

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

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SC Court of Appeals

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended.....Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE STATUTE OF LIMITATIONS ISSUE BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING WHEN APPELLANT DISCOVERED HIS CLAIMS BECAUSE THE RECORD DEMONSTRATES CONFLICTING EVIDENCE REGARDING WHEN APPELLANT DISCOVERED THE PARKING VIOLATIONS AND THE COURT DID NOT CONSIDER EVIDENCE OF THE EQUITABLE TOLLING.
- II. THE CIRCUIT COURT ERRED BY RESOLVING DISPUTED FACTUAL ISSUES REGARDING THE NUMBER AND DESIGNATION OF COMMERCIAL PARKING SPACES.
- III. THE CIRCUIT COURT ERRED IN RESOLVING THE EFFECT OF THE 2017 SETTLEMENT AGREEMENT ON SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE SCOPE AND VALIDITY OF THE RELEASE.

STATEMENT OF THE CASE

Appellant filed this action February 14, 2019 asserting claims relating to the allocation of parking spaces, violations of the Adesso Master Deed, and related damages affecting the commercial units. (R., p. 29). The Amended Complaint asserted causes of action including negligence, breach of the Master Deed, declaratory judgment, injunctive relief, negligent misrepresentation, constructive fraud, and violation of the South Carolina Unfair Trade Practices Act. (R., p. 47). Respondents filed answers denying liability and asserting various defenses. (R., p. 71).

On September 24, 2020, Respondents Holder Properties, Inc., John R. Holder, and Adesso/Columbia, LLC filed a Motion for Summary Judgment. (R., p. 154). On December 28, 2020, the Adesso Horizontal Property Regime and the Adesso Homeowners Association filed their Motion for Summary Judgment. (R., p. 356). The motions argued that Appellant's claims were barred by the statute of limitations and that no genuine issues of material fact existed regarding the allocation of parking spaces or the charging of assessments. (R., p. 154, 356).

The circuit court conducted a hearing on the summary judgment motions on January 7, 2021. (See Transcript of hearing, R., p. 1165). On July 15, 2021, the circuit court entered a Form 4 judgment reflecting the court's decision to grant Respondents' motions for summary judgment. (R., p. 4). Subsequently, on September 21, 2021, the circuit court entered a written order granting the Adesso's motion for summary judgment and dismissing Appellant's claims with prejudice. (R., p. 7). In its order, the court concluded that: Appellant's claims were barred by the statute of limitations; Respondents had complied with the Adesso Master Deed in charging assessments; and the parking allocation within the development complied with the Master Deed and applicable zoning requirements. (R., pp. 4-18).

Following entry of the summary judgment order, Appellant filed a Motion to Reconsider pursuant to Rule 59(e), SCRCF, arguing that the court had overlooked evidence demonstrating genuine disputes of material fact. (R., p. 852). The motion asserted that the record contained conflicting evidence regarding the number and designation of commercial parking spaces; the date on which Appellant discovered the alleged violations; and representations made by the homeowners association and its counsel regarding the settlement agreement. (R., p. 852).

The circuit court denied Appellant's motion to reconsider in an order dated September 19, 2022. (R., p. 19). Appellant thereafter filed a timely Notice of Appeal seeking review of the circuit court's order granting summary judgment and dismissing the action. (R., p. 929). Appellant filed a motion related to issues with the legibility of the transcript that significantly delayed the briefing on the merits.

STATEMENT OF FACTS

This appeal arises from the circuit court's grant of summary judgment dismissing Appellant's claims relating to the allocation of commercial parking spaces at the Adesso condominium development in Columbia, South Carolina. Appellant purchased four commercial condominium units in the Adesso development in December 2014. The units were intended for retail use and depended on the availability of parking spaces designated for the commercial units under the development's governing documents. After the units were leased to tenants, Appellant began receiving complaints that the parking spaces designated for the commercial units were being used by residential guests and other occupants of the building, leaving insufficient parking available for the commercial tenants.

As Appellant investigated the issue, communications from the Adesso Homeowners Association, the property management company, and municipal zoning officials suggested that

the parking allocation within the development was still being addressed and reviewed. Appellant also received representations during the negotiation of a construction defect settlement that the settlement agreement concerned only construction defects and would not affect the parking rights associated with his commercial units.

Appellant ultimately filed this action asserting claims relating to the improper allocation of parking spaces and violations of the governing condominium documents. The circuit court nevertheless granted summary judgment in favor of Respondents, concluding that Appellant should have discovered his claims as early as 2014 or 2015 and that the claims were therefore barred by the statute of limitations.

In doing so, however, the circuit court resolved multiple disputed factual issues that should have been decided by a jury. The record contains substantial evidence showing that Appellant did not discover the alleged parking violations until years after purchasing the units and that the number and designation of commercial parking spaces remained in dispute.

Because South Carolina law requires that all evidence and reasonable inferences be viewed in the light most favorable to the nonmoving party, summary judgment was improper. The order of the circuit court should therefore be reversed and the case remanded for trial.

The ADESSO consists of one hundred and ten (110) residential units in five (5) stories with ground level commercial units consisting of approximately eight thousand one hundred thirty-nine (8,139) square feet. The ADESSO is built over a ground level parking area for residential unit owners and the owner of the commercial units.

Appellant owns real property located at 601 S. Main Street, Suites A, B, C and D, Columbia, South Carolina. Suites A, B, C and D (the "units") are located in the ADESSO Horizontal Property Regime (the "ADESSO"). Appellant purchased the units on December 5,

2014.

In December 2014, Appellant Emad Tadros, M.D., as Trustee of the Grace Living Trust, purchased four commercial condominium units located at 601 S. Main Street, Suites A, B, C and D, Columbia, South Carolina in the Adesso development in Columbia, South Carolina. The units were located on the ground level of the Adesso mixed-use condominium project and were intended to house retail tenants serving residents of the building and the surrounding neighborhood.

The governing documents for the development, including the Adesso Master Deed, established various rights and obligations relating to common elements, limited common elements, and parking allocation within the development. (R., p. 719). Under the Master Deed, certain parking spaces were designated as Limited Common Elements for the benefit of the commercial units, including restricted access parking within the parking structure and designated street parking areas. (R., p. 719).

After purchasing the units, Appellant leased one of the commercial spaces to a tenant affiliated with the United States Marine Corps recruiting office. Shortly after the tenant began occupying the premises, the tenant raised concerns regarding the availability of parking for the commercial units. In an email communication describing the parking conditions at the property, the tenant stated, "The current parking situation is there are 17 parking spaces inside the parking structure that are used by guests of residents and commercial units as well as two street parking spots in front of the building. (R., p. 885).

During this time, Appellant also received communications from Adesso management regarding parking availability at the development. In a January 29, 2015 email, the Adesso management company informed unit owners that the condominium board intended to allocate

additional parking spaces through a sealed bid process.

The email stated, "The Board has decided with so many interested in additional parking spaces at Adesso they will offer six to nine spaces through a sealed bid process. (R., p. 888). This communication suggested that the allocation of parking spaces within the development was still being addressed by the condominium association and that additional spaces might become available.

The tenant further reported that residential guests frequently occupied parking spaces associated with the commercial units, creating difficulties for customers and employees attempting to access the businesses located in the commercial spaces. (R., pp. 306-341). These complaints prompted Appellant to begin investigating whether the parking spaces designated for the commercial units were being properly allocated under the governing documents for the development.

As the parking dispute continued, communications occurred between Appellant's tenant and the City of Columbia Zoning Department regarding compliance with municipal parking requirements for the development. Email communications show that zoning officials began reviewing the issue and gathering information regarding the number and location of parking spaces available to the commercial units. (R., pp. 173-174; p. 51; pp. 99-100). These communications reflected that the adequacy of parking at the development remained under review by city officials several years after Appellant purchased the units.

Separately, the Adesso Homeowners Association initiated litigation relating to alleged construction defects at the development. That litigation resulted in a settlement agreement entered into in May 2017 between the Adesso Homeowners Association and various defendants associated with the development and construction of the property.

The settlement agreement resolved claims relating to alleged construction defects affecting the property and provided for a settlement payment exceeding seven million dollars to the homeowners association. (R., p. 244). The agreement contained broad release provisions purporting to release various claims arising from the development and construction of the property. (R., pp. 244-284). Prior to signing the settlement agreement, Mr. Tadros communicated with the HOA's counsel regarding the scope of the agreement and its potential effect on Appellant's claims relating to parking and other issues affecting the commercial units.

In an email communication with HOA counsel, Mr. Tadros expressed concern that the settlement might affect issues unrelated to the construction defect claims, including the allocation of commercial parking spaces. (R., pp. 292-296). Mr. Tadros asserted that he signed the agreement only after being assured that the settlement concerned construction defects and would not affect his claims relating to the parking spaces associated with the commercial units. (R., pp. 292-296).

As disputes regarding parking allocation and other issues affecting the commercial units continued, Mr. Tadros ultimately filed the present action against the developer and related entities. The complaint asserted claims relating to the allocation and availability of commercial parking spaces, violations of the governing condominium documents, and related damages affecting the commercial units. (R., p. 47-64).

STANDARD OF REVIEW

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, S.C. 101, 115,410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's

case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts. The proper standard is the "genuine issue of material fact" standard set forth in the text of Rule 56(c). It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE STATUTE OF LIMITATIONS ISSUE.

A. GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING WHEN APPELLANT DISCOVERED HIS CLAIMS BECAUSE THE RECORD DEMONSTRATES CONFLICTING EVIDENCE REGARDING WHEN APPELLANT DISCOVERED THE PARKING VIOLATIONS.

The circuit court concluded that Appellant "should have known" of his claims at the time he purchased the commercial units in 2014. (R., pp. 4-6; pp. 7-17). However, the record contains substantial evidence demonstrating that Appellant did not discover the alleged violations until years later.

First, the evidence shows that the parking issues became apparent only after complaints from Appellant's tenant in 2015. The record reflects that the United States Marine Corps tenant contacted Appellant regarding parking problems shortly after occupying the premises. (R., p. 15). Appellant thereafter began investigating the availability of commercial parking spaces within the Adesso development.

Second, the record demonstrates that the Adesso management company represented that the issue would be addressed through a sealed bid process for parking spaces, indicating that the

situation was still evolving rather than clearly resolved at the time of purchase. An email from the Adesso management company dated January 29, 2015 states, "The Board has decided with so many interested in additional parking spaces at Adesso they will offer six to nine spaces through a sealed bid process." (R., p. 888). This email reasonably suggested to Appellant that the availability and allocation of commercial parking spaces remained unresolved.

Third, the record shows that municipal zoning officials were still investigating the adequacy of parking at the Adesso development in 2017 and 2018. (R., pp. 173-174; p. 51; pp. 99-100). Emails between Appellant's tenant and the City of Columbia Zoning Department confirm that the City had begun reviewing the parking issue and gathering information regarding compliance with zoning requirements. (R., pp. 173-174; p. 51; pp. 99-100). This evidence provides a reasonable basis for a jury to determine that Appellant did not know there were issues with the parking in March 2015 and directly contradicts the circuit court's finding that Appellant had knowledge of his claims no later than March 2015. Where conflicting evidence exists regarding when a Appellant knew or should have known of a claim, the issue must be resolved by the trier of fact rather than on summary judgment. Arant v. Kressler, 327 S.C. 225, 489 S.E.2d 206 (S.C. 1997). Accordingly, the circuit court improperly resolved disputed factual issues concerning the discovery of Appellant's claims and this court should reverse the Circuit Court on these grounds and remand the case for trial.

B. THE CIRCUIT COURT FAILED TO CONSIDER EVIDENCE SUPPORTING EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS.

Even if the statute of limitations had begun to run earlier than Appellant contends, the record contains evidence that Respondents' conduct induced Appellant to delay filing suit. South Carolina recognizes that a defendant may be estopped from asserting the statute of limitations

when the defendant's conduct reasonably induces delay in filing suit. Vines v. Self Mem'l Hosp., 314 S.C. 305, 443 S.E.2d 909 (1994).

Here, the record shows that Appellant repeatedly sought clarification from the HOA and its counsel regarding the nature of the parking dispute and the scope of a proposed settlement agreement. In communications with Appellant, the HOA's attorney represented that the settlement related only to construction defect issues and did not affect Appellant's parking claims. (R., pp. 292-296; pp. 231-232). The attorney further warned that if Appellant refused to sign the settlement agreement, the HOA would initiate litigation against him. (R., pp. 292-296; pp. 231-232).

These communications reasonably caused Appellant to delay filing suit while attempting to resolve the dispute through the HOA. Whether Appellant's reliance on these representations was reasonable is a factual determination that should be decided by the jury. Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962) (holding that the reasonableness of a defendant's actions regarding discovery of a claim is generally a jury question). By granting summary judgment despite this evidence, the circuit court improperly resolved disputed factual issues regarding equitable tolling.

II. THE CIRCUIT COURT ERRED BY RESOLVING DISPUTED FACTUAL ISSUES REGARDING THE NUMBER AND DESIGNATION OF COMMERCIAL PARKING SPACES.

The Circuit Court ruled that Respondents have complied with the terms of the Adesso Master Deed in charging assessments to Appellant's commercial units located at the Adesso and that parking spaces in and around the Adesso, currently available for the use of Appellant's commercial units and their tenants, comply with both the Adesso Master Deed and the applicable City of Columbia Zoning Ordinance.

The record contains substantial conflicting evidence regarding the number of commercial parking spaces designated for Appellant's commercial units and whether Respondents have complied with the master deed. The Adesso Master Deed identifies certain parking spaces as Limited Common Elements benefiting the commercial units, including 17 restricted access spaces designated for commercial use. (R., p. 719). However, subsequent amendments and representations created uncertainty regarding the actual number of commercial spaces available. (R., pp. 10-11; pp. 1202-1204).

The circuit court's order references different figures—including 19 and 21 spaces—while other evidence in the record indicates that only 17 spaces were designated for commercial use. (R., p. 719; pp. 4-18). Moreover, Appellant's tenant reported that numerous spaces originally associated with the commercial units were being used by residential guests and other occupants. (R., p. 306-341).

An email from Appellant's tenant describes the parking situation as follows: "The current parking situation is there are 17 parking spaces inside the parking structure that are used by guests of residents and commercial units as well as two street parking spots in front of the building." (R., p. 885). Emails between Appellant's tenant and the City of Columbia Zoning Department confirm that the City had begun reviewing the parking issue and gathering information regarding compliance with zoning requirements. (R., pp. 173-174; p. 51; pp. 99-100).

This evidence creates a clear factual dispute regarding whether the parking spaces designated for the commercial units were properly allocated. Under South Carolina law, when the evidence allows multiple reasonable inferences regarding a material fact, summary judgment is inappropriate. Hancock v. Mid-South Management Co., 381 S.C. 326, 673 S.E.2d 801 (S.C. 2009).

Because the number and allocation of commercial parking spaces directly affect Appellant's claims regarding Master Deed compliance and zoning violations, these disputes are material and must be resolved by a jury and this court should reverse the Circuit Court on this issue.

III. THE CIRCUIT COURT ERRED IN RESOLVING THE EFFECT OF THE 2017 SETTLEMENT AGREEMENT ON SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE SCOPE AND VALIDITY OF THE RELEASE.

The Circuit Court held that Appellant's claims were barred by a settlement agreement executed in May 2017 resolving construction defect litigation involving the Adesso development. (R., p. 4-18). The settlement agreement contained a release provision addressing claims arising from construction defects and related matters involving the development. (R., p. 244).

However, Appellant presented an affidavit and email communications between the parties demonstrating that the parties understood the settlement agreement to apply only to construction defect claims and not to disputes regarding the allocation of commercial parking spaces. (R., pp. 188-189; p. 216). In communications with the homeowners association's counsel during the settlement negotiations, Appellant specifically questioned whether the agreement would affect his claims relating to parking spaces associated with his commercial units. (R., pp. 292-296; pp. 231-232). Appellant asserted that he signed the agreement only after receiving assurances that the settlement concerned construction defects and would not affect his parking-related claims. (R., pp. 292-296; pp. 231-232).

This evidence creates a factual dispute regarding the parties' intent and the scope of the release. Under South Carolina law, where the meaning or scope of a contractual provision is disputed and the evidence permits more than one reasonable interpretation, the issue must be resolved by the trier of fact rather than on summary judgment. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the

contract language. Schulmeyer v. State Farm Fire And Cas., 353 S.C. 491, 579 S.E.2d 132 (S.C. 2003), United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct.App.1992).

Because the evidence supports competing interpretations of the settlement agreement, the circuit court erred in concluding as a matter of law that Appellant's claims were barred by the release. The affidavit of Edmond Tadros also suggests that Appellant relied on representations made by the homeowners association and its counsel when deciding whether to execute the settlement agreement. (R., pp. 298-300). Email communications between the parties included in the record demonstrate that Appellant sought clarification regarding the scope of the settlement agreement and whether it would affect claims relating to the commercial parking spaces. (R., pp. 292-296; pp. 231-232). Those emails indicate that Appellant believed the agreement was limited to construction defect claims and would not prevent him from pursuing claims relating to the parking allocation within the development. (R., pp. 292-296; pp. 231-232). In addition, these emails suggest that Appellant was warned that if he did not sign the agreement, the homeowners association might pursue litigation against him. (R., pp. 292-296; pp. 231-232).

Questions regarding inducement, reliance, and the validity of a release generally present issues of fact for the jury. Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990) (holding that issues relating to fraud, reliance, and inducement are ordinarily questions for the trier of fact). By resolving these factual disputes in favor of Respondents, the circuit court improperly weighed the evidence in violation of the summary judgment standard. Rather than determining whether genuine issues of fact existed, the circuit court effectively resolved competing interpretations of the settlement agreement and rejected Appellant's evidence regarding the parties' understanding of the agreement. This approach conflicts with South Carolina precedent

holding that courts may not weigh evidence or resolve disputed facts when ruling on a motion for summary judgment. *Baughman*, 306 S.C. at 114, 410 S.E.2d at 544. When the evidence allows more than one reasonable inference regarding the effect of a contractual release, the issue must be decided by a jury. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Because the record contains reasonable conflicting evidence regarding the scope and validity of the settlement agreement, summary judgment was improper and this court should reverse on this issue.

CONCLUSION

For the reasons stated above, this court should reverse the Circuit Court because there are genuine issues of material fact concerning whether the 2017 settlement agreement precluded these claims, when Appellant knew of the issues with the parking places and Respondents compliance with the master deed. It was improper for the Circuit Court to grant summary judgment on these issues with reasonable evidence to support Appellant's positions on these issues.

Respectfully submitted,

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