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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

RECEIVED

OCT 30 2014

SC Court of Appeals

Hon. William H. SEALS Sr. Circuit Judge

CASE NO. 2013-CP-21-02319

Carmichael T. Flowers Appellant

VS

Jamel Namias Respondent

Initial Brief of Appellant

Carmichael T. Flowers
Agency # 335945, RCI
P.O. Box 2039, SB39
Ridgeland, S.C. 29936
In Pro - SE

Table of Contents

Table of Authorities ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF CASE 2

ARGUMENTS 3,4,5,6,7

I. Did THE LOWER COURT ERR IN GRANTING
SUMMARY JUDGEMENT IN FAVOR OF RESPONDENT
BASED UPON AN ERRONEOUS "DISCOVERY DATE"?

II. Did THE TRIAL JUDGE ABUSE HIS DISCRETION DUE
TO THE RULING BEING BASED UPON FACTUAL CONCLUSION
HE HAD NO EVIDENTIARY SUPPORT?

CONCLUSION 7

Table of Authorities CASES

BETTY V. MCLEOD, 328 S.C. 435, 492 SE2d 794.

... Pg 6

CREIGHTON V. COLIGNY PLAZA LTD. PARTNERSHIP, 512 SE2d 510

... Pg 7

DEAN V. RUSCON CORP. 321 S.C. 360, 468 SE2d 645 (196)

... Pg 6

EVENING POST PUB. CO. V. BERKELY CO. SCH. DIST (S.C. 2011)

392 S.C. 76, 708 SE2d 745. . . . Pg 4

FONTAINE V. PEITZ, 291 S.C. 536, 539, 354 SE2d 565.

... Pg 7

HOLMES V. HAYNSWORTH, SIMKER & BOYD, 760 SE2d 399.

... Pg 6, Pg 7

TRUE V. MONTEITH, 327 S.C. 116, 120, 489 SE2d 615

... Pg 6

UNLHOEFER V. BOLLINGER 289 S.C. 221, 379 SE2d 296.

(CT. App. 1989.) . . . Pg 6

STATUTES

S.C. CODE OF LAWS (1976) 15-3-530 (5) Pg 3

AND 15-3-535, Pg 3

OTHER AUTHORITIES

- S.C. Rules of Civil procedure, Rule 59(E) . . .Pg 4, 6
S.C. Rules of Civil procedure, Rule 60(B)(1) Pg 6

Exhibits

- 1[#]. Motion for Judgment on THE PLEADINGS
AND/or Summary Judgment.
- 2[#]. 59(E) MOTION (SCRPC) . . .Pg 4, 6
- 3[#]. 60(B)(1) MOTION (SCRPC) . . .Pg 6

STATEMENT OF ISSUES ON APPEAL

Appellant, CAMMICHAEL T. FLOWERS ASSETS
THAT THE SOLE ISSUES PRESENTED FOR JUDICIAL
REVIEW ARE BEST SUMMARIZED AS FOLLOWS:

1) Did THE LOWER COURT ERR IN GRANTING
SUMMARY JUDGEMENT IN FAVOR OF RESPONDENT
BASED UPON AN ERRONEOUS "DISCOVERY DATE"?

2) Did THE TRIAL JUDGE ABUSE HIS DISCRETION
DUE TO THE RULING BEING BASED UPON A FACTUAL
CONCLUSION HE HAD NO EVIDENTIARY SUPPORT.

STATEMENT OF THE CASE

THIS MATTER CAME BEFORE THE FLORENCE COUNTY COURT OF COMMON PLEAS ON AUG. 5. 2014. THE RESPONDENT - JANEL NAMIAS FILED A MOTION FOR JUDGEMENT ON THE PLEADINGS AND/OR SUMMARY JUDGEMENT AGAINST THE APPELLANT, (CARMICHAEL T. FLOWERS), SEEKING JUDGEMENT AS A MATTER OF LAW BASED UPON THE EXPIRATION OF STATUTE OF LIMITATIONS AND LACHES. PRESENT AT THIS HEARING WAS COUNSEL FOR THE RESPONDENTS AND APPELLANT APPEARING PRO-SE. SEE EXHIBIT 1

DURING OPENING REMARKS APPELLANT INADVERTENTLY MISSTATED THE "DATE OF DISCOVERY". IT WAS AT THIS TIME THE HON. WILLIAM H. SEALS, JR. (JUDGE), RULED IN FAVOR OF THE RESPONDENT WITHOUT ANY EVIDENTIARY SUPPORT FOR HIS CONCLUSION, AND THEN ADJOURNED.

ON THE SAME DAY (AUG. 5. 2014) APPELLANT FILED A 59(E) MOTION, (SCRCP), IT WAS DENIED BY JUDGE SEALS ON THE 18TH DAY OF AUG. 2014, SEE EXHIBIT 2

ON AUG 22. 2014 APPELLANT FILED A RULE 60(B)(1) SCRCP AND WROTE JUDGE SEALS, STATING THAT A 60(B)(1) MOTION WAS THE PROPER TOOL FOR "MISTAKES, INADVERTENCE OR EXCUSABLE NEGLIGENCE, THIS MOTION HAS NOT BEEN - RESPONDED TO. SEE EXHIBIT. 3

ON SEPT. 5 2014 APPELLANT FILED NOTICE OF APPEAL AND THIS APPEAL ENSUED.

ARGUMENT NO. 1

1. Did THE LOWER COURT ERR IN GRANTING Summary Judgement IN FAVOR OF RESPONDENT, BASED UPON AN ERRONEOUS "DISCOVERY DATE"?

During THE AUG. 5. 2014 Summary Judgement HEARING Appellant "MISSTATED" THE "DISCOVERY DATE" FOR HIS BREACH OF CONTRACT COMPLAINT AGAINST THE RESPONDENT. THE ATTORNEY FOR THE RESPONDENT FILED FOR SUMMARY JUDGEMENT, AT ISSUE WAS - THE STATUTE OF LIMITATION, THERE WERE NO AFFIDAVITS FILED AND IT IS MY BELIEF I MISSTATED THE ACTUAL DATE, WHICH IS THE DATE I BECAME AWARE OF THE "FACTS AND KNOWLEDGE OF THE INJURY. S. C. CODE OF LAWS (1976) § 15-3-535

THE LAW FURTHER STATES (READS), "WHEN CONFLICTING EVIDENCE EXIST ON THE ISSUE OF WHEN A CLAIMANT KNEW OF SHOULD HAVE KNOWN THAT A CAUSE OF ACTION EXISTED, SO AS TO TRIGGER THE APPLICABLE STATUTE OF LIMITATIONS, THE ISSUE BECOMES ONE FOR THE JURY TO DECIDE, S.C. CODE OF LAWS (1976) 15-3-530(G), 153-535.

THE ATTY. FOR THE RESPONDENT FILES THIS MOTION AND NOTICE OF MOTION FOR JUDGEMENT ON THE - PLEADINGS AND/OR SUMMARY JUDGEMENT, HE NEVER PUT FORTH, (AGAIN) ANY DATE OR ANY OTHER SUPPORT FOR "HIS" MOTION. JEE Exhibit 1

"Rule 56(C) of THE S.C. CIV. PROC. provides THAT Summary Judgment is Appropriate "IF (with Emphasis) THE PLEADINGS, DEPOSITIONS, ANSWERS, INTERROGATORIES AND ADMISSIONS ON FILE TOGETHER WITH AFFIDAVITS, IF ANY, SHOW THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THE MOVING PARTY IS ENTITLED TO JUDGEMENT AS A MATTER OF LAW." I.d. (Quoting Rule 56(C) S.C.R.P.).

Again, THE RESPONDENT'S ATTY. ONLY STATES IN HIS MOTION THAT "PLAINTIFF'S CLAIMS ARE BARRED BY ANY AND ALL APPLICABLE STATUTES OF LIMITATIONS."

HOWEVER, Summary Judgment is NOT Appropriate WHERE further Inquiry into THE FACTS OF THE CASE is Desirable TO CLARIFY THE APPLICATION OF THE LAW. SEE EVENING POST PUB. CO. V. BERKELY COUNTY SCH. DIST. (S.C. 2011) 392 S.C. 76, 708 SE2d 745. THE FACT THAT I MISSTATED THE CORRECT DATE OF DISCOVERY, AND TWICE FILED MOTIONS THAT WERE REJECTED, THE LOWER COURT DID NOT IN GRANTING Summary Judgment IN FAVOR OF RESPONDENTS BASED UPON AN ENORMOUS "DISCOVERY DATE", AND THERE'S NO EVIDENTIARY SUPPORT FOR THE "ORDER." IT IS MY BELIEF THAT THE JUDGE AND/OR THE JURY IS INCUMBENT UPON MAKING JUDICIAL DETERMINATION ON THE PROOF.

ARGUMENT NO. 2

Did THE TRIAL Judge Abuse HIS DISCRETION DUE TO THE Ruling BEING BASED UPON A FACTUAL CONCLUSION HE (Judge) HAD NO EVIDENTIARY SUPPORT?

Appellant filed for divorce (Common Law) from Respondent on NOV. 11. 2009, ON SEPT. 16. 2010 THE RESPONDENT WAS PROPERLY SERVED.

A HEARING WAS SUBSEQUENTLY HELD ON NOV. 8. 2010, THE MATTER CAME BEFORE THE HON. ARTHUR E. MOSEHEAD III, HE RULED AT THAT TIME THAT THE PARTIES WERE NEVER COMMON LAW MARRIED, Judge MOSEHEAD signed THE ORDER DEC. 1. 2010 AND FURTHER STATED THAT THE FAMILY LAW COURT DOES NOT HAVE JURISDICTION TO APPORTION OR DIVIDE ANY PROPERTY OF THE PARTIES, AND ALSO ADDED THAT THIS "ORDER" DOES NOT PROHIBIT Appellant FROM SEEKING A CAUSE OF ACTION AGAINST THE RESPONDENT IN A COURT OF PROPER JURISDICTION.

Appellant THEN filed AN APPEAL, WHICH WAS DISMISSED BY THE COURT OF APPEALS, ORDER DATE JUNE 22. 2011.

Appellant THEN filed AN ACTION IN THE MATRIBOND COURT OF COMMON PLEAS FOR BREACH OF CONTRACT AND CONVERSION, ON NOVEMBER. 29, 2012, SERVICE IN THIS MATTER WAS PERFECTED ON RESPONDENT ON MAY 23, 2013. Appellant's complaint SETS FORTH THAT THE Couple purchased THE property AT 803 DIXIE ST.

florence S.C., WHICH SUGGEST SOME TYPE OF COMMON LAW RELATIONSHIP EVEN IF IT WAS NOT RECOGNIZED BY THE FLORENCE FAMILY LAW COURT.

THE HON. JUDGE MOREHEAD'S 12-1-2010 ORDER DATE DEFINES THE "DISCOVERY DATE". SEE HOLMES V. HAYMS WORTH, SINKER & BOYD 760 SE2D 399, DEAN V. RUSCOM CORP, 321 S.C. 360, 468 SE2D 645 (96), BETTY V. MCLEOD 328 S.C. 435, 492 SE2D 794, TRUE V. MONTEITH, 327 S.C. 116, 120, 489 SE2D 615.

Appellant filed a MOTION FOR RECONSIDERATION, 59(E) S.C. R. CIV. PROC. / MOTION TO ALTER OR AMEND A JUDGEMENT IT WAS DENIED AUG. 18. 2014, CURRENTLY PENDING IS A 60(B)(1) S.C. R. CIV. PROC. SEE EXHIBITS.

THE EVIDENCE RELIED UPON BY THE COURT WAS INSUFFICIENT AND INADEQUATE TO SUPPORT A FINDING IN FAVOR OF THE RESPONDENTS, MOST IMPORTANTLY IT WAS INCONSISTENT WITH THE LAW AND THE FACTS.

THE GRANT OR DENIAL OF A NEW TRIAL MOTION REST WITHIN THE DISCRETION OF THE TRIAL JUDGE AND WILL NOT BE DISTURBED ON APPEAL "UNLESS" THE TRIAL JUDGE'S FINDINGS OR CONCLUSIONS REACHED ARE CONTROLLED BY AN ERROR OF LAW," UMHOEFER V. BOLLINGER 298 S.C. 221, 379 SE2D 296, LCT. APP. 1989).

ON THE OTHER HAND, AN ABUSE OF DISCRETION OCCURS WHEN THE CIRCUIT COURT RULING IS BASED UPON AN ERROR OF LAW, SUCH AS APPLICATION OF THE WRONG LEGAL PRINCIPLE, WHEN THE RULING BASED ON

Factual conclusion is without "Evidentiary Support," WHEN THE Circuit Court is vested with discretion but THE Ruling Reveals NO discretion WAS EXERCISED, OR WHEN THE Ruling DOES NOT fall WITHIN RANGE of PERMISSIBLE decisions APPLICABLE in A PARTICULAR CASE, SUCH THAT it MAY be deemed ARBITRARY AND CAPRICIOUS. SEE *Fontaine v. Peitz*, 291 S.C. 536, 539, 354 SE2d 565, *Creighton v. Coligny Plaza Ltd. Partnership*, 512 SE2d 510.

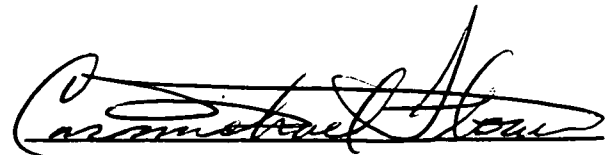
Conclusion

THE BREACH OF CONTRACT is APPLICABLE TO A 3 year STATUTE OF LIMITATIONS, S.C. CODE 1976 - 15 - 3 - 530.

THE DISCOVERY DATE OF 12-1-10 STARTS THE RUNNING OF THE STATUTE OF LIMITATIONS. SEE *Holmes v. Haynsworth, Sinker & Boyd*, 760 SE2d 399. Appellant is NOT TIME BARRED FROM ANY POINT OF VIEW.

Appellant in pro-se, PRAYS THAT THIS COURT WILL REMAND THIS MATTER FOR TRIAL.

DATE: OCT. 25, 2014



AFFIANT BELIEVES THAT THE FACTS IN THIS MATTER AND THE TESTIMONY IS GIVEN UNDER PENALTY OF PERJURY, OFFERS THIS ATTESTMENT CONSISTANT WITH Rule 11 of S.C. Rules of Civil Procedure, AND Rule 603, of THE S.C. RULES OF EVIDENCE, AND Rule 43 (D) OF THE S.C. Rules of Civil Procedure.

AFFIANT SAYETH NO FURTHER:

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 27 DAY OF October 2014

Angel Williams

Notary Public for South Carolina

MY Commission Expires Oct. 7 2024

DATE:

Jasper Co.

31 

Carmichael T. Flowers

Agency # 335945, RCT

P. O. BOX 2039, SB 39

Ridge land S.C. 29936

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CARMICHAEL T. FLOWERS Appellant

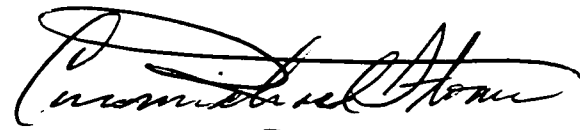
-VS-

JANEL NAMIAS Respondent

Proof of Service

I, THE UNDERSIGNED, Appellant In Pro-SE do HEREBY CERTIFY HE HAS SERVED Appellant's Initial brief upon RESPONDENT'S ATTY. OF RECORD, by depositing THE SAME, IN AN ENVELOPE, IN THE U.S. MAIL, POSTAGE prepaid TO:

MICHAEL C. Abbott
P.O. BOX 148
Florence, S.C. 29503


In Pro SE

DATE: OCT. 25. 2014
Jasper Co.