STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	2016-CP-26-3377
	)	
Athanasios Kandris,	)	
	)	
Plaintiff,	)	
v.	)	ORDER OF SUMMARY JUDGMENT FOR THE DEFENDANTS
	)	
	)	
	)	
Michael J. Moshoures, Stef Properties, LLC, and 20th Century Kitchen, Inc.,	)	
	)	
	)	
Defendants.	)	
	)	

The defendants' motions for summary judgment were heard before me on March 30, 2017. The attorney for the defendants, Michael J. Moshoures ("Moshoures") and Stef Properties, LLC ("Stef," an SC limited liability company owned by Moshoures), Michael J. Barnett, appeared and argued on their behalf. The attorney for the defendant 20th Century Kitchen, Inc. ("20th Century"), Natasha M. Hanna, appeared and argued on its behalf. The plaintiff's attorney, Brown W. Johnson, appeared with the plaintiff and argued on behalf of the plaintiff.

FINDING OF FACT:

Based upon the pleadings and the affidavits on file in this case, and taking into consideration the arguments of counsel, I find pursuant to Rule 56, SCRCP, that:

1. This dispute arises from the operations of the plaintiff's Plantation Pancake House ("Plantation") restaurant located in North Myrtle Beach on lands owned by 20th Century and leased to the plaintiff, and the operations of the defendant Stef's restaurant located (except for an addition made in 2009 as discussed below) on

adjacent lands, which restaurant has been known and operated since February, 2013 as Palmetto House of Pancakes ("Palmetto")[1].

2. In 2009, Stef built a permanent addition (the last construction or addition made to Stef's restaurant), that encroaches across the boundary of Stef's land onto an unimproved portion of the land owned by 20th Century; the addition did not block or encroach upon any parking spaces. The plaintiff has known for many years, at least since March 15, 2013, more that 3 years prior to the commencement of this suit, that the building addition encroaches by up to 17 feet onto lands claimed by the plaintiff to be a part of his leased premises.

3. Also in 2009, Stef acquired by an Assignment from 20th Century the landlord's joint parking rights with the plaintiff upon a portion of the leased property. In reliance thereon, Stef at its sole expense had a portion (hereinafter the "Joint Parking Area") of the land owned by 20th Century cleared of trees and paved to serve as a joint parking area for Plantation and for Stef's restaurant. For many years prior to the commencement of this suit, beginning in or about 2009, the employees and customers of the plaintiff and Stef have continually used (and continue to use) the Joint Parking Area for parking for those two parties' respective restaurants on a first come, first served basis, and Stef has paid all of the taxes and maintenance on the Joint Parking Area since 2009. Stef's right to jointly use the parking spaces within the Joint Parking Area have been and continue to be required for the operation of Stef's restaurant under the applicable zoning ordinances. Stef would sustain substantial monetary damages if those parking rights were lost.

[1] A small portion of Stef's building has also been used as an ice cream shop, which is not an issue.

4. Stef's restaurant was operated under several different names and did not serve breakfast items until February, 2013. In the fall of 2012, Stef decided to change the type of foods to be served in its restaurant, and it requested of the plaintiff that Stef be allowed to modify at its sole expense a portion of the Joint Parking Area in such a way that would allow for Stef to operate a drive through window, without causing any loss of parking spaces in the Joint Parking Area, so that Stef could change its restaurant to a Nathan's Famous hotdogs franchise, but the plaintiff would not agree to the proposed changes to the Joint Parking Area. Stef then told the plaintiff that it would change its restaurant to a pancake house, and it began purchasing equipment and preparing to open under the name Palmetto House of Pancakes.

5. By a letter dated February 12, 2013, several months after Stef had begun converting its restaurant to a pancake house, an attorney then representing the plaintiff sent to Stef and 20th Century a letter objecting to Stef serving breakfast items on the basis that to do so would constitute a breach of contract to which Stef was bound. Stef promptly replied to the plaintiff that Stef disagreed and would proceed without delay to open Palmetto and begin serving breakfast, which it did beginning February 28, 2013, with the plaintiff's full knowledge, more than 3 years prior to the plaintiff's commencement of this lawsuit.

CONCLUSIONS OF LAW:

1. Any claims for damages or injunction by the plaintiff arising from the encroachment of the permanent addition made to Stef's restaurant building in or about 2009 are barred by the statute of limitations as set forth in S.C. Code Annotated 15-3-530(3) (2005). The plaintiff failed to commence suit within 3 years after he knew of the

encroachment.

2. Any claims for damages or injunction by the plaintiff arising from Stef's operation of a restaurant serving breakfast items are based upon an alleged breach of the plaintiff's written lease of lands owned by 20th Century, and they are thus barred by the statute of limitations as set forth in S.C. Code Ann. 15-3-530(1) (2005). The plaintiff failed to commence suit within 3 years after he knew Stef was operating a pancake house serving breakfast.

Reference to and modifications of the said lease are contained within a settlement agreement that was memorialized in a consent order filed March 23, 2009, in civil action number 2008-26-CP-3974, thus ending that prior suit among the parties to this action, *et al.* The plaintiff claims that it seeks an order declaring the defendants in contempt of that consent order, that there is no statute of limitations for contempt of court, and that the plaintiff should therefore be allowed to proceed with that claim, citing Plum Creek v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999). However, the only reference to the statute of limitations in Plum Creek, which was a suit over a writ of mandamus, not a settlement agreement, is *dicta* contained in the last footnote therein, which states: "8. There is no statute of limitations on contempt proceedings [arising from a writ of mandamus] and City certainly has not been prejudiced by any delay. See State v. Bowers, 270 S.C. 124, 241 S.E.2d 409 (1978)." In State v. Bowers, the issue was jury tampering, not a settlement agreement, and the Supreme Court stated therein, "Since there is no statute limiting the time in which contempt proceedings [for jury tampering] may be brought in South Carolina, a correct statement of the law in this State is that delay is no defense unless such delay is unreasonable or the defendant is

prejudiced thereby."

Plum Creek and State v. Bowers are distinguishable from the present case, because under well established South Carolina law, settlement agreements are recognized as contracts, and there is a 3-year statute of limitations for breach of contract, excepting only those contracts provided for in S.C. Code Ann. 15-3-520 (2005), which exception is not applicable to the present case. In Abel v. South Carolina Department of Health and Environmental Control, Op. No. 5474 (S.C.Ct.App. filed March 15, 2017), which was an appeal from the Administrative Law Court (ALC), the issue was the interpretation of "...a settlement agreement that was memorialized in a consent order...."; and, "The ALC found the ... consent order was a valid and enforceable contract." The Court of Appeals then interpreted that contract, stating that, "In South Carolina jurisprudence, settlement agreements are viewed as contracts." Nichols Holding, LLC v. Divine Capital Grp., 416 S.C. 327, 335, 785 S.E.2d 613, 615 (Ct. App. 2016) quoting Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). In the present case, since the settlement agreement memorialized in the consent order filed March 23, 2009 constitutes a contract, as does the lease agreement referenced in that order, the running of the 3-year statute of limitations applicable to contracts bars all of the plaintiff's claims in this case arising from the defendants' alleged breaches of the lease and/or the consent order, except those disposed of in section 3 of this Order, *infra*.

Furthermore, even if this case were not distinguishable from Plum Creek and State v. Bowers, *supra*, I find that under State v. Bowers, the defendants would still be entitled to summary judgment in this case on any contempt of court claim arising from

the operation of Palmetto as a pancake house and/or from Stef's joint use with the plaintiff of the Joint Parking Area, because the plaintiff's delay in bringing this suit has been unreasonable and Stef has been prejudiced thereby.

3. Any claims for damages or injunction by the plaintiff arising from Stef's use with the plaintiff of the Joint Parking Area, for parking on a first come, first served basis by those parties' respective customers and employees, which use by Stef is claimed by the plaintiff to be an abatable trespass and/or nuisance, are barred by the equitable doctrine of *laches*, which consists of the elements of (1) delay (2) that is unreasonable and (3) that causes prejudice, all of which elements are found in this case. See Terry v. Lee, 314 S.C. 420, 445 S.E.2d 435 (1994).

JUDGMENT:

Based upon the foregoing findings of fact and conclusions of law, the Defendants' motions for summary judgment are hereby granted as to all claims by the plaintiff against any or all of the defendants.

The Honorable R. Markley Dennis, Jr.
Business Court Judge

April 12 2017

Rule 6

4/11/17