

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 W. ASHLEY THIEM,)
 as conservator of)
 DEWAYNE A. WHITE,)
 Plaintiff,)
 v.)
)
 CHRISTOPHER A. MALONEY)
 And 2667 SPRUILL AVENUE, LLC,)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-10-6530

**ORDER DENYING PLAINTIFF'S
 MOTION TO RECONSIDER**

FILED
 2016 SEP 28 PM 2:40
 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter came before the Court upon Plaintiff's Motion to Reconsider Summary Judgment granted in favor of 2667 Spruill Avenue, LLC, ("2667 Spruill"). In his motion, Plaintiff raised the issue of equitable estoppel for the first time in this case. Plaintiff is barred from raising equitable estoppel at this late stage. Further, Plaintiff has not presented any new evidence or information to the Court and has not suggested in any way that the Court misapprehended and/or misapplied the law. As such, Plaintiff's Motion to Reconsider is denied, and Summary Judgment in favor of 2667 Spruill is upheld.

FACTS

Plaintiff filed this lawsuit against co-defendant 2667 Spruill seeking damages arising out of a motor vehicle accident which occurred on or about January 1, 2013. Co-defendant Christopher Maloney allegedly caused personal injury to Plaintiff when he struck Plaintiff with his vehicle. Plaintiff's Third Amended Complaint alleged that the purported at-fault driver, Maloney, was using his truck for the purpose of his business, 2667 Spruill. Plaintiff's Third Amended Complaint also alleged that Maloney was an agent acting on behalf of 2667 Spruill. Plaintiff's Third Amended Complaint further alleged that 2667 Spruill negligently supervised Maloney.

2667 Spruill is a duly organized South Carolina corporation formed on June 13, 2006. Maloney is the sole member and the company has no employees. The sole purpose of 2667 Spruill is to own the property located at 2667 Spruill Avenue. The corporation does not have any employees.

At the time of the subject accident on January 1, 2013, Plaintiff was a trespasser on the subject property who, according to Defendants, was in the process of attempting to steal personal property. At the time of the subject incident, Maloney was acting in his individual capacity, and not as an agent of 2667 Spruill, when he drove to the property to throw away household garbage and when he subsequently pursued the Plaintiff. Due to the fact that 2667 Spruill does nothing more than own the property of which Maloney is a member, Maloney was not acting in the course of the business when he entered the property with his personal truck. 2667 Spruill does not manage employees, produce goods, provide services, or do anything else in the furtherance of which Maloney could have been acting on the day of the accident.

At the hearing on 2667 Spruill's Motion for Summary Judgment, counsel for 2667 Spruill argued that 2667 Spruill cannot be liable for Negligent Supervision due to the fact that co-defendant Maloney is the sole owner and only member of 2667 Spruill. Counsel also argued that Maloney was not acting in any capacity on behalf of 2667 Spruill at the time of the accident with the Plaintiff. Further, counsel argued that no evidence had been presented to suggest that the corporate veil should be pierced in this case. The Court concluded the following in granting Summary Judgment in favor of 2667 Spruill: (1) 2667 Spruill cannot be liable for Negligent Supervision due to the fact that Maloney is the sole owner and only member of 2667 Spruill; (2) Maloney was not acting in any capacity on behalf of 2667 Spruill at the time of the accident with the Plaintiff; and (3) no evidence had been presented to suggest that the corporate veil should be

pierced in this case and, as such, Plaintiff's alter ego claim is without merit. Plaintiff did not make any arguments concerning equitable estoppel barring any claims by Defendants at the hearing. Nevertheless, Plaintiff filed this Motion petitioning the Court to overturn its ruling on Summary Judgment based on 2667 Spruill being estopped from denying it was in control or possession of the property at 2667 Spruill Avenue.

LAW

An issue may not be raised for the first time in a motion to reconsider. Johnson v. Sonoco Prod. Co., 381 S.C. 172, 672 S.E.2d 567 (2009). Additionally, a party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not. Anderson Mem'l Hosp., Inc. v. Hagen, 313 S.C. 497, 443 S.E.2d 399 (Ct. App. 1994).

"Equitable estoppel" precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity. Wilson v. Willis, 416 S.C. 395, 786 S.E.2d 571 (Ct. App. 2016), reh'g denied (June 24, 2016). The elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 698 S.E.2d 879 (Ct. App. 2010).

ANALYSIS

This lawsuit was originally filed by Plaintiff on October 22, 2014. Plaintiff amended his Complaint on May 6, 2015, to add 2667 Spruill as a defendant to this case. Plaintiff amended his Complaint a third time on January 22, 2016, to include allegations of Negligent Supervision

against 2667 Spruill. After a hearing on Defendant Spruill 2667's Motion for Summary Judgment on June 2, 2016, Plaintiff is now requesting a fourth "bite at the apple."

Plaintiff argued that equitable estoppel should bar 2667 Spruill from asserting that it only possesses 2667 Spruill Avenue and does not control or lease 2667 Spruill Avenue. Plaintiff also argued that if so estopped, there is a genuine issue of material fact regarding whether Maloney was an agent acting for the purposes of 2667 Spruill, or and its tenants/equitable tenants.

Plaintiff argues that 2667 Spruill's discovery responses submitted on September 11, 2015, did not identify any other potential parties to the lawsuit and that it was in sole possession of the premises. However, Plaintiff had the opportunity to take the deposition of Maloney on November 12, 2015, but did not explore whether there were any other potential parties to this lawsuit. Additionally, Plaintiff failed to take a SCRCP Rule 30(b)(6) deposition of 2667 Spruill. Plaintiff failed to explore any other potential parties to this lawsuit and failed to name them before the expiration of the statute of limitations. Nevertheless, Plaintiff raises this defense for the first time after the Court has rendered judgment in this matter.

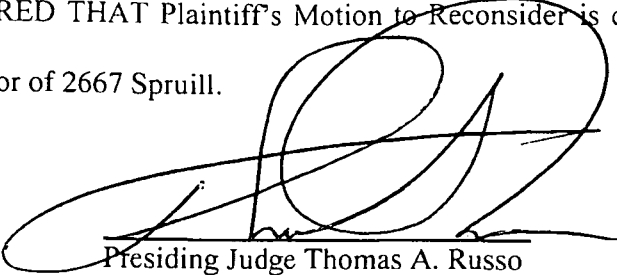
Plaintiff's equitable estoppel argument was not raised in this case until Plaintiff filed his motion to reconsider. Plaintiff raised this issue for the first time in his Motion to Reconsider after summary judgment has been granted to 2667 Spruill. See Johnson, supra. This defense was never entered in any pleading, and never raised at the Summary Judgment hearing. For this reason, Plaintiff's Motion to Reconsider is denied.

CONCLUSION

Plaintiff brings this Motion to Reconsider on a new issue that has never been raised in this case and after judgment has been rendered by the Court.

IT IS THEREFORE ORDERED THAT Plaintiff's Motion to Reconsider is denied and
Summary Judgment is upheld in favor of 2667 Spruill.

IT IS SO ORDERED!

A large, stylized handwritten signature in black ink, appearing to read 'T. Russo', is written over a horizontal line.

Presiding Judge Thomas A. Russo
12th Judicial Circuit

Florence, South Carolina
September 13, 2016

CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

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(864)232-4400

#535

September 23, 2016

Emily M. Nellerhoe
Law Clerk to the Honorable Thomas A. Russo
12th Judicial Circuit
180 N. Irby Street, MSC-O
Florence, South Carolina 29501

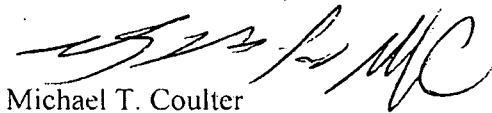
Re: W. Ashley Thiem as Conservator for Dewayne A. White vs.
Christopher A. Maloney and 2667 Spruill Avenue, L.L.C.
C.A. No.: 2014-CP-10-06530
Claim No.: 14-5407352
Date of Loss: 1-1-13

Dear Ms. Armstrong:

Please find enclosed herewith the original and one (1) copy of the Proposed Order Denying the Plaintiff's Motion to Reconsider. Please also find a self-addressed stamped envelope for the Charleston County Clerk of Courts. If you have any questions please do not hesitate to contact me.

Very truly yours,

Clarkson, Walsh, Terrell & Coulter, P.A.



Michael T. Coulter

MTC/rdt

Enclosures