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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2025-001945

Lower Court Case No. 2023-CP-24-00800

The Estate of Herbert Rivers Anderson, Jr., by its Successor Personal Representative
J. Kershaw Spong.....Appellant,

v.

Anderson Family Properties of Greenwood, LLC.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court correctly granted Respondent's motion to dismiss because Appellant's claims were barred by the applicable statute of limitations.
- II. Whether the circuit court correctly granted Respondent's Motion to Dismiss because there was no legal basis for equitable tolling of the statute of limitations.
- III. Whether the circuit court correctly dismissed the Estate's alternative claim for relief under the Statute of Elizabeth, as it was also barred by the statute of limitations and constituted post-judgment relief.
- IV. Whether the circuit court correctly denied Appellant's motion to amend its First Amended Complaint because amendment would have been futile, as the statute of limitations was fatal to Appellant's claims, and no alleged "newly discovered evidence" would have affected the outcome.

STATEMENT OF THE CASE

This simple collection action was initially commenced on August 25, 2023 by the Estate of Herbert Rivers Anderson, Jr. by its original Personal Representative, Mr. Charles W. Schulze (the “Estate” or “Appellant”) asserting a claim for breach of contract to collect on two promissory notes issued to Respondent Anderson Family Properties of Greenwood, LLC (“AFP” or “Respondent”) that were executed in favor of Mr. Herbert Rivers Anderson, Jr. AFP’s managing member is Mr. Anderson’s widow, Ms. Gwen Anderson. *See* Compl. ¶ 2.

The two promissory notes that the Estate sought to collect in this action arose from two separate conveyances of real property by Mr. Anderson to AFP. On March 22, 2012, Mr. Anderson transferred real property to AFP and in exchange received a promissory note in the amount of \$1,560,000.00 (the “2012 Note”). *See id.* ¶ 8. On July 2, 2014, Mr. Anderson transferred additional real property to AFP and in exchange received a second promissory note in the amount of \$1,218,375.00 (the “2014 Note”). *See id.* ¶ 11. The 2012 Note and 2014 Note were attached as exhibits to the original complaint. The original complaint admitted that with regard to the 2012 Note, lots were sold in 2012 to 2015, and with regard to the 2014 Note, properties were sold in 2014 to 2016, and Defendant failed to make payments after the sale of the lots. *See* Orig. Compl. ¶¶ 14-18.

Mr. Herbert Anderson, Jr. passed away on November 2, 2018, and a probate estate was opened in McCormick County Probate Court under the file number 2018-ES-35-127. *See id.* ¶ 21. The probate estate was later transferred to Lexington County under file number 2020-ES-32-01119. *See id.*

On September 28, 2023, AFP filed a motion to dismiss, arguing the statute of limitations barred the breach of contract claim. *See* Mot. to Dismiss (Sept. 28, 2023). While that motion to

dismiss was pending, on November 13, 2023, the Estate moved to stay this action before the circuit court while the probate court ruled upon a pending creditor's petition to remove the personal representative. *Id.* On March 11, 2024, the probate court entered a consent order, allowing the personal representative to voluntarily step down and appointing a successor personal representative. Order Appointing Successor PR.

Pursuant to the circuit court's order granting a consent motion to amend, the Successor Personal Representative filed an amended complaint on October 4, 2024, asserting causes of action for (1) breach of contract, (2) unjust enrichment, (3) constructive trust, and, in the alternative, (4) a violation of the Statute of Elizabeth, S.C. Code Ann. § 27-23-10, related to the underlying promissory notes. Consent Order to Amend, Am. Compl. The Amended Complaint attached as exhibits the resignation of the Personal Representative (Exhibit A); the deeds where Mr. Anderson transferred real property to AFP in exchange for the 2012 Note (Exhibit B); the 2012 Note (Exhibit C); the deeds where Mr. Anderson transferred real property to AFP in exchange for the 2014 Note (Exhibit D); and the 2014 Note (Exhibit E).

The Amended Complaint alleged AFP sold lots included in the 2012 Note and the 2014 Note and intentionally deleted the years the lots were sold despite the deeds being public record and the years of sale being included in the Original Complaint. *Compare* Am. Compl. ¶¶ 16-17 *with* Orig. Compl. ¶ 15.) The Amended Complaint further admitted that it could find no record of demand for payment having been made by Mr. Anderson or his Estate until the filing of the Original Complaint. Am. Compl. ¶ 18.

On November 4, 2025, AFP moved to dismiss, again arguing the statute of limitations, pursuant to S.C. Code § 15-3-530, barred the Estate's claims in the Amended Complaint. Mot. to

Dismiss Am. Compl. On February 6, 2025, the Estate filed a memorandum in opposition of the motion to dismiss. *See generally* Memo. in Opp. To Mot. To Dismiss.

On February 10, 2025, the circuit court held a hearing via WebEx on AFP's motion. *See generally* Tr.

On April 9, 2025, the circuit court issued an order granting the motion to dismiss holding the statute of limitations barred Appellant's claims (the "Order"). *See generally*, Order (Apr. 9, 2025). In granting AFP's motion to dismiss, the circuit court found that the 2012 Note and 2014 Note were not demand notes and that both notes contained a specific date after which repayment was required upon the sale of any lot involved in the said note. *See* Order pp. 1-2.

By order issued on April 9, 2025, the circuit court granted AFP's Motion to Dismiss pursuant to Rule 12(b)(6) and held that the obligation to issue payments pursuant to the terms of the promissory notes began on March 24, 2012, and August 2, 2014. *See* Order, pp. 1-2 (Apr. 9, 2025). The Court further determined that regarding the 2012 note, lots were sold 2012-2015 and regarding the 2014 note, lots were sold 2014-2016. *See id.* The Court ruled "with respect to the 2012 note, because sales of lots took place that same year, the statute of limitations ran on that note sometime in 2015." *Id.* at p. 2. Similarly, "with respect to the 2014 note, because lots were also sold in 2014, the statute of limitations ran on that note sometime in 2017." *Id.* The circuit court noted that the decedent passed away on November 2, 2018, and no repayment of the notes was made. *See id.*

On April 18, 2025, the Estate filed a motion to reconsider pursuant to Rule 59(e), SCRCPP, or, in the alternative, for leave to amend pursuant to Rule 15(a), SCRCPP, arguing that the factual findings of the Dismissal Order were not supported by the allegations of the Amended Complaint, that the circuit court misapplied the law on the statute of limitations, that the circuit court failed to

address the Estate's equitable tolling argument, that the circuit court failed to address the Estate's alternate claim under the Statute of Elizabeth, and that newly discovered information justified further amendment to the Amended Complaint. *See* Mot. to Reconsider.

The Estate filed a memorandum in support of its motion on June 26, 2025. AFP objects to the Court's consideration of allegations contained in the Estate's proposed Second Amended Complaint attached as Exhibit A to the Estate's Motion to Reconsider to the extent Appellant included them in its Statement of Facts. *See generally* Appellant's Brief ("App. Br."), pp. 4-10.

On June 30, 2025, AFP filed a memorandum in opposition to the motion to reconsider arguing that the Estate's motion to reconsider should be denied, because the circuit court had correctly found the Estate's claims were barred by the statute of limitations, the Estate's attempt to introduce additional allegations or "evidence" outside the four corners of the amended complaint was improper, and amending the amended complaint would be futile as there was no legal basis to support the Estate's argument for equitable tolling, and the Estate's claim for fraudulent conveyance under the Statute of Elizabeth was a post-judgment claim.

AFP further noted that under the original complaint and amended complaint, Mr. Anderson sold the real property to a business owned by his wife, Ms. Gwen Anderson, and the transactions occurred several years before Mr. Anderson passed away. AFP further argued that, the relevant statute of limitations ran several years before Mr. Anderson died. Despite the Estate removing the years that the properties were sold under the 2012 Note and 2014 Note, which was included in the original complaint, from the Amended Complaint, the deeds were of public record, and the circuit court could properly take judicial notice of them.

On September 16, 2025, without a hearing or further argument, the circuit court issued an Order, denying the motion to reconsider or, in the alternative, to amend. Order on Mot. to Recons. On September 22, 2025, the Estate timely filed its Notice of Appeal. Notice of Appeal.

STATEMENT OF THE FACTS¹

Decedent Herbert Anderson, Jr. was a major construction developer who owned and operated several lucrative companies, including Anderson Family Properties of Greenwood, LLC (“AFP”). AFP is a land development company and was formed in March 2012. AFP was owned by Mr. Anderson’s wife, Ms. Gwen Anderson. Am. Compl. ¶7.

Mr. Herbert Anderson, Jr. personally loaned AFP \$1,560,000.00 on March 12, 2012, pursuant to a promissory note – the 2012 Note. Am. Compl. ¶11. Mr. Anderson transferred the deeds to numerous lots in the subdivision to AFP on October 3, 2012. Am. Compl. ¶10. A second set of deeds to lots in the subdivision was transferred to AFP on December 19, 2013. Am. Compl. ¶12. Mr. Anderson personally loaned AFP an additional \$1,218,375.00 on July 2, 2014, pursuant to a second promissory note – the 2014 Note. Am. Compl. ¶13.

Herbert Anderson, Jr. passed away on November 2, 2018. Am. Compl. ¶1. Charles Schulze was appointed as personal representative of the Estate pursuant to Mr. Anderson’s Last Will & Testament. Am. Compl. ¶1. On August 25, 2023, the Estate of Herbert R. Anderson, Jr. (“the Estate”) filed a Complaint asserting a cause of action against AFP for breach of the two promissory notes. AFP filed a Motion to Dismiss pursuant to SCRCP 12(b)(6) in Lieu of Answer on September 29, 2023. The circuit court case was temporarily stayed pending the transfer of the probate case to a new county and appointment of a successor personal representative.

¹ Because the circuit court granted AFP’s Motion to Dismiss and dismissed the Estate’s claims pursuant to Rule 12(b)(6), SCRCP, the Statement of Facts includes some of the relevant allegations, as the circuit court could only consider the allegations of the complaint, court filings, and public record in ruling on AFP’s Motion. AFP objects to the Estate’s inclusion of allegations not included in the Amended Complaint in the Estate’s Statement of Facts and inclusion of narrative or inflammatory statements not included in the allegations of the Amended Complaint related to Mr. Schulze, the Estate and the Buchanan Trust. *See* Appellant Br. pp. 4-10.

J. Kershaw Spong was appointed as successor Personal Representative by the Greenwood County Probate Court on March 11, 2024. After investigating the Estate's claims for six months, on October 4, 2024, the successor personal representative filed an Amended Complaint asserting causes of action for (1) breach of contract; (2) quantum meruit; (3) constructive trust; and (4) in the alternative, brought an action to recover under the Statute of Elizabeth, S.C. Code Ann. § 27-23-10. AFP filed a Second Motion to Dismiss pursuant to SCRCP 12(b)(6) on November 4, 2024, once again asserting that the Estate's claims were barred by the statute of limitations.

As stated in greater

By order issued on April 9, 2025, the trial court granted AFP's Motion to Dismiss pursuant to Rule 12(b)(6) and held that the obligation to issue payments pursuant to the terms of the promissory notes began on March 24, 2012, and August 2, 2014. The Court further determined that regarding the 2012 note, lots were sold 2012-2015 and regarding the 2014 note, lots were sold 2014-2016. The Court ruled "with respect to the 2012 note, because sales of lots took place that same year, the statute of limitations ran on that note sometime in 2015. Similarly, with respect to the 2014 note, because lots were also sold in 2014, the statute of limitations ran on that note sometime in 2017". The trial court noted that the decedent passed away on November 2, 2018, and no repayment of the notes was made prior to his death.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Grimsley v. S.C. Law Enf't Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012) (quoting *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). A motion to dismiss made under Rule 12(b)(6) by the Defendant claims that Plaintiff has "fail(ed) to state facts sufficient to constitute a cause of action. (...) If, on a motion

asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matter outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent by Rule 56.” Rule 12(b), SCRCP.

“The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). A court can always take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984). In addition, a Court “may properly take judicial notice of matters of public record” in reviewing a Rule 12(b)(6) motion. *Philips v. Pitt Co. Memorial Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In evaluating a motion to dismiss, the Court must base its decision solely upon the allegations set forth in the complaint. *Jarrell v. Petoseed Co. Inc.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). “That is, the motion must be granted if the facts alleged in the complaint and the inferences reasonably deducted therefrom do not entitle the Plaintiff to relief on any theory of the case.” *Id.* See also *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408,412. 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting Rule 12(b)(6), SCRCP). “[A] claim may be dismissed when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action.”

Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013).

“Normally, a motion to amend a pleading is addressed to the sound discretion of the trial judge.” *Porter Bros., Inc. v. Specialty Welding Co.*, 286 S.C. 39, 41, 331 S.E.2d 783, 784 (Ct. App. 1985) (citing *Mylin v. Allen-White Pontiac, Inc.*, 281 S.C. 174, 314 S.E.2d 354 (Ct. App. 1984)). “The trial [court’s] finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred.” *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App. 2012) (alteration in original) (quoting *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997)). “An abuse of discretion occurs when the [circuit court]’s ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support.” *Oulla v. Velazques*, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct. App. 2019) (alteration in original) (quoting *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)).

ARGUMENT

I. The circuit court correctly granted AFP’s Motion to Dismiss the Estate’s claims pursuant to SCRCP 12(b)(6).

The circuit court correctly granted AFP’s motion to dismiss and held that the Estate’s claims were barred by the statute of limitations and that there was no legal authority supporting the Estate’s argument for equitable tolling. In granting the motion to dismiss, the court was permitted to take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records, as well as matters of public record. For these reasons, and as explained more fully herein, this Court should affirm the circuit court’s dismissal of the Estate’s complaint.

A. The circuit court correctly ruled that Appellant's claims were barred by the applicable statute of limitations in granting Respondent's Motion to Dismiss.

The Estate contends that the trial court erred by imputing the dates real property was sold by AFP. The original Complaint asserted that real property connected to the first promissory note was sold in 2012, 2013, 2014, and 2015 and that lots connected to the second promissory note were sold in 2014, 2015, and 2016. The deeds evidencing these transactions were recorded with the Register of Deeds and are of public record, which may be considered by the circuit court in ruling on a motion to dismiss. Despite the dates of sale clearly being known to the Estate and a pending motion to dismiss based on the statute of limitations, the new Personal Representative of the Estate in filing the Amended Complaint intentionally omitted this information in an effort to improperly circumvent the statute of limitations.

In its Motion to Reconsider, the Estate admitted, "The Amended Complaint was intentionally silent as to when lots were sold or when payments were made because such information was not readily available or apparent to the Plaintiff." (See Plaintiff's Motion to Reconsider, p. 2-3). The fact that sales of property occurred in 2013, 2014, 2015, and 2016 was known to the Estate, of public record, and set forth in the original Complaint. Compl. ¶¶ 14-15.

In its initial appellate brief, the Estate admits same, "To be clear, the Estate does not refute sales took place during Anderson's lifetime. The deeds evidencing these sales are a matter of public record and were discovered during the successor personal representative's review of the available documents evidencing AFP's affairs. Those facts, however, do not appear in the Amended Complaint." (See App. Brief p. 14).

When a party actually discovers the existence of a public record does not change the effective date the public record put the public on constructive notice. Properly recorded documents, such as real estate records, provide constructive notice to the world from the moment they are

recorded, regardless of when a party becomes aware of them. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006) (quoting *Epps v. McCallum Realty Co.*, 139 S.C. 481, 499, 138 S.E. 297, 303 (1927) (“recording amounts to notice, whether known or unknown, because the means of information are at hand”); *Franklin Bank, N.A. v. Bowling*, 74 P.3d 308, 313 (Colo. 2003) (en banc) (constructive notice in real estate transaction essentially is record notice)). Therefore, once a document is filed with the Register of Deeds, the public is presumed to know its contents, whether or not they have actually read it. This is even more so in this case, because Mr. Anderson, prior to his death, sold the relevant properties to AFP, which was owned by his wife, and was alive when the properties were sold.

The only logical reason for the Estate to intentionally omit the known dates of sales from the Amended Complaint is because the Estate knew its claims were barred by the statute of limitations and was attempting to circumvent the proper dismissal by amending the complaint to remove the dates of the transfers that were fatal to its claims. By filing an Amended Complaint omitting the dates of sale, the Estate improperly created the opportunity to challenge the dismissal of its claims on the basis a dispute exists as to when its claims arose and the statute of limitations expired.

Given that the Amended Complaint asserts that sales of property triggering AFP’s obligation to issue payments gives rise to its claims for breach of contract, the Estate admits that it knew, or was on constructive notice, of the dates the sales of property occurred when the Amended Complaint was filed, and concedes that sales of property occurred from 2012-2016, the

trial court's determination that the Estate's claims arose during this period and are time barred was proper².

S.C. Code Ann. § 15-3-530 provides that “an action upon contract, obligation, or liability, express or implied... must be brought within three years of the time the cause of action accrues.” The statute of limitations accrues on a breach of contract action at the time a contract is breached or broken. *Richland–Lexington Airport Dist. v. American Airlines, Inc.*, 306 F.Supp.2d at 566 (D.S.C.2002); also see *Wells Fargo Bank v. Carter*, No. CV 9:14-127-SB, 2014 WL 11034776, at *2 (D.S.C. July 22, 2014) (noting that S.C. Code Ann. § 15-3-530's three-year statute of limitation applies to claims for unjust enrichment and quantum meruit).

The parties concede the validity of the 2012 Note and 2014 Note and that real property was sold by AFP in 2012, 2013, 2014, 2015, and 2016, and that same was public record. Even if the Estate somehow attempts to argue that Mr. Anderson was somehow not aware of these sales although AFP was owned by his wife, the Estate cannot circumvent the fact that the Estate was on constructive notice of the transactions because the Estate did not “discover” the public records until later. The parties also concede that AFP was obligated to issue payments of 75% of its net profits from these sales to the Estate. The Amended Complaint claims that AFP breached its obligation to issue payments due from one or more of these sales.

Furthermore, the circuit court correctly dismissed the Estate's claims for quantum meruit and constructive trust as barred by the statute of limitations, because the allegations underpinning the Estate's claims for quantum meruit, constructive trust, and fraudulent conveyance under the

² Rejecting the dates of sale considered by the trial court results in the Estate's failure to state a claim for breach of contract because there is no evidence showing an obligation to make payments arose and AFP failed to satisfy the obligation.

Statute of Elizabeth were essentially the same as the Estate's claims for breach of contract, and therefore, they would also be barred by the 3-year statute of limitations. S.C. Code § 15-3-530.

Accordingly, the statute of limitations for the Estate to assert its claims expired three (3) years after the date of each sale, with the last potential claim expiring in 2019. The complaint was not filed until August 25, 2023; thus, the Estate's claims are barred by the statute of limitations.

The Estate contends that the trial court lacked the judicial authority to determine when the statute of limitations began to run. Appellant's brief cites to *Walbeck v. I'On Co.*, for the proposition that the statute of limitations is ordinarily a matter for the jury. 439 S.C. 568, 581, 889 S.E.2d 537, 543 (2023)³. In *Walbeck*, a question existed as to when the statute of limitations began to run in connection with claims for negligent misrepresentation and breach of fiduciary duty relating to representations made by the developer to the HOA. *Id.* at 579, 889 S.E.2d at 542-43.

The Supreme Court held that the statute of limitations issue depended on the question for the jury as to what date the date the HOA discovered the alleged harm; however, this determination was based on the central question of when the HOA was on notice of the developer's misrepresentations and breach of fiduciary duty in connection with a development. *Id.* at 584, 889 S.E.2d at 545. The instant case is a simple collection breach of contract action and the statute of limitations is clearly determined from the terms of the contracts and deeds which are of public record, not when a party discovers misrepresentations or breaches of fiduciary duty. Therefore, the Supreme Court's holding in *Walbeck* is not applicable or controlling in the instant case.

Here, the date the Estate's breach of contract claims arose is not in dispute. The parties concede that the 2012 Note and 2014 Note are the contracts at issue, which are not demand notes.

³ The Estate's brief cites this case as *Adkins v. I'On Co.* The correct citation is *Walbeck v. The I'On Company, LLC*.

There is no dispute that the sales of property giving rise to the Estate's alleged claims for breach of contract occurred from 2012-2016, which deeds are matters of public record. There is no question as to when the Estate's claims arose or when the statute of limitations began for a jury to determine and the circuit court properly held that the Estate's claims were barred by the statute of limitations. The Estate's argument that because it removed these dates when it filed the Amended Complaint and therefore, it should survive AFP's motion to dismiss, despite the transactions being of public record, simply fails. *See App. Br.*, p. 14, n. 6; *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006).

Moreover, the Estate's attempt to paint Mr. Spong as "the first truly independent person to review the Estate's affairs" (*App. Br.* at p. 15) does not affect the outcome and fails to take into account that the facts necessitating dismissal of the Estate's claims, as alleged in the Amended Complaint, Original Complaint, and which are of public record, took place during Mr. Anderson's lifetime. As explained *supra*, it is undisputed, and the circuit court correctly found based on the amended complaint, court filings, and public record, that Mr. Anderson transferred the real properties to AFP, which was a company owned by his wife, Mr. Anderson and AFP executed the 2012 Note and 2014 Note, the real properties were sold to third parties, the breaches of the 2012 Note and 2014 Note, and the statute of limitations had lapsed, all of which took place years before Mr. Anderson passed away. The Estate cannot not argue that prejudice or the current Personal Representative's discovery of public records of these transactions changes when the statute of limitations on the Estate's claims lapsed.

Finally, the Estate's claim for quantum meruit fails because the underlying allegations sound in contract and no claim in equity, including quantum meruit and constructive trust, can survive where the plaintiff has claims sounding in contract. "A party cannot disavow a binding

contract and pursue quantum meruit, no matter how green the grass of equity may seem.” *Gibson v. Epting*, 426 S.C. 346, 355-56, 827 S.E.2d 178, 183 (S.C. App. 2019) (citing *Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002); 66 Am. Jur. 2d Restitution and Implied Contracts § 68 (2018) (“[I]t is a defense to an action in quantum meruit that there is a valid express contract covering the supplied services or material furnished.” (footnotes omitted))).

Similarly, “[a] constructive trust results “[whenever] circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution.” *Church v. Mcgee*, 391 S.C. 334, 344, 705 S.E.2d 481, 486-87 (Ct. App. 2011) (citing *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002) (quoting *Hendrix v. Hendrix*, 299 S.C. 233, 235, 383 S.E.2d 468, 469 (Ct. App.1989)). In this instance, the Estate failed to assert any allegations in the amended complaint alleging circumstances of fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution under the theory of constructive trust. Therefore, even if the statute of limitations does not bar the Estate’s claims, which AFP submits the circuit court correctly concluded, the Estate’s claims fail on their face. The circuit court correctly dismissed Estate’s claims and the circuit court’s order should be affirmed.

B. The circuit court correctly granted Respondent’s Motion to Dismiss as there was no legal basis for equitable tolling of the statute of limitations.

The Estate’s brief alleges that the trial court should have considered the Estate’s argument that the statute of limitations was equitably tolled, because a potential conflict of interest might have caused the original personal representative of the Estate from asserting breach of contract claims against AFP prior to the expiration of the statute of limitations. App.’s Br., p. 16-17. The

current successor Personal Representative was appointed after the original Personal Representative voluntarily resigned. *See* Am. Compl., Ex. A.

This issue was extensively argued before the circuit court during a hearing and briefed by Respondent in its Memorandum in Opposition to Appellant's Motion to Reconsider. *See* Resp. Memo. in Opposition to Motion to Reconsider, pp. 4-5; *see generally* Court Hearing Transcript.

Equitable tolling is a nonstatutory, judicially created, tolling theory which "suspends a limitations period" under certain limited circumstances. *Hooper v. Ebenezer Sr. Servs. & Rehab. Cntr.*, 386 S.C. 108, 687 S.E.2d 29, 32 (2009) (quoting *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004)). "Equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Id.* (quoting *Ocana*, 135 N.M. 529, 91 P.3d at 66). In *Hooper*, the South Carolina Supreme Court noted that South Carolina courts had previously tolled the statute of limitations based on equitable considerations involving reliance by employees on employer's assurances that the claim would be taken care of without filing a claim ("reliance period"), where a healthcare facility failed to file a certificate of assumed name for its business designation and conspicuously post its facility license in public view as required by the law, when a party pursues alternative remedies, when a plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading, or extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to assert his or her timely claim, or where the plaintiff exercising reasonable diligence could not have discovered essential information bearing on his or her claim. *Id.* at 33 (citations omitted).

The circuit court correctly disregarded Appellant's argument that equitable tolling should have delayed the statute of limitations. As Respondent extensively argued at the hearing on the motion to dismiss and in its memorandum in opposition to Appellant's motion to reconsider, none

of those extraordinary circumstances are present here in the instant case and there is no legal support for applying such an extraordinary remedy in this case.

Appellant argues some conflict of interest existed with Mr. Charles Schulze, who served as the manager of defendant and subsequently served as the Personal Representative for Plaintiff upon Mr. Anderson's death in 2018.⁴ Notably, the circuit court's findings that the statute of limitations for the 2012 Note expired in 2015 and the statute of limitations for the 2014 Note lapsed in 2017 obviate Appellant's argument because Mr. Anderson was alive after both statutes of limitations for the 2012 Note and 2014 Note had run. Even assuming *arguendo*, that the statute of limitations expired after Mr. Anderson's death, Mr. Schulze, who had worked with Mr. Anderson and Mrs. Anderson and their respective businesses for decades and subsequently served as Mr. Anderson's personal representative and manager of the business, would not rise to the level of justifying the equitable tolling of the statute of limitations. *See* Resp. Memo. in Opp. to Mot. to Reconsider, p. 4.

None of those extraordinary circumstances were present in the instant case supporting the Estate's argument for equitable tolling and the circuit court correctly dismissed the Estate's claims. As the Estate has admitted, sales of property are public record and serve as constructive notice to the world. The Estate had actual knowledge or was on constructive notice when the sales of property occurred and that AFP was in breach of the 2012 Note and 2014 Note for failure to pay. The circuit court also found the statute of limitations lapsed during Mr. Anderson's lifetime. The Amended Complaint does not allege that sales of property or breach of contract occurred after Mr. Anderson's death. Accordingly, there is no legal authority and Appellant's amended complaint

⁴ Notably, the Estate did not attempt to add Mr. Schulze as a defendant in its Amended Complaint.

fails to allege facts sufficient to establish extraordinary circumstances to support Appellant's equitable tolling argument and the circuit court correctly granted Respondent's motion to dismiss.

C. The circuit court correctly granted Respondent's Motion to Dismiss as the statute of limitations barred Appellant's cause of action for fraudulent conveyance under the Statute of Elizabeth and it also constitutes post-judgment relief.

The Statute of Elizabeth is a post-judgment claim and is not the proper basis for a cause of action in the underlying claim. Moreover, Appellant incorrectly argues that the statute of limitations for the Statute of Elizabeth would be different than Appellant's other claims by attempting to point to when Appellant would have known the conveyances were "fraudulent." The conveyances from Mr. Anderson to AFP occurred several years before he passed away to a business his wife owned and were of public record. The Successor Personal Representative essentially attempts to argue that the statute of limitations did not begin to run on transactions that occurred from 2012 to 2014 and while Mr. Anderson was alive, until Mr. Spong was appointed as Personal Representative in 2024 and determined the conveyances were improper. AFP is unaware of any case that would support Appellant's position and the circuit court correctly dismissed Appellant's claims and should be affirmed.

II. The circuit court correctly denied the Appellant's Motion to Reconsider and for Leave to Amend.

Rule 15(a) provides "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice another party." SCRCP 15(a). A trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010).

The Estate essentially points to "newly discovered evidence of a general ledger payment" on December 31, 2020, and property transactions, which were a matter of public record well before

the Estate requested to amend the Complaint the first time. Notably, AFP debunked the Estate’s claim regarding the general ledger entry on December 31, 2020 as futile because the very document the Estate relied upon demonstrated it was an erroneous entry which was corrected on December 27, 2023. More importantly, the general ledger transaction that Appellant references was not identified as a payment to the Estate and would not serve as any basis for consideration as payments on the 2012 Note or 2014 Note because the holder of those notes was the Estate, not Ms. Gwen Anderson.

12/31/2020	1041	GWEN ANDERSON...	LOAN-HIR ANDERSO...	REPAY FOR ...	180,000.00	16,003.69
12/27/2023		GWEN ANDERSON	LOAN- GRA TR B	Deposit	180,000.00	494,374.62

See Mot. To Reconsider, Ex. A, p. 3-4; Resp.’s Memo. in Opp. To Mot. To Reconsider, p. 7.

Appellant further contends that amendment of the pleadings should be allowed so it can conduct discovery to determine whether a breach of contract occurred. The Estate gives no explanation for its failure to perform basic investigation of its claims prior to filing the Amended Complaint. This is expected and required of any plaintiff participating in the litigation process.

Again, the date(s) and sale price of real property is a matter of public record and would not have changed the circuit court’s conclusion that the statute of limitations on the 2012 Note began on March 24, 2012, and the 2014 Note on August 2, 2014, pursuant to the terms of the notes between the parties. *See* Order pp. 1-2.

The Estate has cited no legal authority for the proposition that each sale of property under a note is an independent breach, and acknowledges it is an open question for which the courts must look to the intent of the parties. The circuit court correctly held that the first sale of the first property under each note constituted the triggering event for the statute of limitations and held that the

statute of limitations for the 2012 Note ran in 2015 and the 2014 Note ran in 2017, while Mr. Anderson was alive.

Additionally, the Estate gives no explanation for its failure and/or intentional decision to include claims and allegations that were known to it at the time the Amended Complaint was filed, including potential claims for breach of fiduciary duty against the original personal representative. Based upon the foregoing, the circuit court's denial of the Estate's Motion to Reconsider and alternative Motion to Amend was correct and should be upheld.

CONCLUSION

The circuit court correctly granted AFP's motion to dismiss and denied the Estate's motion to reconsider because the Estate's claims were barred by the applicable statute of limitations and there was no legal basis for equitable tolling of the Estate's claims. Additionally, with regard to the Estate's claim under the Statute of Elizabeth, the Estate failed to state a claim for relief as it constituted post-judgment relief. Further, the circuit court correctly denied the Estate's motion to reconsider, or in the alternative motion to amend, as further amendment of the pleadings to would be futile. Therefore, AFP respectfully requests the Court affirm the circuit court's order dismissing the Estate's claims and the circuit court's order denying the Estate's motion to reconsider, or in the alternative motion to amend for the reasons stated herein and any ground(s) appearing in the Record on Appeal, pursuant to SCAR 220(c).

[Signature Block Next Page]

Respectfully submitted,

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Greenville, South Carolina

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