

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 M. Martin,

Appellant,

v.

Glenda Simmons,

Respondent.

BRIEF OF APPELLANT

RECEIVED

OCT 20 2016

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY FINDING THIS ACTION IS BARRED BY STATUTE OF LIMITATIONS AND GRANTING THE DEFENDANTS MOTION TO DISMISS?

STATEMENT OF THE CASE

On October 20, 2015, Tiffany M. Martin brought this action alleging negligence in an automobile accident case against the at-fault driver Glenda Simmons (See Complaint R. p. 3). Bristol West Insurance Company, the insurer alleged to have provided underinsured motorist coverage to the Plaintiff answered alleging, among other defenses, Martin's claim was barred by the applicable Statute of Limitations.

On December 4, 2015, Bristol West filed a Motion to Dismiss (R. p. 12) along with a Memorandum in Support of Motion to Dismiss (R p. 14). At the hearing, Plaintiff submitted a Memorandum of Law in Opposition to Motion to Dismiss (R p.17). The motion was heard by The Honorable Benjamin H. Culbertson on January 19, 2016. After hearing from both sides, the Honorable Judge Culbertson took the matter under consideration (See Transcript R. p. 27 lines 12-14). On January 19, 2016, the Court issued a Form 4 Order granting the Defendant's Motion to Dismiss (R. p. 1). On February 1, 2016, Martin served the Notice of Appeal on Bristol West Insurance Company.

FACTS OF THE CASE

This case involves an automobile accident where Plaintiff was rear-ended after stopping for traffic while traveling southbound on US 701 on August 24, 2012. Glenda Simmons was also traveling southbound on US 701 and having failed to stop struck the rear of Ms. Martin's vehicle.

Ms. Martin was undergoing treatment for injuries sustained in a fall in June of 2012 at the time of the accident. Ms. Martin continued her treatment after the accident believing the injuries to still be caused by the fall in June of 2012. At an appointment in January 2013, Ms. Martin's physician disclosed the cause of Ms. Martin's current pain and injuries to be the automobile accident occurring on August 24, 2012.

ARGUMENTS

I. BECAUSE APPELLANT'S INJURIES WERE NOT DISCOVERED TO BE CAUSED BY THE ACCIDENT UNTIL INFORMED SUCH BY THE TREATING PHYSICIAN, THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN UNTIL SUCH DISCOVERY WAS MADE.

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). 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, Ms. Martin 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 (R. p. 25 lines 9- 16). Ms. Martin's complaint was filed on October 28, 2015 and as such

should be considered filed timely under S.C. Code Ann. § 15-3-535.

The Court relied upon the Tanvel Case and McClain Case in granting the Respondent's Motion to Dismiss (See Order Ending Action R. p. 1). The Appellant argues the case at hand differs from Tanyel v. Osborne, 312 S.C. 473, 441 S.E.2d 329 (S.C.App. 1994) and McClain, et al. v. Jarrard, et al., 354 S.C. 218, 580 S.E.2d 763 (S.C. App. 2003) in that the loss was known from the date of the accident in the cases stated from the Court. In this case, Ms. Martin was not aware of any injuries or loss from the date of the accident until she was informed of the correlation of the accident to her back pain in January of 2013 (See Paragraph 6, Page 1 of Complaint R. p. 6 paragraph 6).

II. IN THE INTEREST OF JUSTICE AND EQUITY THIS MATTER SHOULD BE DECIDED ON THE MERITS OF THE CASE.

Due to the extensive nature of the Ms. Martin's injuries, the monetary amount of the medical invoices, and the future pain and suffering she will undergo, this matter should be heard on its merits rather than be dismissed. "Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it." Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728 (Ct. App. 2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.'" Id. at 736 (citation omitted). "In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. Limitations of Actions §15 (2005). "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." Ocana v. Am. Furniture Co., 91 P.3d 58, 66 (N.M. 2004).

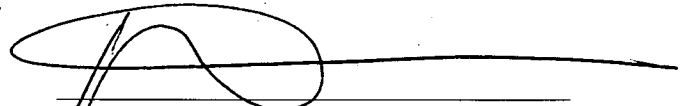
III. BECAUSE THERE WOULD BE NO PREJUDICE TO DEFENDANT THE CASE SHOULD BE DECIDED ON THE MERITS.

The Defendant/Respondent had a liability insurance policy with State Farm Insurance Company at the time of the accident which is the subject matter of the complaint. (Policy 1689370C0840A). The limits of this policy was tendered to the Appellant/Respondent as a result of a claim in this matter. A Covenant Not to Execute a Judgement against the Defendant/Respondent was executed by the Appellant and therefore, there would be no prejudice to the Defendant/Respondent by allowing this matter to be decided on the merits of the case (See Page 8 of Transcript R. p. 27 lines 16-20).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and reinstate the case in the lower court to be tried on its merits.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line extending to the right.

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Certificate of Counsel

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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