

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM Horry COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000335

Tiffany Martin

Appellant,

v.

Glenda Simmons

Respondent.

RECORD ON APPEAL

Ralph J. Wilson, Jr.  
Post Office Box 860  
Conway, South Carolina 29528  
843-488-1013  
**Attorney for Appellant**

John Robert Murphy, Esq.  
PO Box 6648  
Columbia, SC 29260  
803-454-1231  
**Attorney for Respondent**

**RECEIVED**

SFP 08 2016

SC Court of Appeals

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Tiffany M. Martin  
 PLAINTIFF(S)

Glenda Simmons  
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for:  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

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), SCRPC;  Rule 4(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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.

FILED  
 HORRY COUNTY  
 16 JAN 20 PM 1:49  
 CLERK OF COURT  
 HONORABLE JUSTICE WARD

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

**Defendant's Motion to Dismiss is GRANTED. Lawsuit is barred by statute of limitations. - See Tanyel v. Osborne, 312 S.C. 473, 441 S.E.2d 329 (S.C.App.1994). See also McClain, et al. v. Jarrard, et al., 354 S.C. 218, 580 S.E.2d 763 (S.C.App.2003).**

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)
N/A	N/A	\$ N/A
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.

*Benjamin H. Culbertson*  
 Benjamin H. Culbertson, Circuit Court Judge

2148  
 Judge Code

Jan. 19, 2016  
 Date



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Tiffany M. Martin,

Plaintiff(s)

vs.

Glenda Simmons,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 26-

7743

COPY

Submitted By: Ralph J. Wilson, Jr.  
Address: 1300 2nd Avenue, Suite 212, Conway, SC 29526

SC Bar #: 76716  
Telephone #: 843-488-1013  
Fax #: 843-488-1014  
Other:  
E-mail: Attorney@RalphWilsonLaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

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- Debt Collection (110)
- General (130)
- Breach of Contract (140)
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- Employment Discrim (170)
- Employment (180)
- Other (199)

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- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Previous Notice of Intent Case #  
20 -NI-
- Notice/ File Med Mal (230)
- Other (299)

Torts - Personal Injury

- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Assault/Battery (370)
- Slander/Libel (380)
- Other (399)

Real Property

- Claim & Delivery (400)
- Condemnation (410)
- Foreclosure (420)
- Mechanic's Lien (430)
- Partition (440)
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- Minor Settlement (730)
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- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Sexual Predator (510)
- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of State Depositions (650)
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Pre-Suit Discovery (670)

- Confession of Judgment (770)
- Petition for Workers Compensation Settlement Approval (780)
- Other (799)

Submitting Party Signature: 

Date: October 27, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

### FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tiffany M. Martin, )  
 )  
Plaintiff, )  
vs. )  
 )  
Glenda Simmons, )  
 )  
Defendant. )  
 )  
 )  
 )

Case No. 2015-CP-26-\_\_\_\_\_


**SUMMONS**

HORRY COUNTY  
2015 OCT 23 PM 1:53  
CLERK OF COURT

**TO: DEFENDANT GLENDA SIMMONS:**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber, Ralph J. Wilson, Jr., Esquire, at his office, 1300 2<sup>nd</sup> Ave, Suite 212, Conway, SC 29526, within **thirty (30)** days after the service hereof, exclusive of the day of such service; **AND IF YOU FAIL** to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

RALPH WILSON LAW PC



Ralph J. Wilson, Jr., Esq.  
1300 2<sup>nd</sup> Ave, Suite 212  
Conway, SC 29526  
Phone: (843) 488-1013  
Fax: (843) 488-1014  
*Attorney for Plaintiff*

October 27, 2015  
Conway, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tiffany M. Martin, )  
Plaintiff, )

vs. )

Glenda Simmons, )  
Defendant. )

Case No. 2015-CP-26-\_\_\_\_\_

**COMPLAINT  
(Negligence)**

HORRY COUNTY  
2015 OCT 20 11 14:53  
MET. CLERK OF COURT

The Plaintiff, complaining of the above named Defendant, would respectfully show unto the Honorable Court that:

**THE PARTIES**

1. The Plaintiff is a resident of the State of South Carolina and County of Horry.
2. On information and belief, Defendant is a citizen and resident of the State of South Carolina residing in Horry County.

**FACTUAL ALLEGATIONS**

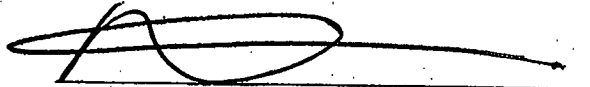
3. On or about August 24, 2012, Plaintiff was stopped for traffic going Southbound in her vehicle on US-701.
4. Defendant failed to stop and struck the rear of Plaintiff's vehicle.
5. As a direct and proximate result of the above described crash Plaintiff sustained personal injuries as more fully outlined below:
6. The Plaintiff became aware of the injury resulting from the accident after diagnoses from her doctor on January 17, 2013.
7. The Plaintiff suffered injuries to her back

**FOR A FIRST CAUSE OF ACTION  
(Negligence)**

8. In operating a motor vehicle on the public roadways, Defendant had a duty to use reasonable and due care in the operation of her vehicle.
9. Defendant further had a duty to comply with all applicable traffic laws.
10. Defendant breached these duties in one or more of the following particulars:
- a. In failing to keep a proper lookout;
  - b. In failing to leave enough space between her vehicle and the Plaintiffs;
  - c. In driving too fast for conditions;
  - d. In failing to abide by applicable traffic laws;
  - e. In failing to stop in time;
  - f. In failing to maintain proper control of his vehicle;
  - g. Such other particulars as may be learned during discovery or at the trial of this matter.
11. As a direct and proximate result of the Defendant's negligent, careless, grossly negligent, willful, wanton, reckless, and/or unlawful acts as described more fully above, Plaintiff suffered extensive pain, suffering, mental anguish and discomfort; spent money for medical care and treatment; was unable to enjoy normal life activities; will require future medical treatment for her injuries and suffered such other actual, consequential, and/or special damages as may be learned during discovery or at the trial of this matter.
12. On information and belief, Plaintiff is entitled to judgment against Defendant for all actual, consequential, special, and punitive damages in an appropriate amount (as determined by a jury).

WHEREFORE, Plaintiff prays for judgment against the Defendant for all actual, consequential, special, and punitive damages in an appropriate amount (as determined by a jury), the cost of this action, and for such other relief in law or equity as the Court may deem just and proper.

RALPH WILSON LAW PC



Ralph J. Wilson, Jr., S.C. Bar No. 76716

1300 2<sup>nd</sup> Ave., Ste. 212

Conway, SC 29526

T: 843-488-1013 F: 843-488-1014

Attorney@RalphWilsonLaw.com

*Attorney for Plaintiff*

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2015-CP-26-07743

Tiffany M. Martin,

Plaintiff,

v.

**ANSWER**

Glenda Simmons,

Defendant.

**TO: RALPH J. WILSON, ESQUIRE, ATTORNEY FOR PLAINTIFF AND TO THE PLAINTIFF ABOVE NAMED:**

Bristol West Insurance Company, the insurer alleged to have provided underinsured motorist coverage to the Defendant, submits this answer pursuant to South Carolina Code Section 38-77-150 and does so without waiving any defenses to insurance coverage. The Defendant, answering the Plaintiffs' Complaint herein, would respectfully show unto the Court that:

**FOR A FIRST DEFENSE**

1. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. Paragraphs 1 and 2 are admitted upon information and belief.

3. As to Paragraphs 3 and 4, this Defendant admits that Defendant's vehicle was involved in an accident with Plaintiff's vehicle on August 24, 2012; otherwise, Paragraphs 3 and 4 are denied.

4. Paragraphs 5, 6, and 7 are denied.

5. Paragraphs 8 and 9 state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the same.

6. Paragraphs 10, 11 and 12 are denied.

7. Plaintiff's "Wherefore" Paragraph is denied.

**FOR A SECOND DEFENSE**

8. The Defendant would show that the Plaintiff's claim against the Defendant is barred by the applicable Statute of Limitations.

**FOR A THIRD DEFENSE**

9. The Complaint fails to state a claim upon which relief can be based and accordingly, this Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A FOURTH DEFENSE**

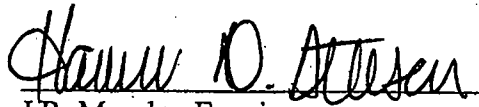
10. The Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligent, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred. The Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of the Plaintiff and would ask that this court compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovery and if it is determined that the Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, carelessness, recklessness and gross negligence.

substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

**WHEREFORE**, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs. Defendant also prays for such other and further relief as the court deems just and proper.

The Defendant demands a jury trial.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire

Hannah D. Stetson, Esquire

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant

December 2, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Tiffany M. Martin, )  
 Plaintiff )

v. )

Glenda Simmons, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO:  
2015-CP-26-7743

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Ralph J. Wilson, Esquire P.O. Box 2461 Conway, SC 29528 843-488-1013	Defendant's Attorney: Hannah D. Stetson, Esquire Post Office Box 6648 Columbia, SC 29260 803-782-4100
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss  
Estimated Time Needed: 15 minutes Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type

Written motion attached  
 Form Motion/Order  
I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for  Plaintiff /  Defendant      December 2, 2015  
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: 25.00  
 EXEMPT:  Rule to Show Cause in Child or Spousal Support  
(check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status     State Agency v. Indigent Party  
 Sexually Violent Predator Act     Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication     Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter:  
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE \_\_\_\_\_

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

CLERK'S VERIFICATION

Date Filed: \_\_\_\_\_ Collected by: \_\_\_\_\_  
 MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO: 2015-CP-26-7743

Tiffany M. Martin,

Plaintiff,

vs.

Glenda Simmons,

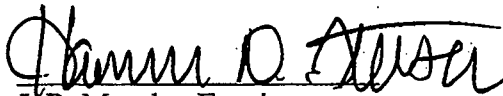
Defendants.

**MOTION TO DISMISS**

**TO: RALPH J. WILSON, ESQUIRE, ATTORNEY FOR PLAINTIFF, AND TO THE PLAINTIFF ABOVE NAMED:**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Glenda Simmons, by her undersigned attorneys, will move before the Presiding Judge of the Horry County Court of Common Pleas at the Horry County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the Plaintiff's Complaint based upon the grounds that the Plaintiff's Complaint is time barred by the applicable statute of limitations. The basis for this motion is more clearly set out in the memorandum of law filed contemporaneously herewith.

MURPHY & GRANTLAND, P.A.



J. R. Murphy, Esquire

Hannah D. Stetson, Esquire

P. O. Box 6648

Columbia, SC 29260

803-782-4100

Attorneys for Defendant

December 2, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2015-CP-26-7743

Tiffany M. Martin,

Plaintiff,

vs.

Glenda Simmons,

Defendants.

**DEFENDANT'S MEMORANDUM  
IN SUPPORT OF MOTION  
TO DISMISS**

The Defendant Glenda Simmons (hereinafter "Defendant"), by and through her undersigned counsel, respectfully submits this Memorandum of Law in support of her Motion to Dismiss.

**FACTUAL AND PROCEDURAL BACKGROUND**

This action arises out of an automobile accident occurring on August 24, 2012. (Compl. ¶ 3). Plaintiff alleges in her Complaint that on this date, Defendant's vehicle failed to stop and struck the rear of Plaintiff's vehicle. (Compl. ¶ 4). On October 28, 2015, Plaintiff filed the instant Complaint in the Horry County Court of Common Pleas against Defendant. The Complaint asserts a negligence claim against the Defendant arising out of the August 24, 2012 accident.

**ARGUMENT**

Defendant is entitled to a dismissal of Plaintiff's Complaint because Plaintiff's Complaint was not commenced within the applicable three-year statute of limitations. Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the commencement of negligence actions. *See* S.C. Code Ann. § 15-3-530(5). "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." *True v.*

*Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183-84, 708 S.E.2d 787, 793 (Ct. App. 2011). Under this objective test, a court must determine “whether the circumstances of the case 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.” *Id.*

Here, the three-year statute of limitations began to run in this action on August 24, 2012, the date of the accident and the date on which Plaintiff was put on notice that a claim against Defendant might exist. Indeed, in *Wiggins v. Edwards*, 314 S.C. 126, 128-29, 442 S.E.2d 169, 170 (1994), a case arising out of injuries following an automobile accident, the South Carolina Supreme Court specifically held that under an objective analysis, the plaintiff “should have been aware of a potential claim on the date of the [automobile] accident; therefore, the statute of limitations began to run at that time.” *Id.* Because the plaintiff in *Wiggins* filed her action three years and four days after the date of the accident, the court affirmed that the action was filed outside of the applicable three-year statute of limitations period. *Id.* at 129, 442 S.E.2d at 169.

Similarly here, Plaintiff knew or should have been aware of a potential cause of action against Defendant on the date of the accident. Plaintiff’s reference in her Complaint to January 17, 2013 as the date in which Plaintiff “became aware of the injury resulting from the accident” evidences an attempt by Plaintiff to convert the discovery rule analysis into a subjective inquiry. (Compl. ¶ 6). However, the objective nature of the inquiry has been clearly established by South Carolina courts. Objectively, Plaintiff knew or should have known on the date of the accident—August 24, 2012—that a cause of action existed against Defendant. Thus, under the applicable

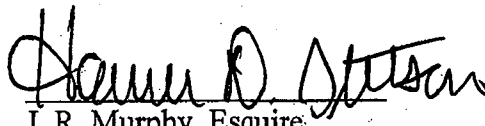
three-year statute of limitations, Plaintiff had until August 24, 2015 to commence a negligence action against Defendant.

Plaintiff's Complaint was filed on October 28, 2015, over two-months past the three-year limitations period governing this action that expired on August 24, 2015. *See* S.C. Code Ann. § 15-3-530(5). Title 15 of the South Carolina Code, which contains the applicable statute of limitation in this case, provides in relevant part that "[c]ivil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued." S.C. Code Ann. § 15-3-20. Plaintiff's action was not commenced within the applicable limitations period prescribed within Title 15 following the August 24, 2012 accrual of her negligence cause of action against Defendant. As such, the Court should dismiss Plaintiff's Complaint on the basis of the expiration of the statute of limitations.

#### CONCLUSION

Based on the foregoing, Defendant respectfully requests that the Court grant her Motion to Dismiss and dismiss Plaintiff's Complaint in its entirety.

Murphy & Grantland, P.A.



J. R. Murphy, Esquire

Hannah D. Stetson, Esquire

P. O. Box 6648

Columbia, SC 29260

Phone: 803-782-4100

Fax: 803-782-4140

Attorneys for Defendant

December 2, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tiffany M. Martin, )  
 )  
Plaintiff, )

Civil Action #: 2015-CP-26-7743

v. )

**PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS**

Glenda Simmons, )  
 )  
Defendant. )  
\_\_\_\_\_ )

The Plaintiff, Tiffany M. Martin (hereinafter "Plaintiff"), by and through her undersigned attorney, respectfully submits this Memorandum in Opposition to Defendant's Motion to Dismiss, as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

This action arises from an automobile accident occurring on August 24, 2012. Prior to this accident, Plaintiff had been receiving treatments from her physician for a broken ankle and lower back pain from injuries sustained from a fall that occurred in June of 2012. During this time, Plaintiff was experiencing pain and discomfort. While continuing treatment for her previous injuries from June of 2012, Plaintiff's physician requested additional MRIs in December of 2012. Upon review of the results of the MRIs, Plaintiff was informed that the auto accident was the cause of the current pain she was suffering and that she needed additional treatment for her back. Plaintiff was aware of the automobile accident that occurred on August 24, 2012. However, due to her prior injuries she was not aware of the related injuries as the source of her discomfort until she was informed of them in January 2013.

## ARGUMENT

Defendant is not entitled to a dismissal of the Plaintiff's Complaint as Plaintiff did not become aware of the source of her injury until January of 2013. Under South Carolina law, negligence actions must to be filed within three years. S.C. Code Ann. § 15-3-530 (5). More specifically, S.C. Code Ann. § 15-3-535 states that all actions initiated must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. "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." *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). "

Moreover, the Plaintiff in this case was being treated for injuries that she sustained in June of 2012 when the accident happened on August 24 2012. During this time and up until the discovery of the true source of her pain, Plaintiff was under the belief that the source of the pain she was suffering from was from her injuries from her accident in June of 2012. More specifically, due to the Plaintiff's prior fall, she believed that the fall was the cause of her back pain. However, the Plaintiff was informed by her physician that the current back pain she was experiencing could only have been caused by the auto accident. Because of this discovery, Plaintiff only became aware of her injuries sustained in the August 2012 accident in January of 2013.

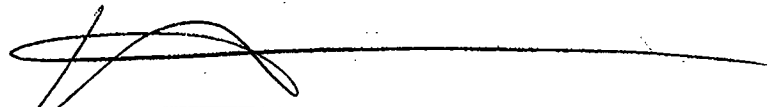
Further, as the Defendant has noted in their Motion to Dismiss, the test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183-84, S.E. 2D 787, 793 (Ct. App. 2011). Here, Plaintiff was being treated by her physician after the accident and only in January of 2013 did she become aware of the underlying cause of the discomfort she was suffering from. Plaintiff's complaint was filed on October 28, 2015 and as such should be considered filed timely under S.C. Code Ann. § 15-3-535.

Additionally, in the interest of justice and equity, due to the extensive nature of the Plaintiff's injuries, the monetary amount of the medical invoices and the future pain and suffering the Plaintiff will undergo, the Defendant's Motion to Dismiss should be Denied.

Lastly, by denying the Defendant's motion and allowing the Plaintiff to move forward with her complaint no prejudice would be suffered by the Defendant as there is a Covenant not to execute.

### CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss.



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Conway, South Carolina  
January   /  /  , 2016

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) 2015-CP-26-7743

Tiffany M. Martin, )  
 )  
 Plaintiff, ) Transcript of Record  
 )  
 vs. ) January 19, 2016  
 )  
 Glenda Simmons, )  
 )  
 Defendant. )

B E F O R E:

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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

DeShawn Herman Mitchell, Esquire  
Attorney for Plaintiff

Hannah Davis Stetson, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)  
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1 (On the record, January 19, 2016.)

2 THE COURT: All right. Next one I have is 2015-CP-26-  
3 7743, this is the case of Tiffany M. Martin versus Glenda  
4 Simmons, and I've got this is a motion to dismiss. Please  
5 give the court reporter your names and who you represent.

6 MS. STETSON: Your Honor, Hannah Stetson on behalf of the  
7 Defendant. We're appearing for the uninsured motorist  
8 carrier.

9 THE COURT: All right.

10 MR. MITCHELL: DeShawn Mitchell on behalf of Ms. Martin.  
11 I'm here for Mr. Wilson in his absence.

12 THE COURT: All right. Ms. Stetson, this is your motion?

13 MS. STETSON: Yes, Your Honor.

14 THE COURT: Excuse me. And you represent who now?

15 MS. STETSON: We represent the Defendant. Technically  
16 we're appearing on behalf of Bristol West the underinsured  
17 motorist carrier, but appearing for the Defendant.

18 THE COURT: All right. Let me hear from you.

19 MS. STETSON: Thank you, Your Honor. May it please the  
20 Court? This is a negligence action arising out of a motor  
21 vehicle accident occurring on August 24<sup>th</sup> of 2012 in Horry  
22 County, and the complaint alleges that Plaintiff was a  
23 passenger in a vehicle that the Defendant rear-ended on August  
24 24<sup>th</sup> of 2012. This negligence action was filed on October 28<sup>th</sup>  
25 of 2015, and we have filed a motion to dismiss based on the

1 expiration of the statute of limitations in this case. In  
2 South Carolina a negligence action must be filed three years  
3 after, after the commencement of the action, and South  
4 Carolina follows the discovery rule under which the statute  
5 begins to run when a party knew or should have known that a  
6 cause of action for the wrongful conduct existed. Here  
7 Plaintiff knew or should have known that a cause of action  
8 against Defendant arising out of the alleged negligence of  
9 Defendant relating to the car accident arose on the actual  
10 date of the car accident itself, which was August 24<sup>th</sup> of 2012,  
11 and that would mean that the statute of limitations in this  
12 action expired on August 24<sup>th</sup> of 2015. The complaint here was  
13 not filed until October 28<sup>th</sup> of 2015, which is two months after  
14 the statute of limitations, and for that reason we are asking  
15 that the Court dismiss the complaint, and, and I will note  
16 that within the complaint itself there is an allegation that  
17 on January 17<sup>th</sup> of 2013 Plaintiff became aware of her injury,  
18 and, and to the extent that Plaintiff argues that this January  
19 date is the date from which the statute began to run, I would  
20 just note to the Court that South Carolina Courts have  
21 consistently recognized that the discovery rule is an  
22 objective inquiry and not a subjective inquiry and the  
23 standard is would a reasonable person known or should have  
24 known that the cause of action began to run on the date of the  
25 accident.

1 THE COURT: All right.

2 MS. STETSON: Thank you, Your Honor.

3 THE COURT: All right, sir. Let me hear from you, Mr.  
4 Mitchell.

5 MR. MITCHELL: Thank you, Your Honor. Before I get  
6 started may I approach?

7 THE COURT: All right. All right.

8 MR. MITCHELL: May it please the Court, Your Honor?  
9 We're in agreement with most of the facts. Ms. Martin was  
10 injured in a motor vehicle accident on August 24<sup>th</sup>, 2012.  
11 Prior to that, she sustained a fall in June of 2012 which she  
12 hurt her ankle and also her back.

13 With respect to the Defendant's motion to dismiss, Ms.  
14 Martin was receiving treatments for her fall in June of 2012,  
15 and her doctor ordered her to have MRIs in December of 2012.  
16 Upon discovery -- pardon me. After receiving results from the  
17 MRI in December of 2012, in June of 2013 the doctor let Ms.  
18 Martin know that the injuries that she sustained, the pain and  
19 discomfort that she was feeling were the result of the  
20 automobile accident which she was in in August of 2012.  
21 Additionally, Your Honor, with respect to -- with respect to  
22 the Plaintiff becoming aware of, of the, the injury that she  
23 sustained, the Courts have held that it is the exercise of  
24 reasonable diligence that has to be shown, and exercise of  
25 reasonable diligence means simply that an injured party must

1 act with some promptness for the facts and circumstances of  
2 the injury would put a person of common knowledge and  
3 experience on notice.

4 In this particular case, Your Honor, the Plaintiff in  
5 this case was injured in the automobile accident in August,  
6 but prior to that she sustained a fall in which she had some  
7 of the same types of pain and discomfort and injuries that  
8 manifested later on. It was the Plaintiff's understanding  
9 that -- she did not know that the pain and discomfort that she  
10 was feeling was from the automobile accident. She thought  
11 that it was from a continuing discomfort from the initial fall  
12 of June 2012. The doctor alerted her that the pain and  
13 discomfort that she was feeling could have only come from the  
14 automobile accident. So January 17<sup>th</sup>, 2013, was the time and  
15 place or the date, I should say, Your Honor, that she became  
16 aware of the discomfort.

17 THE COURT: That's when she's got the doctor's diagnosis?

18 MR. MITCHELL: Yes, sir.

19 THE COURT: Okay.

20 MR. MITCHELL: Being such, Your Honor, the lawsuit was  
21 filed in October 28<sup>th</sup>, 2015, still within that three year  
22 window of the statute of limitations, and because of this we  
23 believe that the complaint is timely, and we would ask that  
24 you deny the Defendant's motion to dismiss.

25 THE COURT: All right. Thank you. Anything in reply?

1 MS. STETSON: Just briefly, Your Honor, in looking at the  
2 memorandum and listening to arguments of counsel, there's a  
3 lot of focus on her subjective pain and when she believed  
4 something was caused by back pain and when she was informed  
5 that it might not have been, and again, I think the Courts  
6 have recognized that it's an objective analysis, and if we  
7 were to do that by every case the statute of limitations would  
8 essentially become meaningless. So we would just ask the  
9 Court to objectively apply the discovery rule and find that  
10 this case was filed outside of the statute of limitations.

11 THE COURT: All right. Well, do you all have any case  
12 you can cite? I mean, I'm going to have to take it under  
13 advisement because I don't know, where you have somebody who  
14 is injured, they're involved, you have an incident, they think  
15 the injury is due to the prior incident, then they find out  
16 subsequently that it's the second incident, when the statute  
17 of limitations starts to run? Do you all have any cases on  
18 point that deal with car --

19 MR. MITCHELL: Not that speaks to that direct issue, Your  
20 Honor.

21 THE COURT: Okay.

22 MS. STETSON: I don't have anything directly on point,  
23 Your Honor. In our memorandum, which is in the file and I  
24 have a copy if Your Honor does not have it, we did cite to the  
25 Wiggins versus Edwards case, which is a Supreme Court case,

1 and I believe that doesn't address later discovering that  
2 you're injured but does address later discovering someone that  
3 might have harmed you or, you know, you're identifying the  
4 Defendant later on, and sort of saying that at the time even  
5 if it's a later discovered identity I would analogize that to  
6 a later discovered injury. The statute still begins to run  
7 from the date where you knew a cause of action existed,  
8 whether you were able to identify the specific medical  
9 documentation to support that cause of action or the specific  
10 person. However, I'm sure we'd be happy to, you know  
11 supplement --

12 THE COURT: Well, no, I can go ahead, let me do some  
13 research. I'll take it under advisement and I'll let you know  
14 my decision. Okay?

15 MS. STETSON: Thank you, Your Honor.

16 MR. MITCHELL: Just a couple of more points, Your Honor,  
17 just, lastly, there was a covenant not to execute against the  
18 Defendant in this particular matter, Ms. Simmons. So there  
19 would be no prejudice to her if the motion to dismiss would  
20 be, would be denied.

21 THE COURT: Okay. Well, I mean, but you're just talking  
22 about the underinsured carrier is the one that's basically  
23 bringing the motion; correct?

24 MS. STETSON: Right. Yes.

25 THE COURT: Okay.

1 MS. STETSON: On, on her behalf under the statute, which  
2 we have the right to do.

3 THE COURT: Okay. All right. That sounds good. I'll  
4 take it under advisement and let you know.

5 MR. MITCHELL: Thank you so much, Your Honor.

6 MS. STETSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MS. STETSON: Your Honor, would you like a submission of  
9 proposed orders or --

10 THE COURT: No. I'll take a look, and what I'll probably  
11 do, we've got it on the record. I'll probably just do a Form  
12 4 that says it's either granted or denied, and I mean, I  
13 understand. I think the facts are pretty much nothing is in  
14 dispute. There was an injury. There was an automobile  
15 accident, then automobile accident in August, January she gets  
16 the medical report that says the injury is due to the August  
17 automobile accident, not to the prior incident, and so when  
18 does the statute of limitations start to run, the date of the  
19 accident or the date the doctor gives his diagnosis, and I  
20 don't know the answer to that, but I'll take a look and see.  
21 Okay?

22 MS. STETSON: Thank you, Your Honor.

23 MR. MITCHELL: Thank you so much, Your Honor.

24 THE COURT: All right. Thank you.

25 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Tiffany M. Martin v. Glenda Simmons, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 19, 2016.

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

---

Grace L. Hurley, CVR-CM-M  
Official Reporter

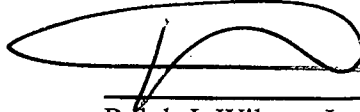
May 11, 2016.

Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 2, 2016



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**RECEIVED**  
SEP 08 2016  
SC Court of Appeals