

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2011-CP-10-2026

Jerome Myers and Gloria
Myers,

Appellant,

v.

Shelly K. All, Cezar E.
McKnight, Ms. Willie O.W.
McFadden-Myers and
Latonya Hobson,

Respondent.

INITIAL BRIEF OF RESPONDENT


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OCT 25 2013

SC Court of Appeals

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STATEMENT OF THE CASE

The Appellants for fraud brought this action, and on August 10, 2012, Attorney for Respondents Willie O.W. McFadden-Myers, Latonya Hobson & Cezar E. McKnight, Esquire filed Motion for Summary Judgment.

The matter was dismissed with prejudice by Order of the Honorable Markley R. Dennis, Jr. after a hearing on the Motion on or about October 24, 2012. The Court dismissed the action because the statute of limitations had expired. The alleged actions giving rise to the Appellant's cause of action were alleged to have occurred some time in June of 2007. The Appellants filed their Summons and Complaint on March 17, 2011 and personally served the Respondents some time in April, 2011.

ARGUMENT

This Court must uphold the ruling of the Court of Common Pleas dismissing this matter with prejudice because of the fact that the statute of limitations in this matter has expired. A civil action is commenced when the summons and complaint are filed with the Clerk of Court if the summons and complaint are served within the statute of limitations in any manner prescribed by law; or if not served within the statute of limitations, actual service must be accomplished no later than one hundred twenty days after filing. Rule 3(a)(1) and Rule 3(a)(2) of the South Carolina Rules of Civil Procedure.

The Appellants filed a complaint alleging fraud on the part of the Respondents. Any complaint alleging as a cause of action fraud must be filed within three years of the actual discover of the cause of action or in the alternative, when it should have been discovered. §15-3-530(7). The Appellants filed their summons and complaint on March 17, 2011. In their complaint they allege that they discovered the alleged fraud sometime in June, 2007. The statute of limitations in their matter thus would expire at the latest on June 30, 2010.

There exists no means under the law for the Appellant's cause of action to survive. They filed their summons and complaint on March 17, 2011, nine months after their statute of limitations had run. The Supreme Court of South Carolina has made it clear that actions cannot be successfully brought outside of their statute of limitations. Statute of Limitation is an absolute defense to the cause of action of fraud. Briggs v. Richardson, 273 S.C. 376(1979).

The Appellants give various arguments as to why the statute of limitations has not expired, however none of them have any binding legal basis. They seem to be attempting to come up with extralegal means of expanding the term of the statute of limitation. §15-3-530(7) is clear and plain in its meaning. If a statute's terms are clear, the court must apply the terms according to their literal meaning. Hooper v. Ebenezer Senior Services, 659 S.E. 2d 213. Furthermore this Court is precluded from construing the statute without regard to its plain

meaning. "An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of the statute." Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507.

CONCLUSION

Therefore it is clear on the facts and the law that the Court of Common Pleas properly dismissed this matter with prejudice and the Court of Appeals must uphold the Court of Common Pleas ruling.

October 22, 2013


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