

RECEIVED

Aug 03 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON
COUNTY
Court of Common Pleas

HONORABLE JESSICA ANN SALVINI

Circuit Court Judge

Case No. 2018-CP-1002580

Appellate Case No. 2025-01433

Elise Cromwell,

Appellant,

v.

Medical University of South
Carolina Hospital Authority
and the Medical University of
South Carolina,

Respondents.

FINAL BRIEF OF APPELLANT

Donald Gist, Esquire
Gist Law Firm, PA
Columbia, South Carolina 29203
(803) 771-8007
Attorney for Appellant

Bob J. Conley, Esquire
Clawson & Staubes
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
(843) 577-2026
Attorney for Respondents

9. Respondent's Motion for Judgment on the Pleadings filed on April 8, 2019;
10. Order Denying Respondent's Motion for Judgment on the Pleadings for Lack of Prosecution filed on September 9, 2019;
11. Respondent's Motion to Restore Motion for Judgment on the Pleadings filed on September 30, 2019;
12. Respondent's First Motion for Summary Judgment filed on October 4, 2019;
13. Respondent's Second Motion for Summary Judgment filed on February 10, 2022;
14. Respondent's Consent Order to Strike according to Rule 40(j) filed on March 9, 2022
15. Order granting Order to Strike according to Rule 40(j) filed on March 9, 2022;
16. Appellant's Motion to Reinstate Case filed on March 20, 2024;
17. Respondent's Memorandum in Opposition to Appellant's Motion to Restore Case filed on September 17, 2024;
18. Consent Order to Continue Motion to Restore Case Hearing filed by Respondent on September 19, 2024;
19. Consent Order to Continue Motion to Restore Case Hearing filed by Respondent on December 3, 2024;
20. Joint Motion to Continue Motion to Restore Case Hearing filed by Appellant on January 22, 2025;
21. Appellant's Reply to Respondent's Memorandum in Opposition to Appellant's Motion to Restore Case filed on March 28, 2025;
22. Case Hearing Transcript from March 31, 2025, Pages 1-9
23. Order Denying Motion to Restore Case filed on April 1, 2025;
24. Formal Order Denying Motion to Restore Case filed on May 8, 2025;
25. Appellant's Motion for Reconsideration filed on May 16, 2025;
26. Initial Order filed on May 21, 2025;
27. Respondent's Response in Opposition to Appellant's Motion for Reconsideration filed on May 29, 2025;
28. Final Order Denying Appellant's Motion to Restore Case filed on June 18, 2025.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 3, 2026

/s/ Donald Gist
Donald Gist
Gist Law Firm, P.A.
Columbia, South Carolina 29203
(803) 771-8007

TABLE OF CONTENTS

Table of Authorities	5
Statement of Issues on Appeal	6
Statement of the Case.....	7
Standard of Review	8
Facts.....	9-11
Arguments	
1. The Circuit Court Committed Legal Error by Treating Rule 40(j) as an Automatic Bar to Restoration.....	12-13
2. The Breach of Contract Action Was Timely Commenced and Therefore Satisfied the Statute of Limitations.....	13-15
3. The 2022 Rule 40(j) Strike Did Not Revive or Restart the Statute of Limitations.....	15-16
4. A Case Stricken Under Rule 40(j) Remains Pending.....	16-17
5. The Circuit Court Abused Its Discretion by Denying Restoration on an Incorrect Legal Premise.....	17
Conclusion.....	17-18

TABLE OF AUTHORITIES*

CASES

<u>Maxwell v. Genez</u> , 356 S.C. 617, 591 S.E.2d 26(S.C. 2023).....	12 &16
<u>Goodwin v. Landquest Dev. LLC</u> , 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015).....	8,13,17
<u>Prince v. Liberty Ins. Co.</u> , 390 S.C. 166, 700 S.E.2d 280 (2010)	13
<u>Town of Summerville v. City of North Charleston</u> , 378 S.C. 107, 662 S.E.2d 40 (2008)	8
<u>Ocana v. Am. Furniture Co.</u> , 135 N.M. 539, 91 P.3d 58, 66 (2004)	15

STATUTES

S.C. Code Ann. § 15-3-530 (2024).....	8, 13, 14, 17
S.C. Code Ann. § 15-3-30 (1976).....	15
S.C. Code Ann. § 15-3-40 (1976).....	15

OTHER AUTHORITIES

Rule 40(j) SCRCP.....	12,16, 17
Rule 41 SCRCP.....	16
51 Am. Jur. 2d Limitation of Actions §169 (2000).....	15
54 C.J.S Limitations of Actions §115 (2005).....	15

STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court Commit Legal Error by Treating Rule 40(j) as an Automatic Bar to Restoration?
2. Whether the Breach of Contract Action Was Timely Commenced and Therefore Satisfied the Statute of Limitations.
3. Whether the 2022 Rule 40(j) Strike Did Not Revive or Restart the Statute of Limitations.
4. Whether A Case Stricken Under Rule 40(j) Remains Pending.
5. Did the Circuit Court Abuse Its Discretion by Denying Restoration on an Incorrect Legal Premise?

STATEMENT OF THE CASE

This appeal arises from the Circuit Court's Order and denial of June 18, 2025, by the Honorable Jessica Ann Salvini denying Plaintiff's Motion for Reconsideration to restore this action to the active trial docket pursuant to Rule 40(j), SCRCF. **R. 27.**

Appellant commenced this Breach of Contract action in the Court of Common Pleas of Charleston on May 21, 2018, within the applicable three-year statute of limitations set forth in S.C. Code Ann. §15-3-530. **R. 29.** The statute of limitations for the causes of action alleged by Appellant expired in 2021. Therefore, the action was timely and properly pending before the Circuit Court.

In 2022, the matter was stricken from the trial docket pursuant to Rule 40(j), SCRCF, by the Honorable Jennifer McCoy. **R. 208.** The Rule 40(j) Order did not dismiss the case, nor did it adjudicate the merits of the Appellant's claims. Rather, it removed the case from the active trial roster. Following the 40 (j) strike, the parties engaged in ongoing settlement negotiations in an effort to resolve the dispute without further litigation. During this period, counsel also experienced health issues that affected the progress of the case. Additionally, civil litigation practice was materially impacted by Covid-era disruptions affecting Court operations and docket management.

On May 16, 2024, Appellant filed a Motion for Reconsideration to Restore the case to the active docket. **R. 210.** The Circuit Court denied the motion, concluding that restoration was not warranted because more than one year had elapsed since the Rule 40(j) strike. **R. 27.** Appellant now appeals the Circuit Court's denial of restoration, asserting that Rule 40(j) does not mandate automatic dismissal after one year and that the court abused its discretion in refusing to restore a timely filed action that had not been dismissed in which Defendant suffered no demonstrable harm.

STANDARD OF REVIEW

The standard of review for the Circuit Court of South Carolina (or an appellate court reviewing a Circuit Court decision) on a question of law is de novo. Under this standard, the appellate court owes no deference to the lower Court's legal conclusions, deciding the issues with a "clean slate." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 622 S.E.2d 40 (2008).

A motion to restore under Rule 40(j) SCRPC is addressed to the sound discretion of the Circuit Court and will not be disturbed absent an abuse of discretion. *Goodwin v. Landquest Dev. LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015). An abuse of discretion occurs when an error of law controls the Circuit Court's ruling or is without evidentiary support. A ruling based upon an error of law constitutes an abuse of discretion.

However, to the extent the denial rests upon interpretation of Rule 40(j) or application of the statute of limitations under South Carolina Code Ann. §15-3-530, those questions are reviewed de novo. Accordingly, while this Court affords deference to the Circuit Court's discretionary determination, any denial of restoration premised upon an incorrect interpretation of Rule 40(j) or the statute of limitations under South Carolina Code Ann. §15-3-530 constitutes reversible legal error.

FACTS

This case comes before the Court on May 21, 2018, when Appellant filed her Complaint. **R. 29.** Respondents later filed their Motion to Dismiss on July 11, 2018, in lieu of an Answer. **R. 43.** Respondents additionally filed their Memorandum of Law in support of their Motion to Dismiss on November 29, 2018. **R. 49.** Subsequently, an Order was rendered on December 28, 2018, denying the Respondents' Motion to Dismiss. **R. 3.** Respondents later filed a Motion to Alter/Amend on January 8, 2019. **R. 93.** Appellant later filed a Memorandum in Opposition to such Motion on January 22, 2019. **R. 157.** Subsequently, Respondents' Motion to Alter/Amend was denied as well on February 8, 2019. **R. 4.** Respondents then filed their Answer on February 20, 2019, **R. 165,** and amended it on March 21, 2019. **R. 174.** Respondents subsequently filed their Motion/Judgment on the Pleadings on April 8, 2019, **R. 188,** and an Order was rendered on September 9, 2019, **R. 5,** for lack of prosecution. Respondents then filed a Motion to Restore such Motion/ Judgment on the Pleadings **R. 194,** along with their Motion for Summary Judgment **R. 200 and R. 206** on September 30, 2019, October 4, 2019, and February 10, 2022, respectively.

Respondents then filed an initial Proposed Scheduling Order on October 23, 2019, which was granted the same day. Respondents later filed a second Proposed Scheduling Order on March 4, 2020, which was granted on March 5, 2020. Respondents later filed a third Proposed Scheduling Order on May 12, 2021, which was granted the same day. The Appellant subsequently requested an Order of Protection from the Court on August 4, 2021, which was granted on August 11, 2021. A third Amended Consent Scheduling Order was filed by Defendants on November 9, 2021.

Respondents subsequently filed their second Motion for Summary Judgment on February 10, 2022.

The Respondents submitted a final scheduling order, which was granted on February 24, 2022.

Pursuant to such an order, Respondents filed a Consent Order to Strike according to Rule 40j, which was granted on March 22, 2022. **R. 208.** Appellant subsequently filed a Motion to Reinstate such case according to Rule 40j, SCRCR on March 20, 2024. **R. 210.** Respondents subsequently filed a Memorandum in Opposition to Appellant's Motion to Restore on September 17, 2024. **R. 211.** On September 19, 2024, a Consent Order to Continue a Motion to Restore Hearing was filed by the Court. **R. 9.** An additional Consent Order to Continue a Motion to Restore Hearing was filed by the Court on December 3, 2024. **R. 12.** Subsequently, a Joint Motion to Continue was filed by Appellant on January 24, 2025. **R. 216.** Appellant, pursuant to a Motions Roster Publication on March 24, 2025, subsequently filed a Reply to Respondents' Motion in Opposition to Reinstate Case on March 28, 2025. **R. 218.** Thereafter, an Order on Appellant's Motion to Reinstate Case pursuant to Rule 40j was given by the Honorable Judge Jessica Ann Salvini, denying such restoration of Appellant's case on April 1, 2025, **R. 15,** and a formal Order was given by the Court on May 8, 2025. **R. 18.** Appellant thereby filed a Motion for Reconsideration on May 16, 2025, **R. 224,** following the May 8, 2025, Order denying Appellant's Motion to Reinstate. **R. 18.** Subsequently, an Initial Order on Appellant's May 16th Motion for Reconsideration was given by the Honorable Judge Jessica Ann Salvini on May 21, 2025, recommending that any motions by the movant be filed by May 28, 2025, and any replies be filed by June 4, 2025. **R. 25.** Respondents subsequently filed their Response in Opposition to Appellant's Motion for Reconsideration to Restore Case on May 29, 2025. **R. 231.** A Final Order was given by the Honorable Judge Jessica Ann Salvini denying Appellant's Motion to Restore Case on June 18, 2025. **R. 27.**

Appellant then timely filed her Notice of Appeal with the South Carolina Court of Appeals on July 18, 2025, appealing the June 18, 2025, decision from the Circuit Court. On August 4, 2025, Appellant received a letter stating that Appellant's case was dismissed due to failure to provide proof of filing the Notice of Appeal with the Charleston County Clerk of Court, as required by Rule 203(d) of the South Carolina Appellate Court Rules. Appellant subsequently filed the Notice of Appeal with the Charleston County Clerk of Court on August 11, 2025, and on August 19, 2025, Appellant filed a Motion to Restore Appellate Case outlining such filing and reasoning for restoring such case. Appellant later filed a Motion on October 23, 2025, to Order the Transcript in this matter outside of the deadline, which was later granted. Appellant then received the transcript from the lower court on February 4, 2026, **R. 233**, and filed with the Appellate Court a Letter on February 10, 2026, stating that she received the transcript on February 4, 2026. Appellant then timely filed her Initial Brief in this matter on March 6, 2026. Defendants subsequently filed their Initial Brief on May 6, 2026. Appellant later filed her Reply Brief on May 18, 2026. Appellant later filed for an Extension of Time to File the Record on Appeal on June 4, 2026. Appellant later filed the Record on Appeal in this matter 30 days later on July 14, 2026. Appellant now timely files her Final Brief in this matter.

ARGUMENTS

I. The Circuit Court Committed Legal Error by Treating Rule 40(j) as an Automatic Bar to Restoration.

Rule 40(j) of the SCRCP permits a case to be stricken from the docket by agreement and restored upon motion. *Maxwell v. Genez*, 356 S.C. 617, 622 n.2, 591 S.E.2d 26, 28. (2003). Rule 40(j) does not require that a party move to restore the case to the docket within one year after it has been stricken. *Id.* Instead, the unambiguous language provides that if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. *Id.* “A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); if the party simply cannot take advantage of the one-year tolling period provided by the rule.” *Id.* “When by these rules or by notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefore is made before the expiration of the period as originally prescribed or extended or (2) upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done...” *Id.* Furthermore, as stated in *Maxwell*, Rule 40(j) does not have a set deadline for filing a motion to restore. *Maxwell*, 356 S.C. 617, at 622.

Rule 40(j) provides a one-year period for tolling purposes only. It does not provide that a case is dismissed if not restored within one year. The South Carolina Court of Appeals has expressly held that the one-year language in Rule 40(j) concerns tolling and not dismissal.

Goodwin v. Landquest Dev. LLC, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015). Furthermore, Rule 40(j) does not require a party to restore the case within one year after it was stricken. *Id.* The one-year period only affects whether the statute of limitations is tolled. Rule 40(j) does not contain dismissal language and does not divest the court of jurisdiction. The rule limits the tolling benefit to cases restored within one year.

Any limitations defense must be analyzed under South Carolina Code Ann. §15-3-530 and resolved by the court, as such statute is not self-executing. Accordingly, the Circuit Court judge's assertion that Appellant's 40(j) strike constituted "automatic dismissal" is legally unsupported. **R. 15 & R. 18.**

Therefore, by denying restoration solely because more than one year had elapsed, the Circuit Court effectively rewrote Rule 40(j) to include an automatic dismissal provision that does not exist, establishing a clear legal error.

II. Whether the Breach of Contract Action was Timely Commenced and Therefore Satisfied the Statute of Limitations.

Breach of Contract actions in South Carolina are governed by South Carolina Code Ann. §15-3-530, establishing the statute of limitations for such a cause of action. The statute controls when the action must be commenced or filed. It does not violate Rule 40(j); rather, the tolling benefit is lost after the statute of limitations expires, which in this case expires in three years. Based on South Carolina Code Ann. §15-3-530, the statute requires that the action be commenced within three years of accrual, meaning when the breach occurs and when the Appellant knew or should have known of the breach, as established under the discovery rule. *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (2010).

Here, Appellant's Breach of Contract and Breach of Contract with Fraudulent Intent claim

occurred in June of 2016, per Appellant’s initial complaint **R. 29, pg. 4, paragraph 15**, as this was the first time she knew or should have known her contract with the Respondent was breached due to racial discrimination and retaliation initiated by the Respondent. Appellant had three years from June 2016 to file a Breach of Contract claim and a Breach of Contract with Fraudulent Intent claim based on the statute of limitations set out by South Carolina Code Ann. §15-3-530. Appellant filed her initial complaint within the three-year statute of limitations when she filed her complaint on May 21, 2018, in State Court. **R. 29**. Subsequently, the statute expired in 2019 and not 2021 as stated by the Circuit Court in its May 8, 2025, Order denying Appellant’s restoration of the case after the Rule 40(j) strike. **R. 18, pg. 5**. Because Appellant commenced this action before expiration, the statute of limitations was satisfied.

The expiration of the limitations period while the case was pending does not extinguish a timely filed action that was subsequently stricken from the docket two years later. The Circuit Court analysis not only adds dismissal language to Rule(40j), which inherently does not permit such action, but additionally incorrectly looks at the purpose and timeframe of South Carolina Code Ann. §15-3-530, which is a clear error of law. Even if the Circuit Court’s analysis as to Respondent being a “government entity rendering a statute of limitations for a Breach of Contract claim to be two years and not three” **R. 18 pg. 4**, Appellant still commenced her initial complaint well within the statute of limitations in May of 2018, which was two years after the first time she knew or should have known her contract with the Respondent was breached, established by the June of 2016 statement in Appellant's initial complaint. **R. 29, pg. 4, paragraph 15**. Again, the Circuit Court's erroneous assertion that Appellant’s statute of limitations began after Appellant filed her complaint is a clear error of law, as statutes of limitations do not set a timeframe for the

progression of a complaint and “what allegations of wrongdoing occur after”, but rather the timeframe to which a proceeding must be initiated after the accrual of an unlawful event. **R. 18 pg. 4.**

Therefore, Appellant’s Breach of Contract action was timely commenced, satisfying the statute of limitations set out in §15-3-530, which governs filing deadlines of such claims and not docket activity.

III. The 2022 Rule 40(j) Strike Did Not Revive or Restart the Statute of Limitations.

Tolling “refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting.” 51 Am. Jur. 2d Limitation of Actions §169 (2000). “Tolling may either temporarily suspend the running of the limitations period or delay the start of the limitations period.” *Id.* South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. *See* South Carolina Code Ann. §15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); *Id.* §15-3-40 (providing exceptions for persons under a disability, including underage or insane). The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 65 (2004); *see also* 54 C.J.S. Limitations of Actions §115.

When Appellant’s case was stricken in 2022 **R. 208**, the statute of limitations had already expired in 2019, three years after the accrual of Appellant’s case; therefore, there was no remaining limitations period to toll. Thus, whether the Appellant’s case was restored within one year is immaterial to the limitations analysis. Tolling only matters if the statute remains open.

Therefore, the Circuit Court’s reasoning improperly treated the Rule 40(j) strike as if it reset

or revived the limitations period. This reasoning is a clear error of law as Rule 40(j) contains no such language, and such analysis became an abuse of discretion by the Circuit Court in Appellant's case.

IV. A Case Stricken Under Rule 40(j) Remains Pending

A Rule 40(j) strike removes the case from the active docket while allowing the case to be tolled for one year. *Maxwell*, 356 S.C. 617, at 621. It, however, does not dismiss the action, nor does it require refiling or terminating jurisdiction. If dismissal had been intended, Rule 41 would have applied. Rule 41 of the SCRCP governs the voluntary and involuntary dismissal of civil actions. It addresses when and how a case may be dismissed, and whether such dismissal is with or without prejudice, operating as an adjudication on the merits. In contrast, Rule 40(j) is administrative in nature and only concerns the active state of a case and the tolling benefits of a case that has been stricken.

Furthermore, Respondent cannot move for dismissal for failure to prosecute or comply with court rules under Rule 41(b) as Appellant has not abandoned her case or prejudiced the Respondent with undue delay. In fact, although restoration was sought more than one year after the Rule 40(j) strike, the delay was attributable to ongoing settlement negotiations, documented health emergencies, and pandemic-related disruptions affecting court operations.¹ Furthermore, the

¹ Although Rule 40(j), SCRCP, provides that an action restored to the docket within one-year preserves tolling of the statute of limitations, the Rule does not impose a mandatory one-year deadline for restoration as the Circuit Court stated in its May 8, 2025, Order. However, in *Maxwell v. Genez*, 356 S.C. 617, 621-22, 591 S.E.2d 26, 28 (2003), the South Carolina Supreme Court clarified that Rule 40(j) does not require a motion to restore to be filed within one year; rather, the one-year provision concerns only the tolling effect. The Court further recognized that, where a procedural time period is implicated, Rule 6(b), SCRCP, permits enlargement of time "for cause shown," even after expiration of the specified period. *Id.* Accordingly, restoration of a Rule 40(j) case beyond one-year falls within the circuit court's discretionary authority, and the proper inquiry is whether good cause exists and whether the opposing party has demonstrated prejudice. *See also Personal Care, Inc. v. Theos*, 426 S.C. 78, 825 S.E.2d 281 (Ct. App. 2019) (recognizing that restoration after one year implicates statute of limitations concerns but is not automatically barred).

Respondent during this time was having significant difficulty locating crucial witnesses to receive written or oral testimony concerning Appellant's case. **R. 233 pgs. 1-9.**

Therefore, this action was timely commenced, never dismissed, and was not abandoned. Respondent cannot demonstrate prejudice, and under *Goodwin*, Rule 40(j) does not impose an automatic bar, and the equities favor restoration of Appellant's case. *Goodwin v. Landquest Dev. LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015).

V. The Circuit Court Abused Its Discretion by Denying Restoration on an Incorrect Legal Premise.

While restoration under Rule 40(j) is discretionary, discretion must be exercised within the bounds of the law. A discretionary ruling based on an incorrect interpretation of Rule 40(j) and the statute of limitations constitutes an abuse of discretion. In the Appellant's case at hand, her Breach of Contract claim was timely filed and commenced. The statute of limitations had already expired before the Appellant, and the Respondent decided to strike the Appellant's case. Furthermore, Rule 40(j) does not create automatic dismissal of Appellant's case because such case was stricken after the statute of limitations set by South Carolina Code Ann. §15-3-530, which is three years and two years against a governmental agency, had expired. Such expiration is immaterial to Appellant's Rule 40(j) strike, as Appellant's initial complaint was timely commenced in 2018, therefore rendering such analysis irrelevant.

CONCLUSION

Appellant's Breach of Contract claim was timely filed in 2018 and therefore satisfied § 15-3-530. The statute's expiration in 2019 did not extinguish the pending action. The subsequent 40(j) strike in 2022 did not revive, restart, or extinguish the claim. Under *Goodwin*, Rule 40(j)'s one-

year provision relates solely to tolling- not dismissal. Accordingly, the Circuit Court erred as a matter of law in denying restoration. Appellant respectfully requests that this Court reverse and remand Appellant's case with instructions to restore such case to the docket.

August 3, 2026

Respectfully submitted,

/s/ Donald Gist

Donald Gist

S.C. Bar No. 13098

Columbia, South

Carolina 29203

(803) 771-8007

Attorney for Appellant