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SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2014-CP-26-8261
Wylie Neil Doyle, Timothy Lee, Anthony J. Mottola, III, and David Todd,	)	
Plaintiffs,	)	
vs.	)	**ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION AND NEW TRIAL**
Horry County d/b/a Horry County Fire Rescue,	)	
Defendant.	)	

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CLERK OF COURT
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This matter comes before the Court upon Plaintiffs' Motion for Reconsideration and New Trial. Plaintiffs ask this Court to alter and/or amend its Order granting a directed verdict in favor of Horry County on Plaintiffs' cause of action for violation of the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, et seq. ("Wage Act").[1]

FACTUAL BACKGROUND

Plaintiffs are employees of Horry County, working as firefighters/paramedics in the Horry County Department of Public Safety. In early 2008, the Horry County Administrator, Carl Danny Knight, approved a proficiency pay increase (known as Propay) for certain members of the Horry County Department of Public Safety, including firemen/paramedics. Horry County calculated Propay which involved each Plaintiff being re-graded from a Grade 17 to a Grade 15.

[1] This Court granted Horry County's Motion for Directed Verdict on all of Plaintiffs' causes of action. In Plaintiffs' post-trial motion, they only attribute error to this Court's ruling on the Wage Act cause of action. Because Plaintiffs did not address this Court's ruling on Plaintiffs' causes of action for promissory estoppel and unjust enrichment, this Court will not address them in this Order.

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In April 2008, Horry County issued to each Plaintiff a document known as a "Statement of Wages". These Statements of Wages showed their salary before and after the Propay increase. Each Plaintiff signed their respective Statement of Wages in April 2008.

Since April 2008, the Plaintiffs disagreed with the Propay increases they received and, over several years, they questioned various members of the County's Human Resources Department about the Propay increase. Ultimately, on December 11, 2014, seven and one-half (7½) years after the implementation of Propay, Plaintiffs filed suit against Horry County, alleging the County incorrectly calculated their Propray increase in April 2008.

This case was tried from September 20 to September 21, 2016. During Plaintiffs' case-in-chief, each Plaintiff, and Dennis Gibbons, also a firefighter/paramedic for the County, testified that they understood their respective Statement of Wages when they signed it in April 2008. The Plaintiffs, and Mr. Gibbons, further each testified that they believed that their new salary shown on their respective Statement of Wages was incorrect when they signed in April 2008, as each believed they should have received additional pay.

At the conclusion of Plaintiffs' case, Horry County moved for a directed verdict with respect to all of Plaintiffs' causes of action. This Court granted the County's motion. With respect to the Wage Act claim, which is the subject of this motion, this Court found that it was barred by the statute of limitations. Thereafter, on or about October 4, 2016, Plaintiffs submitted this Motion for Reconsideration and New Trial.

ANALYSIS

I. STATUTE OF LIMITATIONS FOR WAGE ACT

In their Motion for Reconsideration and New Trial, Plaintiffs argue the statute of limitations for their Wage Act claim should start anew with each allegedly incorrect paycheck the

Plaintiffs received from the date of the Propay increase on March 29, 2008 to the present. This argument was previously considered by the South Carolina Court of Appeals in Maher v. Titex Corp., 331 S.C. 371, 500 S.E.2d 201 (Ct. App. 1998), and it was rejected.

In Maher, the plaintiff was hired by a manufacturing company in 1985. Id. at 375, 500 S.E.2d at 206. The plaintiff's offer letter stated that he would be entitled to a fifty percent bonus plan, which provided that fifty percent of the pre-tax profits of the company would be divided among direct sales personnel, including the plaintiff. Id. No bonuses were distributed until 1987, when the plaintiff received a $28,000.00 bonus. Id. In September 1987, the company decided to terminate the fifty percent bonus plan and replace it with a discretionary bonus plan. Id. The company failed to provide the plaintiff with written notice of the cancellation of the fifty percent bonus plan. Id. On September 27, 1994, the company terminated the plaintiff. Id. at 376, 500 S.E.2d at 206. Thereafter, the plaintiff filed suit against the company, alleging he was owed bonuses pursuant to the fifty percent bonus plan from 1988 through 1994. Id. at 383, 500 S.E.2d at 210. The company argued the statute of limitations barred plaintiff's attempt to recover bonuses from 1988 through 1994. Id. The plaintiff alleged his action was timely filed because the company failed to pay bonuses to him every year from 1988 through 1994. Id. The plaintiff asserted this was a "continuing wrong," with the statute of limitations clock starting anew for every violation. Id.

The Court of Appeals found the company's failure to pay plaintiff pursuant to the fifty percent bonus plan was "a single wrong with continuing effects." Id. at 383, 500 S.E.2d at 211. The Court continued, "[the company's] 'wrong' was the one-time unilateral abrogation of the 'fifty percent bonus plan,' and replacement of this plan with a purely discretionary bonus plan." The Court of Appeals observed, "[t]he objective test in South Carolina's discovery rule is sufficient to

allow plaintiffs the opportunity to discover and act upon the breach, without need for application of the "continuing wrong" doctrine in this situation." Id. at 384, 500 S.E.2d at 211.

The discovery rule is well-established in South Carolina. Pursuant to the discovery rule,

> the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996).

The date on which discovery should have been made is an objective, not subjective, question. Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995). "In other words, whether the particular plaintiff actually knew he had a claim is not the test." Joubert, 341 S.C. at 191, 534 S.E.2d at 9. "[C]ourts must decide 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.; see Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994) (exercise of reasonable diligence means simply that injured party must act with some promptness where facts and circumstances of injury would put 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; statute of limitations begins to run from this point and not when advice of counsel is sought or full-blown theory of recovery is developed).

"South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Titex Corp., 331 S.C. 371, 380, 500 S.E.2d 201, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d

404, 407 (4th Cir. 1994)). The statute of limitations "is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to act with some promptness." Maher, 331 S.C. at 377, 500 S.E.2d at 207 (internal citations and quotations omitted).

In April 2008, Horry County provided Plaintiffs with written notice of the Propay increase, when the County issued a Statement of Wages to each Plaintiff. The Statement of Wages showed each Plaintiff's salary before and after the Propay increase. Each Plaintiff signed their respective Statement of Wages in April 2008. At trial, Plaintiffs testified that they understood their Statement of Wages when they signed it in April 2008. The Plaintiffs further testified that they believed their wages were incorrect when they signed their Statement of Wages, as they believed they should have received additional pay as a result of the Propay increase.

Accordingly, pursuant to the discovery rule and the Court of Appeals' ruling in Maher, at trial I held that the statute of limitations for Plaintiffs' Wage Act cause of action commenced with the issuance of the Statements of Wages signed by each Plaintiff. In April 2008, Plaintiffs, according to their own testimony, became aware that the Propay increase they received was incorrect, at least according to their interpretation of Propay. Thus, from there, Plaintiffs had three (3) years from the time they received written notice of their change in pay to bring suit under the Wage Act. S.C. Code Ann. § 41-10-80(C). Plaintiffs did not file suit until December 11, 2014. Because Plaintiffs failed to file this legal action within three (3) years of when they received written notice of their change in pay, their cause of action for violation of the Wage Act is barred by the statute of limitations. See S.C. Code Ann. Sec. 41-10-80(C) ("Any civil action for the recovery of wages must be commenced within three years after the wages become due.").

II. EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS

Next, Plaintiffs argue the statute of limitations of the Wage Act should be equitably tolled. Plaintiffs fail to raise a compelling reason to justify equitable tolling of the statute of limitations. Our Supreme Court has observed that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). Furthermore, the party seeking to invoke the doctrine of equitable tolling bears the "devoir of persuasion" and must establish a "compelling basis for awarding such relief." Id. at 115, 687 S.E.2d at 33 (citing 54 C.J.S. Limitations of Actions § 115).

Here, based on Plaintiffs' testimony, they believed their wages to be incorrect when they signed their respective Statement of Wages in April 2008. Plaintiffs point to no evidence demonstrating that Horry County actively misled or prevented them from timely filing suit within the limitations period. See Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 11, 186 Vt. 605, 610, 987 A.2d 258, 264 (Vt. 2009) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum."). Likewise, Plaintiffs fail to raise any other compelling reason to justify the equitable tolling of the statute of limitations.

Accordingly, I find it would be inappropriate to equitably toll the statute of limitations on Plaintiffs' Wage Act cause of action.

III. EQUITABLE ESTOPPEL

Lastly, Plaintiffs argue that Horry County should be estopped from raising the statute of limitations as a defense to Plaintiffs' Wage Act cause of action. See Parker v. Parker, 313 S.C.

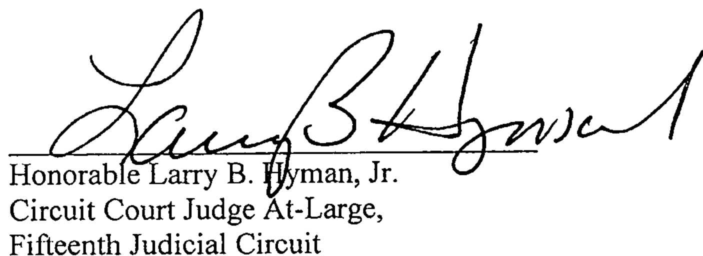
482, 487, 443 S.E.2d 388, 391 (1994) (Equitable estoppel operates to deny a party "the right to plead or prove an otherwise important fact."). Plaintiffs fail to point to any conduct on the part of Horry County that would justify the application of equitable estoppel. See Maher, 331 S.C. at 381, 500 S.E.2d at 209 (The elements of 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. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped.) (citing Brayboy v. Ewing, 311 S.C. 272, 273, 428 S.E.2d 731, 732 (Ct. App. 1993)).

As a result, I find the doctrine of equitable estoppel does not apply, and it does not bar the County from raising the statute of limitations as a defense to Plaintiffs' Wage Act claim.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Reconsideration and New Trial is denied, and the Court's Order directing a verdict in favor of Horry County on Plaintiffs' Wage Act cause of action stands.

IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.
Circuit Court Judge At-Large,
Fifteenth Judicial Circuit

Dated: 12-6-16
Conway, South Carolina