

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Judge for The Ninth Judicial Circuit

Case No. 2013-000407

Alan Sheppard.....Appellants

v.

Lynn McCants, Ronald C. Owens, Russell Bennett, Charles P. Darby,
Kiawah Resort Associates LP..... Respondents

APPELLANT'S REPLY BRIEF

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RULES

South Carolina Rules of Civil Procedure Rule 15

STATEMENT OF ISSUES ON APPEAL

- I. ALLEGATIONS MADE BY THE APPELLANT IN THE RECORD BEFORE THE TRIAL COURT CONSTITUTE A CAUSE OF ACTION THAT COULD NOT BE BARRED BY RES JUDICATA OR THE STATUTE OF LIMITATIONS.**

ARGUMENT

I. ALLEGATIONS MADE BY THE APPELLANT IN THE RECORD BEFORE THE TRIAL COURT CONSTITUTE A CAUSE OF ACTION THAT COULD NOT BE BARRED BY RES JUDICATA OR THE STATUTE OF LIMITATIONS.

The standard review of this Court is the same standard as that of the Trial Court. *Williams v. Condon* 347, S.C. 227,553 S.E.2d 496 (Ct. App 2000). If there are factual allegations that would entitle a Plaintiff to relief on any theory, the case should not be dismissed. *Baird v. Charleston County* 333 S.C. 519, 511, S.E. 2d 69 (1999). A complaint should not be dismissed merely because the court has doubts that the Plaintiff will prevail. *Toussaint v. Ham* 292 S.C. 415, 357 S.E. 2d 8 (1987).

The Plaintiff clearly made allegations to the Court, which would clearly set forth a cause of action, which would not be barred by either res judicata or the statute of limitations. Just because the Appellant was *pro se* in the underlining proceedings, he should not be penalized because he did not use the magic words of "Amend my Complaint", which pursuant to the *Rule 15 of South Carolina Rules of Civil Procedure*, should have been freely granted.

The court reviewed the allegations made by the Plaintiff, which clearly constitutes a cause of action that could not have been barred by the Statute of Limitations or res judicata, since the allegations accrued after both the Order relied on by the Respondents, within the statute of limitations. The Plaintiffs status as a *pro se* litigant, clearly effects his attempt to make these allegations in an artful manner. However, this court should look at substance over form.

CONCLUSION

Based on the above, the Appellant would pray that the Order of Dismissal be overturned and that this case be remanded for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark W. Hardee", written over a horizontal line.

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November 19, 2013

CERTIFICATE OF SERVICE

I, Vicky McCarter, an employee with the law firm of The Hardee Firm., do hereby certify that I have this date served a copy of the following pleading upon the individual named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below:

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PLEADING:

Appellants Reply Brief

A handwritten signature in cursive script, appearing to read 'Vicky McCarter', written over a horizontal line.

Vicky McCarter

Columbia, South Carolina
November 19, 2013