's claims are time-barred by the applicable statute of limitations. In addition, the Circuit Court did not err or abuse its discretion in granting Respondents' Motion for Summary Judgment. Further, the fact that Appellant was not served with Respondents' Memorandum and Affidavit prior to the Summary Judgment hearing conducted by the Circuit Court on April 12, 2024, is not grounds for reversing the Circuit Court's Order granting Respondents' Motion for Summary Judgment. There was no prejudice and there is simply no genuine issue of material fact. As a result, Respondents respectfully request that this Court uphold the Circuit Court's Order granting Respondents' Motion for Summary Judgment.

s/James P. Walsh
James P. Walsh (SC Bar# 15180)
P. Christopher Smith, Jr. (SC Bar# 74086)
Matthew J. Algino (SC Bar # 106853)
CLARKSON, WALSH & COULTER, P.A.
P.O. Box 6728
Greenville, SC 29606
Phone: (864) 232-4400
jim.walsh@clarksonwalsh.com
chris.smith@clarksonwalsh.com
matthew.algino@clarksonwalsh.com
Attorneys for Respondents