

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 REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondents' brief attempts to recast a fact-intensive dispute as one appropriate for summary judgment. That framing is incorrect. The record viewed in the light most favorable to Appellant contains substantial conflicting evidence regarding when Appellant discovered or reasonably should have discovered his claims, whether Respondents' conduct delayed that discovery, whether parking allocations complied with governing documents, and the scope and effect of the 2017 settlement agreement. These disputes are quintessential jury questions. The circuit court improperly weighed evidence and resolved credibility determinations which are errors requiring reversal.

ARGUMENT

I. RESPONDENTS MISCHARACTERIZE THE STATUTE OF LIMITATIONS RECORD

A. Discovery of Claims Is a Jury Question Where Evidence Conflicts

Respondents assert Appellant "knew or should have known" of his claims in 2014–2015. But that assertion ignores conflicting evidence which precludes summary judgment. Appellant presented evidence that parking violations were not apparent at purchase and only became evident after tenant complaints and subsequent investigation. The record further shows ongoing uncertainty and investigation by HOA management and zoning officials, suggesting the issue was unresolved and not discoverable as a legal claim. Respondents' reliance on "constructive notice" improperly converts the discovery rule into a strict liability standard.

The law requires reasonable diligence, not perfect diligence. S.C. Code Ann. § 15-3-535 "All actions... must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." When evidence permits

more than one reasonable inference as to when a plaintiff discovered or should have discovered a claim, the issue must be decided by a jury, not the court. As a result, this court should reverse the trial court on this issue and remand the case for trial.

B. Constructive Notice Does Not Resolve Disputed Facts

Respondents argue recorded documents alone establish constructive notice. That argument fails for two reasons. First, constructive notice is not dispositive where the practical effect of documents is unclear or contradicted by real-world conditions. Second, the record shows actual parking use and representations conflicted with recorded documents, creating factual ambiguity.

The evidence demonstrates that parking allocation was actively evolving and under review, that additional spaces were being considered or reallocated, and communications suggested the issue was not finalized at the time of purchase. Thus, whether a reasonable person would have discovered a legal violation is a fact question, not a legal conclusion and this court should reverse the trial court on this issue and remand the case for trial.

C. Respondents Ignore Evidence Supporting Equitable Tolling

Respondents argue no "extraordinary circumstances" exist. This misstates the record. Appellant presented evidence that he sought clarification from HOA and counsel, he was affirmatively told the dispute was being addressed, and he relied on representations that certain issues (including settlement scope) would not affect his claims.

These facts support equitable tolling, and/or equitable estoppel, an issue Respondents attempt to sidestep. At minimum, they create a jury question as to whether Appellant's delay was reasonable. Respondents improperly ask this Court to weigh credibility and interpret communications, functions reserved for the factfinder. As a result, this court should reverse the trial court on this issue and remand the case for trial.

II. GENUINE ISSUES OF FACT EXIST ON PARKING ALLOCATION

A. The Record Contains Conflicting Evidence

Respondents claim no dispute exists regarding compliance with the Master Deed and PUD. That is demonstrably incorrect. The record includes conflicting evidence regarding the number of commercial parking spaces (17 vs. higher figures), evidence that spaces designated for commercial use were used by residents, and evidence that subsequent amendments and practices created ambiguity.

Even Respondents' own materials acknowledge changing allocations, re-designations of spaces, and post hoc adjustments (e.g., signage changes). This is precisely the type of evidentiary conflict that precludes summary judgment.

B. Post-Litigation "Fixes" Do Not Eliminate Liability

Respondents argue that later actions (e.g., 2018 re-designation of spaces) render the issue moot. That argument fails because compliance after the fact does not negate prior violations or damages; the adequacy of those "fixes" is itself disputed; and Appellant seeks relief based on past and ongoing harm, not merely prospective allocation. Thus, the controversy remains live and justiciable.

C. Summary Judgment Improperly Resolved Competing Inferences

The circuit court accepted Respondents' interpretation of the Master Deed, the PUD requirements, and the factual allocation of spaces. However, where evidence supports multiple reasonable interpretations, the court must deny summary judgment.

Respondents' position depends on selecting favorable evidence, discounting contrary testimony, and drawing inferences against Appellant. That is reversible error and as a result, this court should reverse the trial court on this issue and remand the case for trial.

III. THE SETTLEMENT AGREEMENT ISSUE PRESENTS FACT QUESTIONS

Respondents attempt to dismiss the settlement issue as irrelevant. That is inaccurate. The record shows that the settlement agreement contains broad release language, Appellant sought clarification regarding its scope, and he was told it would not affect parking-related claims. This creates factual disputes regarding intent of the parties, scope of the release, and reasonable reliance. Where contractual language and extrinsic evidence support multiple interpretations, the issue must be resolved by the factfinder, not on summary judgment. As a result, this court should reverse the trial court on this issue and remand the case for trial.

IV. RESPONDENTS RELY ON AN IMPROPER SUMMARY JUDGMENT FRAMEWORK

Throughout their brief, Respondents repeatedly treat disputed facts as established, ask the Court to weigh evidence, and ignore the requirement that all reasonable inferences favor Appellant. The correct standard is clear. Summary judgment is inappropriate where evidence permits more than one reasonable inference. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (S.C. 2023). Here, the record supports multiple competing inferences on every material issue and as a result, this court should reverse and remand this case for trial.

CONCLUSION

Respondents' arguments depend on resolving factual disputes, weighing evidence, and drawing inferences against Appellant that are all improper at the summary judgment stage. Because genuine issues of material fact exist regarding the statute of limitations and discovery, equitable tolling and reliance, parking allocation compliance, and the scope of the settlement agreement, the circuit court's order must be reversed, and the case remanded for trial.

Respectfully submitted,

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