

IN THE STATE OF SOUTH CAROLINA)

COURT OF APPEALS

RECEIVED

SEP 08 2014

SC Court of Appeals

Camichael T. Flowers,

Appellant,

VS.

Janel Namias,

Respondent.

**MOTION/APPLICATION
to proceed without cost and
AFFIDAVIT IN SUPPORT THEREOF.**

I Carmichael T. Flowers, hereby apply for leave to proceed in this action without prepayment of fees or cost or security thereof. In support of my motion and application I declare under penalty of perjury that the following facts are true.

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty, I am unable to pay the cost of said proceeding or give security.

(3) An Affidavit in support thereof substantiating the same is here with attached.

Carmichael T. Flowers
Applicant Pro-Se

() Leave GRANTED.

() Leave Denied

S/ _____
Honorable Court of
Appeals / Judge/ Clerk

Date: _____

Sworn to and subscribed before

me this 3 day of September, 2014.

Virginia Robinson
Notary Public for South Carolina

My Commission Expires. May 20, 2021

STATE OF SOUTH CAROLINA
County of FLORENCE
Carmichael T. Flowers
Appellant

- VS -
JANEI NAMIAS
Respondent

IN THE COURT OF APPEALS

Affidavit in Support of
MOTION TO PROCEED in forma
pauperis

I, Carmichael T. Flowers, being of SOUND MIND, DO HEREBY DEPOSE AND STATE UNDER OATH AND THE PENALTY OF PERJURY, THAT THE FOLLOWING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF:

I, Carmichael T. Flowers THE Appellant in pro-se in THE ABOVE MATTER WAS COHABITING WITH THE - Respondent, Appellant performed work for THE Respondent for which he has NOT BEEN PAID AND THE Respondent CONTINUES TO DEPRIVE Appellant of personal property.

THE U.S. CONSTITUTION REQUIRES THAT WHERE CERTAIN 'FUNDAMENTAL RIGHTS ARE CONCERNED AN INDIGENT BE ALLOWED ACCESS TO THE COURTS. BECAUSE I WAS DENIED DUE PROCESS AND ABSENT A COUNTERVAILING STATE INTEREST OF OVERTIDING SIGNIFICANCE I MUST BE GIVEN A MEANINGFUL OPPORTUNITY TO BE HEARD.

ITs my belief THAT my complaint/appeal fits A
STATUTORY EXCEPTION OR CONCERNS A FUNDAMENTAL
Right.

DATE: SEPT. 3. 2014

Carroll Flowers

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Carmichael T. Flowers,

Plaintiff,

vs.

Janel Namias,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #2013-CP-21-02319

NOTICE OF MOTION
AND MOTION FOR
JUDGMENT ON THE PLEADINGS
AND/OR SUMMARY JUDGMENT

RECEIVED

SEP 08 2014

TO: THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service of this notice upon you or as soon thereafter as counsel may be heard, counsel for the Defendant will move before the Presiding Judge of the Florence County Court of Common Pleas for an order pursuant to Rule 12(c) and/or Rule 56 of the South Carolina Rules of Civil Procedure seeking judgment in her favor on the pleadings and/or summary judgment. The grounds for this motion are that no genuine issue of material fact exists and the Defendant is entitled to judgment as a matter of law.

More specifically, the Plaintiff alleges in his Complaint in Paragraph 11 that "on October 3, 2008, the Plaintiff was arrested" and incarcerated such that he lost various items of personal property and income allegedly due and owing to him by the Defendant. The Plaintiff filed this action in the Marlboro County Court of Common Pleas on November 29, 2012. Service was perfected on the Defendant on May 23, 2013. Rule 3 of the South Carolina Rules of Civil Procedure states that an action is commenced upon filing the Summons and Complaint within the applicable statute of limitations and actual service within 120 days after filing.

Reviewing the allegations contained within the Plaintiff's Complaint in the light most favorable to him, he did not commence his action against the Defendant until more than four and

one-half years after the facts allegedly giving rise to his causes of action. Therefore, the Plaintiff's claims are barred by any and all applicable statutes of limitation and/or the equitable doctrine of laches. In short, the Plaintiff has simply failed adequately to protect his rights by failing timely to pursue his actions against the Defendant. Thus, the Defendant is entitled to judgment in her favor.

The Defendant will rely upon such pleadings as have been filed, and the statutory and common law in the State of South Carolina in support of her motion.

Respectfully submitted,



MICHAEL C. ABBOTT
Attorney for Defendant

Florence, SC
April 22, 2014

ABBOTT & MCKISSICK LAW FIRM, LLC
702 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
(843) 669-0085 fax
mcabbott@abbottmckissicklaw.com

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Carmichael T. Flowers,

Plaintiff,

vs.

Janel Namias,

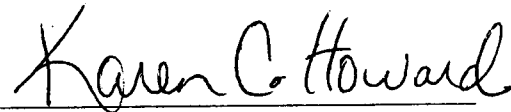
Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #2013-CP-21-02319

**CERTIFICATE
OF MAILING**

The undersigned, a Legal Assistant for Abbott & McKissick Law Firm, LLC, attorneys for the Defendant, does hereby certify that she deposited in the United States Mail a copy of the Notice of Motion and Motion for Judgment on the Pleadings and/or Summary Judgment dated April 22, 2014, the same being addressed to those persons whose names and addresses appear below, this being done on April 22, 2014, and that sufficient postage was affixed thereto:

Mr. Carmichael T. Flowers #335945
Evans Correctional Institute
610 Highway #9 West, F1-B-123
Bennettsville, SC 29512



KAREN C. HOWARD

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-21-02319

Carmichael T. Flowers

Plaintiff,

v.

Janel Namias

Defendant.

ORDER

2014 AUG 19 AM 11:58
FILED
CONNIE REED-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

INTRODUCTION

THIS MATTER CAME BEFORE THE COURT, originally on August 5, 2014. An Order ruling in same was signed on August 7, 2014 by the Honorable William H. Seals, Jr. Thereafter the Plaintiff filed a Motion to Alter or Amend pursuant to Rule 59(e) SCRPC.

MOTION TO ALTER OR AMEND JUDGMENT

The Court considered the Plaintiff's motion to Alter or Amend on the written record only. The Court finds that the motion shall be denied.

THEREFORE, IT IS ORDERED that:

Plaintiff's Motion to Alter or Amend Judgment is hereby denied.

AND IT IS SO ORDERED, this the 18 day of August 2014.


The Honorable William Henry Seals, Jr.
Circuit Court Judge

Florence, South Carolina

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SEP 08 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE

2014 AUG 13 AM 9:35 NO. 2013 CP. 21-2319

CONNIE REEL-SHEARIN

CCCP & GS

Carmichael T. Flowers
PLAINTIFF(S)

FLORENCE COUNTY, S.C.

Tanel Namias
DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

Submitted by: _____

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

CERTIFIED A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Carmichael T. Flowers,

Plaintiff,

vs.

Janel Namias,

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A #2013-CP-21-02319

ORDER GRANTING
SUMMARY JUDGMENT

FILED
2014 AUG 12 PM 12:38
FLORENCE COUNTY
CLERK OF COURT
CONIE REE-SPARIS

This matter came before me on August 5, 2014 in the Florence County Court of Common Pleas. Defendant Janel Namias filed a Motion for Judgment on the Pleadings and/or Summary Judgment against the Plaintiff, Carmichael Flowers, seeking judgment as a matter of law based upon the expiration of the statute of limitations and laches. Present at the call of the case were counsel for the Defendant and the Plaintiff appearing pro se.

From reviewing the Complaint, it appears that the Plaintiff has presented claims against the Defendant for breach of contract, conversion, and, liberally construed, quantum meruit. The statute of limitations for breach of contract and conversion is three years according to S.C. Code Ann. §15-3-530. It is well settled law in South Carolina that “under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.” Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005). The Plaintiff filed his action in the Marlboro County Court of Common Pleas on November 29, 2012. The Plaintiff alleges in his Complaint in paragraph 11 that “on October 3, 2008, the Plaintiff was arrested” and incarcerated due to criminal domestic violence and malicious injury to real and personal property

CERTIFIED: A TRUE COPY
Conie Rees-Sparis
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

As indicated above, the statute of limitations for breach of contract and conversion is three years from the date the complainant knew or should have known a potential cause of action exists. It is clear from reviewing the Plaintiff's Complaint and his prior divorce action that he knew or should have known of a potential cause of action at the latest on November 17, 2009 when he filed his pro se divorce action. Interestingly, in argument before the court, the Plaintiff indicated his discovery date was July 22, 2009. Nevertheless, using the last possible date on which the Plaintiff knew or should have known he had a claim against the Defendant, November 17, 2009, the Plaintiff did not file this lawsuit until more than three years after that date, thus implicating the statute of limitations.

It is well settled law in South Carolina that the standard for granting judgment as a matter of law requires that there be no genuine issue of material fact. I find and conclude based upon the Plaintiff's Complaint, the arguments of counsel, and the Plaintiff himself, that no genuine issue of material fact exists with regard to when the Plaintiff knew or should have known that a potential cause of action against the Defendant existed. Therefore, the Defendant is entitled to judgment as a matter of law as to the actions for breach of contract and conversion given that more than three years passed before the Plaintiff filed his Complaint.

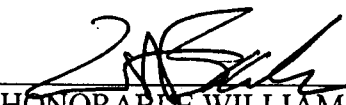
Arguably, the Plaintiff's Complaint in paragraph 15 seeks recovery in quantum meruit allegedly for payment of services rendered in helping rehabilitate the Defendant's house. The Plaintiff states in paragraph 11 of his Complaint that on October 3, 2008, he was arrested on criminal domestic violence and malicious injury to real and personal property of which he had equal ownership. The property the Plaintiff alludes to is the house solely deeded to the Defendant (Complaint paragraph 5) for which he seeks payment of services rendered in helping to rehabilitate. However, clearly from the Plaintiff's own Complaint, it appears that he

maliciously injured that real and personal property that he previously allegedly rehabilitated. Thus, the Plaintiff's hands are unclean and any possible "enrichment" which would have befallen the Defendant, was undone by the Plaintiff's own malicious injury to that real and personal property. It would cause prejudice to the Defendant under these circumstances to allow the presumptive action for quantum meruit to go forward given the significant length of time which has passed since his alleged improvements to the home which he later destroyed, given that the Defendant no longer owns the home and any evidence she could use to defend the action such as receipts to repair the damage done by the Plaintiff have since been lost.

Therefore, I find that the Plaintiff's unreasonable delay has caused the Defendant to detrimentally change her position and that the Plaintiff's own unclean hands in causing the damage to the property at issue requires a finding that the Plaintiff's equitable claims be dismissed pursuant to the doctrine of laches.

AND IT IS SO ORDERED.

Florence, SC
8/6, 2014


HONORABLE WILLIAM H. SEALS JR.
Florence County Court of Common Pleas

FILED
2014 AUG 12 PM 12:38
CORRECTIONAL INSTITUTE
COCOP
FLORENCE COUNTY, S.C.

CERTIFIED A TRUE COPY
C. W. H. H. H. H. H.
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.