

RECEIVED

FEB 22 2016

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000058
Opinion No. 5342 (S.C. Ct. App. refiled December 16, 2015)

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce C. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, Plaintiffs,

Of whom John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens are Respondents,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC a/k/a Source One Signature Communities, Defendants,

Of whom Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc. are Petitioners.

REPLY TO RETURN TO PETITION FOR A WRIT OF CERTIORARI

Charles T. Smith (S.C. Bar No. 5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Petitioners Ronald L. Charlton,
Bonnie N. Charlton, James R. Charlton, and
Bayside Property, Inc.

Other Counsel of Record:

K. Douglas Thornton
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526
(843) 488-5858

and

John M. Leiter
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451
Attorneys for Respondents

Donald G Hunt, Jr.
Kristen G. Atkins
Atkins Hunt Atkins, P.C.
Post Office Box 266
Fuquay-Varina, NC 27526
(919) 552-2020
Attorneys for Petitioners Landquest Development, LLC,
Kyle V. Corkum and South Bay Properties, LLC

Andrew F. Lindemann
Davison, Morrison & Lindemann, PA
Post Office Box 8568
Columbia, SC 29202-8568
(803) 806-8222

and

Elise F. Crosby
Crosby Law Firm, LLC
405 Dozier Street
Georgetown, SC 29440
(843) 54+-3103
Attorneys for The City of Georgetown

James Lynn Werner
Lawrence M. Hershon
Parker, Poe, Adams & Bernstein, LLP
Post Office Box 1509
Columbia, SC 29202
(803) 255-8000
Attorneys for Hartford Casualty Insurance Company
and Hartford Fire Insurance Company

INDEX

Statement of the Case 1

Arguments

1. THE COURT OF APPEALS ERRED IN STATING AS FACTS MATTERS THAT ARE DISPUTED ALLEGATIONS NOT SUPPORTED BY THE RECORD ON APPEAL 2

2. THE COURT OF APPEALS ERRED IN OVERLOOKING OR FAILING TO APPRECIATE THE IMPORTANT DATES THAT WERE THE BASIS FOR THE CIRCUIT COURT’S DECISION 3

3. THE COURT OF APPEALS ERRED IN HOLDING - IN CONFLICT WITH *MAXWELL v. GENEZ*, 356 S.C. 617, 591 S.E. 2d 26 (2003) - THAT IT IS NOT NECESSARY TO COMPLY WITH THE STATUTE OF LIMITATIONS WHEN RESTORING A CASE THAT HAS BEEN STRICKEN 6

4. THE COURT OF APPEALS ERRED IN CREATING MULTIPLE CONFLICTING RULES REGARDING THE TIME LIMIT FOR RESTORING CASES THAT HAVE BEEN STRICKEN 7

Conclusion 9

STATEMENT OF THE CASE

This case was commenced July 9, 2009. The case was struck because of South Bay Properties, LLC's bankruptcy by Judge Hyman's order dated July 22, 2011. South Bay Properties, LLC's bankruptcy was dismissed August 12, 2011. Four of the Plaintiffs moved to restore this case and to consolidate this case with a separate case pending in circuit court by a motion filed January 22, 2013.

Judge Culbertson found and concluded that the motion to restore this case was not timely because the statute of limitations had expired. The claims alleged in the complaint arose more than three years before the motion to restore was filed and the running of the statute of limitations had not been stayed. Judge Culbertson denied the motion to restore.

The Court of Appeals reversed the denial of the motion to restore and remanded for further proceedings. *John Steven Goodwin, et al. v. Landquest Development, LLC et al.*, Opinion No 5342 (S.C. Ct. App. filed August 12, 2015; withdrawn, substituted and refiled December 16, 2015). Petitioners seek a writ of certiorari to review the Court of Appeals decision.

ARGUMENTS

1. THE COURT OF APPEALS ERRED IN STATING AS FACTS MATTERS THAT ARE DISPUTED ALLEGATIONS NOT SUPPORTED BY THE RECORD ON APPEAL.

Petitioners listed specific statements of fact in the Court of Appeals' opinion that are disputed allegations not supported by the record on appeal. The Court of Appeals' revised opinion acknowledges:

... our description of the facts is based on the parties' allegations - primarily those of the Goodwins and Owenses. Nevertheless, we have carefully reviewed the record, and we believe our opinion provides an accurate factual context in which to address the legal issue that resolves this appeal.

(Opinion, R. p. 512)

Petitioners respectfully submit that facts are important. An accurate factual context in which to address legal issues must necessarily be based upon more than the contested allegations of one party to the litigation.¹

The key fact is not that the Goodwins and Owenses commenced this lawsuit within three years of the date their alleged claims accrued. Any lawsuit that is not commenced within three years of the date the alleged claims accrued can be, and generally is, quickly dismissed.

¹ The Return to Petition for a Writ of Certiorari makes a curious argument that having filed a lis pendens on behalf of the Plaintiffs in this case, Plaintiffs' attorneys did not represent the Plaintiffs in regard to the lis pendens. (Return pp. 3-4) Apparently Goodwins and Owens contend that they can place a cloud on the title to another person's property by having a lis pendens filed, then allow the action in which the lis pendens was issued to be stricken and prevent removal of the cloud by claiming that the attorneys who filed the lis pendens do not represent them even though the attorneys have not received a court order pursuant to Rule 11(b), SCRCPC.

The key fact is that the Goodwins and Owenses did not move to reinstate/restore this lawsuit until more than three years after the date their alleged claims arose and more than seventeen months after Judge Hyman struck the case. By focusing on inflammatory allegations in the complaint, the Court of Appeals overlooked or failed to appreciate that after commencing this lawsuit the Goodwins and Owenses abandoned their claims by failing to respond to Judge Hyman's order in a timely manner.

2. THE COURT OF APPEALS ERRED IN OVERLOOKING OR FAILING TO APPRECIATE THE IMPORTANT DATES THAT WERE THE BASIS FOR THE CIRCUIT COURT'S DECISION.

The critical dates in this action are:

September 17, 2007	The Goodwins purchased Lot 160 from South Bay Properties, LLC. (Motion to Reinstate/Restore p. 1, R. p. 101)
December 21, 2007	The Owenses purchased Lot 94 from South Bay Properties, LLC. (Motion to Reinstate/Restore p. 1, R. p. 101)
July 9, 2009	This action was commenced. (Motion to Reinstate/Restore p. 2, R. p. 102)
July 22, 2011	The Honorable Larry B. Hyman, Jr. struck this action and copies of the order were mailed to the Plaintiffs' attorneys. (Form 4, R. p. 001)
August 12, 2011	South Bay Properties, LLC's bankruptcy was dismissed. (Motion to Reinstate/Restore p. 3, R. p. 103)
January 22, 2013	The Goodwins and Owenses moved to reinstate/restore this action. (Motion to Reinstate/Restore p. 1, R. p. 101)

Judge Hyman's order does not include leave to restore this action at a latter date.

Judge Hyman's order does not provide for tolling the statute of limitations. The Goodwins and Owenses did not move for relief from Judge Hyman's order on the grounds of mistake, inadvertence, surprise, excusable neglect or any of the other grounds listed in Rule 60(b), SCRCF. The Goodwins and Owenses did not move to alter or amend Judge

Hyman's order pursuant to Rule 59(e), SCRCR. The Goodwins and Owenses did not appeal Judge Hyman's order.

The Return to Petition for a Writ of Certiorari argues this issue should not be considered in support of the petition for writ of certiorari because it was not raised before the circuit court but rather was raised for the first time in the Petition for Rehearing citing Rule 242(d)(2), SCACR. (Return p.5) The Rule actually provides in relevant part:

Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court.

This issue was raised before the Court of Appeals in the Petition for Rehearing. (Petition for Rehearing pp. 3-4, R. pp.495-496) The Court of Appeals simply overlooked or failed to appreciate the issue.

The Return to Petition for a Writ of Certiorari also seeks to invoke Chief Justice Gregory's Administrative Order No. 1988-05-04-01 issued May 4, 1988, which provides that when a pending case is stayed as a result of a bankruptcy proceeding, the court may strike the case from the calendar with leave to restore. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." *Rice v. Multimedia, Inc.*, 318 S.C. 95, 456 S.E.2d 381 (1994). The argument that Administrative Order No. 1988-05-04-01 "imbued" Judge Hyman's order with leave to restore is a misstatement of the Administrative Order. Nothing in the Administrative Order purports to supplement or amend future circuit court orders.

Because the Goodwins and Owenses failed to act, Judge Hyman's order became the law of the case. "An unappealed ruling is the law of the case and requires affirmance."

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); *Buckner v. Preferred Mutual Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, “right or wrong, is the law of this case and requires affirmance.”)

If the Goodwins and the Owenses did not intend to abandon their claims they should have acted when Judge Hyman struck their case or, at the latest, within three years after their alleged claims arose. The alleged claims necessarily arose prior to July 9, 2009, the date Plaintiffs’ complaint was filed. The Goodwins and the Owenses failed to object to Judge Hyman’s order striking this case or to otherwise seek to reinstate this case until January 22, 2013, more than three years after the alleged claims arose and more than seventeen months after Judge Hyman dismissed the case. By then the time for asserting these claims and the time for challenging Judge Hyman’s order had long expired.

3. THE COURT OF APPEALS ERRED IN HOLDING - IN CONFLICT WITH *MAXWELL V. GENEZ*, 356 S.C. 617, 591 S.E. 2D 26 (2003) - THAT IT IS NOT NECESSARY TO COMPLY WITH THE STATUTE OF LIMITATIONS WHEN RESTORING A CASE THAT HAS BEEN STRICKEN.

In *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003) this Court applied the statute of limitations to determine whether a motion to restore the case was timely filed. Since the Maxwells' motion to restore was filed more than one year after their case was stricken and the statute of limitations was not tolled, the statute of limitations barred the Maxwells' claims.

In *Graham v. Dorchester County School District*, 339 S.C. 121, 528 S.E. 2d 80 (Ct. App. 2000) the Court of Appeals also applied the statute of limitations to determine whether a motion to restore the case was timely filed. Because the statute of limitations expired prior to Graham moving to restore, the decision of the trial court dismissing Graham's action with prejudice for failure to timely move to restore her case was affirmed.

Instead of following the holdings in *Maxwell, supra*, and *Graham, supra*, the Court of Appeals created a new rule stating:

We hold that because the Goodwins and Owenses complied with the statute of limitations when they initially filed and served the summons and complaint, it was not necessary for them to comply with the statute again when they attempted to restore the case to the docket.

(Opinion, R. p. 504)

The essence of the Court of Appeals' new rule is that if a case is timely commenced, there is no time limit on reinstating the case and cases can be reinstated or restored many years

or even decades after being ended. This new rule conflicts with the holding in *Maxwell v. Genez, supra*.²

4. THE COURT OF APPEALS ERRED IN CREATING MULTIPLE CONFLICTING RULES REGARDING THE TIME LIMIT FOR RESTORING CASES THAT HAVE BEEN STRICKEN.

The Court of Appeals' opinion acknowledges that claims cannot be restored after the statute of limitations has expired where,

... all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored.

The Court of Appeals' opinion creates a new rule that claims struck due to bankruptcy can be restored without regard to the statute of limitations. The Court of Appeals' opinion creates an open issue as to whether claims struck for reasons other than bankruptcy or consent of all parties can be restored without regard to the statute of limitations.

Furthermore, the Court of Appeals' opinion specifically reserves for future determination, "... whether the delay in restoring the case provides the circuit court some

² The Return to Petition for a Writ of Certiorari argues that the Court of Appeals' opinion is consistent with Chief Justice Gregory's Administrative Order No. 1988-05-04-01. (Return p. 6) This argument might have had some merit if the Court of Appeals had been considering an appeal of Judge Hyman's order. However, the Goodwins and Owenses did not appeal Judge Hyman's order. The Administrative Order has no application to Judge Culbertson's order denying the motion to reinstate/restore.

other basis on which to dismiss the case, such as failure to prosecute or an equitable theory such as laches.” (Opinion, R. p. 513)

A result of the Court of Appeals’ opinion is that parties will not know whether a case that has been stricken is really ended until someone tries to reinstate the case and receives a final judicial determination. Parties may discover many years after a case has been struck that a court, based upon equitable theories, is willing to reinstate the litigation.³

The Notes to the 1994 amendments to Rule 40, SCRCP, include the statements:

Former Rule 40(c)(3) often was used to dismiss and refile many of these cases causing confusion in the docket and the status of those cases.

Rule 40(j) is the final section of the rule and substantially revises the procedure for dismissing a case previously found in Rule 40(c)(3). Rule 40(j) now requires all adverse parties to consent to the dismissal in writing, but, the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party. Any remaining portion of the statute of limitations begins to run one year after the case was stricken unless the case has previously been restored to the General Docket.

The Court of Appeals’ opinion will again cause the confusion in the docket and the confusion regarding the status of cases that the changes to the South Carolina Rules of Civil Procedure were intended to prevent. Cases dismissed without the written consent of all parties will be beyond the reach of statutes of limitations and will form a shadow docket, invisible to court administration.

³ The Return to Petition for a Writ of Certiorari argues there is no basis to believe that a case that has been struck due to a bankruptcy has ever been really ended. (Return p. 8) That is an accurate assessment of one of the results of the Court of Appeals’ opinion.

CONCLUSION

For the reasons stated herein, these Petitioners ask the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

Charles T. Smith

Charles T. Smith (S.C. Bar No. 5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578

Attorney for Petitioners Ronald L. Charlton, Bonnie
N. Charlton, James R. Charlton, and
Bayside Property, Inc.

February 19, 2016

RECEIVED

FEB 22 2016

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000058
Opinion No. 5342 (S.C. Ct. App. refiled December 16, 2015)

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce C. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, Plaintiffs,

Of whom John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens are Respondents,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC a/k/a Source One Signature Communities, Defendants,

Of whom Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc. are Petitioners.

PROOF OF SERVICE

RECEIVED

FEB 22 2016

I certify that on the 19th day of February, 2016, I served the Reply to Return to
Petition for a Writ of Certiorari, by depositing copies in the United States Mail, postage
prepaid, addressed to:

K. Douglas Thornton, Esquire
Thornton Law Firm., LLC
1025 Third Avenue
Conway, SC 29526

Donald G Hunt, Jr., Esquire
Kristen G. Atkins, Esquire
Atkins Hunt Atkins, P.C.
134 N. Main Street, Suite 204
Post Office Box 266
Fuquay-Varina, NC 27526

Elise F. Crosby, Esquire
Crosby Law Firm, LLC
405 Dozier Street
Georgetown, SC 29440

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577

James Lynn Werner, Esquire
Lawrence M. Hershon, Esquire
Parker, Poe, Adams & Bernstein, LLP
Post Office Box 1509
Columbia, SC 29202

Andrew F. Lindemann, Esquire
Davison, Morrison & Lindemann, PA
Post Office Box 8568
Columbia, SC 29202-8568

Charles T. Smith

Charles T. Smith (S.C. Bar No. 5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578

Attorney for Petitioners Ronald L. Charlton, Bonnie
N. Charlton, James R. Charlton, and
Bayside Property, Inc.

February 19, 2016

WWW.USPS.GOV

LABEL 119



WWW.USPS.GOV

LABEL 119



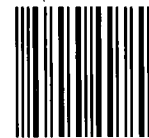
RECEIVED

FEB 22 2016

S.C. SUPREME COURT



1007



29211

U.S. POSTAGE
PAID
GEORGETOWN, SC
29440
FEB 19, 16
AMOUNT
\$22.95
R2305K142038-21

WRITE FIRMLY WITH BALL POINT PEN ON HARD SURFACE TO MAKE ALL COPIES LEGIBLE.

CUSTOMER USE ONLY

FROM: (PLEASE PRINT) **PHONE:** (743) 545-6578
Charles T. Smith
605 Cypress Street
Georgetown, SC 29440

PAYMENT BY ACCOUNT (if applicable)

DELIVERY OPTIONS (Customer Use Only)

SIGNATURE REQUIRED *Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.*
Delivery Options
 No Saturday Delivery (delivered next business day)
 Sunday/Holiday Delivery Required (additional fee, where available*)
 10:30 AM Delivery Required (additional fee, where available*)
*Refer to USPS.com or local Post Office for availability.

TO: (PLEASE PRINT) **PHONE:** ()
The Honorable Daniel E. Shaverhouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC
ZIP + 4 (U.S. ADDRESSES ONLY) 29211

For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
\$100.00 Insurance Included.



EL304786529US

EL304786529US



**PRIORITY
★ MAIL ★
EXPRESS™**

ORIGIN (POSTAL SERVICE USE ONLY)

<input checked="" type="checkbox"/> 1-Day	<input type="checkbox"/> 2-Day	<input type="checkbox"/> Military	<input type="checkbox"/> DPO
PO ZIP Code 29440	Scheduled Delivery Date (MM/DD/YY) 2/20/16	Postage \$ 22.95	
Date Accepted (MM/DD/YY) 2/19/16	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <input checked="" type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$
Time Accepted 3:07 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$
Weight 151 lbs. oz.	Sunday/Holiday Premium Fee \$	Total Postage & Fees \$ 22.95	
Accepted Employee Initials CS			

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY) 2/20	Time <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature CS
Delivery Attempt (MM/DD/YY) 2/20	Time <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature CS

LABEL 11-B, SEPTEMBER 2015 PSN 7690-02-000-9996

3-ADDRESSEE COPY