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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

COURT OF COMMON PLEAS  
2013-CP-40-05675

**RECEIVED**

Willie J. Riley, )  
Plaintiff, )  
vs. )  
Dennis Wayne Catoe and Does, )  
Defendants. )

SEP 14 2015  
SC Court of Appeals  
TRANSCRIPT OF RECORD

March 2, 2015  
Columbia, South Carolina

**B E F O R E:**

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

**A P P E A R A N C E S:**

WILLIE J. RILEY, PRO SE  
Appearing for the Plaintiff  
LESLIE A. COTTER, JR., ESQ.  
Attorney for the Defendant

DEBORAH M. McCURDY, RPR  
Official Court Reporter

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I N D E X   O F   W I T N E S S E S

(WHEREUPON, no witnesses were called  
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced  
during these proceedings.)



1 approach? I do have extra copies.

2 THE COURT: I am about to get to it. I'm down  
3 to your motion. You said it was attached.

4 MR. COTTER: Yes, sir.

5 THE COURT: I'm down to your affidavit.

6 MR. COTTER: Yes, sir.

7 In essence, Your Honor, my affidavit, as Your  
8 Honor can read and will see, it is based on the  
9 fact that we served requests for admission in this  
10 case under Rule 36. Those were attached as Exhibit  
11 A to our -- to my affidavit.

12 And as of the date of the filing of my  
13 affidavit, we, on behalf of the Defendant,  
14 Mr. Catoe, did not receive any responses or  
15 objections or anything in response to those.

16 And as a result of that, by operation of Rule  
17 36A and B, we would request that the matters  
18 contained in those requests for admission are and  
19 should be deemed all admitted under the rules.

20 So that is an aspect of our motion for summary  
21 judgment. But, of course, Your Honor, the basis of  
22 our motion for summary judgment is what the  
23 legislature has enacted with respect to the statute  
24 of limitations for legal malpractice actions, which  
25 is a statutory three years, quote, after the person

1           knew or by the exercise of reasonable diligence  
2           should have known that he had a cause of action.  
3           And that is Section 15-3-530 and 15-3-535.

4           And we're also relying on the seminal case of  
5           Epstein versus Brown, found at 610 S.E.2d 816, on  
6           Page 18 in particular.

7           Your Honor, as we have set forth in our motion  
8           for summary judgment -- which is really a  
9           combination of a motion and memorandum all in  
10          one -- with respect to the original complaint, by  
11          way of history, Your Honor, it was defective as a  
12          matter of law because it did not contain the  
13          required contemporaneously filed affidavit of an  
14          expert. It was missing the expert affidavit. And  
15          therefore it was dismissed by the Court's order  
16          filed February 18th, 2014.

17          Thereafter, the Plaintiff filed an amended  
18          complaint which is the complaint which is before  
19          Your Honor right now on which our motion for  
20          summary judgment is based.

21          The Plaintiff's amended complaint was not  
22          filed until March 4th, 2014. And, Your Honor, on  
23          behalf of the Defendants, we submit that it was  
24          not -- this action has not been properly commenced  
25          as a matter of law within the three year statute of

1            limitation period for a legal malpractice action  
2            against my client, Attorney Dennis Catoe.

3            And, Your Honor, we have set forth in our  
4            motion the triggering dates when the statute of  
5            limitation clocks should begin to run. And of  
6            course the discovery rule applies. And under the  
7            statutes and under the Epstein v. Brown case, it is  
8            undisputed in the record that the Plaintiff,  
9            Mr. Riley, knew or should have known that he had a  
10           potential legal malpractice claim against the  
11           Defendant Catoe when he sought and received the  
12           advice of an independent attorney, William E.  
13           Booth, III, in early June, 2009. And that is when  
14           both Mr. Booth and Mr. Riley recognized and knew  
15           that they had a legitimate problem with his title  
16           to and ownership of the subject property.

17           And, Your Honor, that is a defined term. It  
18           is defined in our answer. And the subject property  
19           involved a piece of property located at 2181  
20           Whitaker Parkway in Orangeburg. And I have  
21           referenced that in the first page of my motion too.

22           Your Honor, it was early June, 2009, when the  
23           Plaintiff Riley knew that he had a legitimate  
24           problem with his title and ownership to the subject  
25           property purchased, for which my client, Mr. Catoe,

1 was the real estate closing attorney.

2 The real estate closing transaction occurred  
3 July 29th, 2008. And, Your Honor, as we have  
4 attached as Exhibit 1 to our motion for summary  
5 judgment on behalf of Mr. Catoe, Exhibit 1 is a  
6 letter that Mr. Booth --

7 THE COURT: I have seen a letter of  
8 August 4th, but that is Exhibit 3.

9 MR. COTTER: Pardon me?

10 THE COURT: You know I am a speed reader.

11 MR. COTTER: Yes, I know you are, Your Honor.

12 THE COURT: I'm down to Booth's letter of  
13 August 3rd, 2009.

14 MR. COTTER: Yes, sir. That is attached as  
15 Exhibit 1. It is also attached to my affidavit.  
16 That is correct.

17 THE COURT: It is Exhibit 3 in here, is all  
18 I'm saying.

19 MR. COTTER: Yes, sir. You have flipped ahead  
20 of me. But it is also Exhibit 1, Your Honor.

21 THE COURT: Okay.

22 MR. COTTER: And, Your Honor, I have been in  
23 front of you a long time, I know you are a speed  
24 reader, but that is the date which the three year  
25 statute of limitations under the seminal case of

1 Epstein v. Brown, under the legislative mandate,  
2 that is when the three year statute of limitations  
3 clock would start. And this action was not  
4 commenced within three years after that date.

5 Thank you, Your Honor.

6 MR. RILEY: How are you doing, Your Honor? My  
7 name is Willie Riley, and I'm representing myself  
8 here in a pro se case.

9 To respond to the statute of limitations, me  
10 and Mr. Catoe had an agreement. And he actually  
11 told me -- because from 2000 -- around 2010/2011,  
12 we left -- we had a continuance at a court date  
13 that the judge had to actually leave from court.  
14 And the same judge actually left from court  
15 actually end up retiring. So we actually had a  
16 conversation where he actually, you know, addressed  
17 me and gave me the information about the statute of  
18 limitations might be running out on the case.

19 He also insured me that even though that my --  
20 he said even though that my title insurance only  
21 covered \$3,800, so it didn't really matter because  
22 he had his own insurance that he would actually  
23 submit a claim to, but he said we could not submit  
24 the claim to the insurance company until we  
25 actually know the total of the title of the actual

1 damages.

2 And he keep giving me this -- he would keep  
3 saying this and keep saying this over and over that  
4 we can't file for the claim until we actually know  
5 what we are filing for. He was saying anything we  
6 doing as filing would have been premature.

7 And I also have a letter from him that, you  
8 know, he actually, you know, actually said these  
9 things in the letter, you know, actually replying  
10 to that he was going to submit a claim to his  
11 insurance company.

12 And this is my first time ever hearing  
13 anything about a statute of limitations as far as  
14 him using that as a defense.

15 THE COURT: Well, see, he got a lawyer and you  
16 didn't. That is the problem you have got.

17 MR. RILEY: Uh-huh. Well, you're right.

18 THE COURT: Statute of limitations is three  
19 years, and it would have started running at least  
20 from August 4th of 2009. So he is well without the  
21 statute of limitations. But the legislature says  
22 in that case he mentioned, says that is tough luck.  
23 So --

24 MR. RILEY: But isn't it possible that an  
25 attorney could actually, you know, waive his

1 statute of limitations?

2 THE COURT: Could be, but that is not in front  
3 of me today. You know, if you had an attorney, he  
4 might have done that for you. You can't just stand  
5 there and say that, you have got to do some stuff.  
6 I can't give you legal advice.

7 MR. RILEY: See, the advice that I have had,  
8 you know, that I would like to present is that he  
9 actually, in a letter written from him, from his  
10 office, showing that, you know, that he was going  
11 to actually -- he agreed to actually waive his  
12 statute of limitations based on the fact that he  
13 had his own insurance company.

14 THE COURT: Show me the letter.

15 (Pause.)

16 THE COURT: Of course they offered to pay you  
17 money. Why didn't you take it?

18 MR. RILEY: Who offered to pay me money?

19 THE COURT: Somebody. I thought.

20 (Pause.)

21 THE COURT: They filed an offer of judgment  
22 for you for \$8,500 back in December.

23 MR. RILEY: Yes, he did an offer of judgment  
24 of \$8,500, but he know the damages amount is way,  
25 way over.

1 THE COURT: You paid \$3,000 something for the  
2 lot.

3 MR. RILEY: No, I paid \$3,000 something for  
4 the lot. And I also did -- and I actually have  
5 evidence of that, that he actually submitted to the  
6 Appellate Court that I had damages, you know,  
7 exceeding \$3,800 worth on renovations to this  
8 property. And basically that is the reason why he  
9 said the -- if it was just about the \$3,800, I  
10 would have just filed with the title insurance  
11 company from Day One, but because of the damages --  
12 and maybe that is what he addressed to me -- that  
13 the damages was not going to exceed -- I mean, the  
14 title company was not going to exceed the \$3,800.  
15 But he knew my damages was way exceeded \$3,800.

16 And, I mean, from the law, I was understanding  
17 that even from an acknowledgment of debt is also a  
18 tolling of the statute of limitations, which he  
19 knew from Day One that this claim was based on  
20 damages.

21 I mean, our whole conversation always been to  
22 what we never knew the actually amount of the  
23 damages to be able to file. And he keep telling me  
24 that it would have been premature to even waste the  
25 Court's time filing for damages if we haven't got

1 the concluded price of the actual damages.

2 And at the same time I was giving him a chance  
3 to actually really -- I didn't want to go in court  
4 and say I was asking for a certain amount of money  
5 when I could have recovered a certain amount of  
6 money on the back end of it.

7 So basically that is where it came from, you  
8 know, is just that -- but he always assured me that  
9 we were not going to have a problem with the claim.

10 THE COURT: That is not what this letter says.  
11 Mark it as his exhibit.

12 MR. RILEY: I also have e-mails that he  
13 actually, you know, admits to the damages that he  
14 knew that I was incurring.

15 THE COURT: You are reading it the wrong way.  
16 He doesn't admit to that. He says he personally is  
17 out of pocket \$4,000 in costs and \$10,000 in legal  
18 fees.

19 MR. RILEY: No. No, Your Honor, I'm saying I  
20 have e-mails that he actually sent to another  
21 attorney that he actually admit that I was  
22 incurring damages from Day One.

23 THE COURT: He said if you had settled you  
24 wouldn't have incurred any of the appeal costs. I  
25 read the letter. I know you don't know; the

1 lawyers know I am a speed reader.

2 MR. RILEY: My thing, I wasn't speaking on the  
3 actual appeal costs, you know what I'm saying, on  
4 the appeal costs he was saying that I could have  
5 settled with another client, which I never heard  
6 anything about, you know, as far as what the client  
7 said.

8 THE COURT: Well, the statute of limitations  
9 has got it. Tough luck. All right.

10 MR. COTTER: Thank you, Your Honor.

11 THE COURT: Prepare an order.

12 MR. COTTER: Yes, sir. Thank you, Your Honor.

13 THE COURT: Put in there he also did about 17  
14 requests for admissions, something like that.

15 MR. COTTER: Yes, sir.

16 THE COURT: He never answered those either.

17 MR. RILEY: I mean, I am going to address you  
18 in response to that. I actually -- he said he had  
19 sent it to him. I sent an e-mail telling him that  
20 I didn't receive it, and he said by the e-mail  
21 address. And I responded to him telling him that  
22 the e-mail address that he actually sent it to is  
23 an e-mail address that I no longer had. And I  
24 actually sent him the e-mail address, the current  
25 one. And I spoke with him on the phone, and it was

1 never --

2 THE COURT: Who are you calling him?

3 MR. RILEY: I'm sorry. I'm sorry, Your Honor.

4 Mr. --

5 THE COURT: Cotter?

6 MR. RILEY: Cotter. And I actually -- I spoke  
7 with him on the telephone.

8 MR. COTTER: Your Honor, I didn't get an  
9 e-mail from him after the requests for admission  
10 were served, and I don't recall any telephone call  
11 I had with him.

12 THE COURT: Well, put that in your order, sign  
13 an affidavit to that effect. Okay.

14 MR. RILEY: All right, thank you, Your Honor.  
15 (Pause.)

16 THE COURT: And, incidentally, I don't know  
17 this other lawyer. I know Cotter.

18 MR. RILEY: Huh?

19 THE COURT: I don't know the one you are  
20 suing.

21 MR. RILEY: Oh, okay.

22 THE COURT: Okay? Anytime somebody rules  
23 against them they say the judge has been meeting  
24 with the lawyer. I just don't know him. That's  
25 all.

1 MR. RILEY: Huh? No, you know --

2 THE COURT: I know, I am just telling you --

3 MR. RILEY: I mean, I understand your point.

4 THE COURT: I'm just saying if I had known him  
5 I would have said I can't hear the case.

6 MR. RILEY: Oh, okay. Okay.

7 MR. COTTER: Your Honor, may I approach and  
8 just write down the -- I didn't get a copy of the  
9 letter he handed up, so I'm not --

10 THE COURT: The court reporter can't --  
11 doesn't have it right now. You can get it from her  
12 later. You can go to the clerk's office and make a  
13 copy.

14 MR. COTTER: Okay.

15 THE COURT: He might give you a copy too.

16 MR. RILEY: I mean, here is a copy of it. I  
17 took the letter to his office. You know, we took  
18 all the files over there, so he has a copy of the  
19 letter.

20 MR. COTTER: That was long before the requests  
21 for admissions were being served. But, anyway.

22 THE COURT: Anyway. She doesn't have any  
23 capability of making a copy.

24 MR. COTTER: No, no, I understand that. I was  
25 just going to approach just to write the date down.

1 THE COURT: Okay.

2 MR. RILEY: Your Honor, I have got another  
3 quick question. So is there any way I can appeal  
4 this decision?

5 THE COURT: Sure.

6 MR. RILEY: Do I have to do a request for an  
7 appeal or I just need to --

8 THE COURT: I am not giving you any legal  
9 advice. That is the problem when you try to  
10 represent yourself. There are time limits on it.

11 MR. RILEY: Well, I mean, I would like to --

12 THE COURT: Time you get the thing, you need  
13 to do something like in ten days or something.

14 MR. RILEY: All right. I understand.

15 THE COURT: It would be in your best interest  
16 if you sold the lot.

17 MR. RILEY: I appreciate it. Thank you.

18 THE COURT: All right.

19 (WHEREUPON, the proceedings were concluded.)  
20  
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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

**RECEIVED**

SEP 14 2015  
SC Court of Appeals

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STATE OF SOUTH CAROLINA        )  
  )  
COUNTY OF RICHLAND            )

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 2nd day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 12, 2015

*s/Deborah M. McCurdy, RPR*

\_\_\_\_\_  
Deborah M. McCurdy, RPR  
Fifth Circuit Court Reporter



Shelby  
2:35 pm  
left message  
August 31, 2015

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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August 28, 2015

Willie J. Riley  
84 Wild Indigo Ct.  
Columbia SC 29229

Re: Willie Riley v. Dennis Catoe  
Appellate Case No. 2015-001627

**RECEIVED**

SEP 14 2015

SC Court of Appeals

Dear Mr. Riley:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: Leslie A. Cotter, Jr., Esquire