



The South Carolina Court of Appeals

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November 26, 2014

Mr. William B. Jung, Esquire
1156 Bowman Rd.
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Mt. Pleasant SC 29464

RECEIVED
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SC Court of Appeals

Ms. Linda Weeks Gangi, Esquire
PO Box 1740
Conway SC 29528

Mr. David Jay Parrish, Esquire
PO Box 486
Charleston SC 29402

Re: Johnson Koola v. Cambridge Two
Appellate Case No. 2013-000279

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny Abbott Kitchings

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cc: The Honorable W: Jeffrey Young

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Johnson Koola, Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually,
Cambridge Lakes, LP, Stephen R. Heape, Individually
and as General Partner of Cambridge Lakes, LP,
Cambridge Lakes Apartment Homes, a/k/a Cambridge
Lakes Apartments, LP, a/k/a Cambridge Lakes
Apartment Homes, LP, Classic Properties of Charleston,
Inc., Cambridge Contracting, LP, Trademark Properties,
Inc., Carolina One Charleston Home Team Properties,
LLC, Charleston Home Team, LLC, Carolina One, and
William E. Jenkinson, IV, Individually,

Of whom Cambridge Two, LLC, Albert V. Estee,
Individually, Cambridge Lakes, LP, and Stephen R.
Heape, Individually and as General Partner of Cambridge
Lakes, LP are the Respondents.

Appellate Case No. 2013-000279

Appeal From Charleston County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2014-UP-422
Submitted October 1, 2014 – Filed November 26, 2014

AFFIRMED

William B. Jung, of William B. Jung, Esq., LLC, of Mt. Pleasant, for Appellant.

Linda Weeks Gangi, of Thompson & Henry, PA, of Conway, for Respondents Cambridge Lakes, LP and Stephen R. Heape; and David Jay Parrish, of Nexsen Pruet, LLC, of Charleston, for Respondents Cambridge Two, LLC and Albert V. Estee.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in concluding the statute of limitations barred Johnson Koola's claims: *Bovain v Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) (providing a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"); *id.* ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP."); S.C. Code Ann. § 15-3-530 (2005) (providing a three-year statute of limitations for an action upon a liability created by a statute); *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) ("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. The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist. *The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.*" (citations omitted)); *Dorman v. Campbell*, 331 S.C. 179, 184-85, 500 S.E.2d 786, 789 (Ct. App. 1998) (providing the injured party does not have to obtain "actual knowledge of either the potential claim or of the facts giving rise thereto" and it is irrelevant

whether he fully comprehends the extent of the damage); *id.* at 184, 500 S.E.2d at 789 (stating the date to determine when discovery of an injury should have been made is an objective rather than subjective question); Rule 3(a), SCRPC (providing if a complaint is filed but not served within the statute of limitations, then service must be made within 120 days of filing).¹

2. As to whether the trial court applied the proper standard for summary judgment: *Froneberger v. Smith*, 406 S.C. 37, 46, 748 S.E.2d 625, 629 (Ct. App. 2013) ("The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, . . . the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.").

AFFIRMED.²

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.

¹ As to whether the trial court erred in failing to apply the doctrine of equitable tolling: *Wilder Corp v Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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Cambridge Lakes, LP, Stephen R. Heape, Individually
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Cambridge Lakes Apartment Homes, a/k/a Cambridge
Lakes Apartments, LP, a/k/a Cambridge Lakes
Apartment Homes, LP, Classic Properties of Charleston,
Inc., Cambridge Contracting, LP, Trademark Properties,
Inc., Carolina One Charleston Home Team Properties,
LLC, Charleston Home Team, LLC, Carolina One, and
William E. Jenkinson, IV, Individually,

Of whom Cambridge Two, LLC, Albert V. Estee,
Individually, Cambridge Lakes, LP, and Stephen R.
Heape, Individually and as General Partner of Cambridge
Lakes, LP, are the Respondents.

Appellate Case No. 2013-000279

ORDER

Appellant has filed a petition for rehearing and a motion to supplement the record on appeal, which this court will construe as an additional petition for rehearing. After careful consideration of the petition for rehearing and the motion to supplement the record on appeal, this court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing and the motion to supplement the record on appeal are denied.

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FEB 26 2015

SC Court of Appeals

H B W J.

John O. Latta J.

Stephanie F. McGinnis J.

Columbia, South Carolina

cc: William B. Jung, Esquire
Linda Weeks Gangi, Esquire
David Jay Parrish, Esquire
The Honorable W. Jeffrey Young

FILED

January 26, 2015



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