

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Mark Wilson,)
)
Plaintiff,)

C/A No. 2012-CP-29-498

v.)

Keith Jayma,)
)
Defendants,)

ORDER GRANTING SUMMARY JUDGMENT

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SC Court of Appeals

2017 SEP 27 AM 11:40
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This case came before the court on August 15, 2017 for a hearing on Defendant Keith Jayma's motion for summary judgment, based upon expiration of the statute of limitations on each of Plaintiff's causes of action. For the reasons set forth below, I find and conclude that Plaintiff's entire complaint is time-barred and, therefore, GRANT summary judgment in favor of Defendant.

Relevant Facts

Wilson and Jayma began a business relationship in April 2005, when Jayma and a friend¹ made a \$32,000 loan to Wilson. The loan was evidenced by a written promissory note, and was secured by a mortgage covering 63+/- acre parcel of land that was owned by Wilson and located in Lancaster County, South Carolina (the "Disputed Tract").

In approximately August 2005, Wilson and Jayma continued their business relationship, when they formed a partnership to construct and sell a million-dollar speculative home in Union County, North Carolina. By the terms of their unwritten agreement, Wilson would serve as

¹ Jayma's friend, Wilbur Streeter, III, was originally named a defendant in this action. Streeter has since been dismissed.

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general contractor, overseeing construction of the "spec" home, while Jayma would secure financing for the project.

At some point during construction, Wilson proposed that Jayma could borrow additional funds for the project, using the Disputed Tract as collateral. Wilson offered to transfer a portion of the Disputed Tract² to Jayma, so that Jayma could obtain a second loan to help fund construction of the "spec" house.

In November 2005, Wilson signed a deed, prepared by Jayma's attorney, which transferred the entire Disputed Tract to Jayma. At his deposition, Wilson admitted that he did not read the deed before signing it, and also acknowledged that, when Wilson signed the deed, it did not include a detailed property description. In his complaint, Wilson alleges that the deed to the Disputed Tract was obtained through fraud and is, therefore, invalid.

Construction of the "spec" home took longer, and cost more, than originally projected. By the time the home was completed in 2007, Wilson and Jayma had exhausted their original construction loan, as well as the additional money that Jayma had borrowed against the Disputed Tract. Wilson and Jayma were openly antagonistic toward one another, and were communicating only through written correspondence and email.

On March 6, 2008, Wilson sent a lengthy fax to Jayma, accusing Jayma of various wrongs. Among other things, Wilson accused Jayma of committing fraud, forgery and misappropriation of partnership assets. With respect to Wilson's conveyance of the Disputed Tract, Wilson wrote:

I signed over, with no legal representation and to an attorney that you have used many times, not 25 acres but my entire 63 acres, with absolutely no money changing hands. . . I've been deceived, defrauded, tricked and shammed. . . .

² There is a factual dispute as to whether Wilson offered to transfer the entire Disputed Tract, or only 25 acres. For purposes of this motion, and construing all facts in a light most favorable to Wilson, the court will presume that Wilson did not offer the entirety of the Disputed Tract to Jayma.

On September 12, 2008, an attorney representing Wilson sent Jayma a certified letter, accusing Jayma of violating his fiduciary duties to Wilson in several specifics. Again, the lawyer's letter accused Jayma of misappropriating partnership funds and mentioned the deed to the Disputed Tract, contending that the deed improperly conveyed "63 acres of land . . . rather than the intended 25 acres." The lawyer's letter threatened litigation if Jayma did not immediately provide "a proper accounting . . . and re-convey[] [the Disputed Tract to] Mr. Wilson." Jayma did not respond to the lawyer's letter.

Summary Judgment Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." McAlhany v. Carter, 415 S.C. 54, 60, 781 S.E.2d 105, 110 (2015). Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Rule 56(c) S.C. R. Civ. P.; Bowen v. Lee Process Sys. Co., 342 S.C. 232, 536 S.E.2d 86 (Ct. App. 2000). A party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. Stanford Fire Ins. Co. v. Marine Contracting and Towing, 301 S.C. 418, 392 S.E.2d 460 (1990). Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must come forward with facts showing there is a genuine issue for trial in order to avoid summary judgment. Baughman v. American Tel., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from that evidence in a light most favorable to the non-

moving party. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

Analysis

“Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). They “embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs.” Id. (citing 51 AM. JUR. 2D, Limitation of Actions § 18, at 603 (1970)). One purpose of a statute of limitations “is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.” Id. (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 378 S.E.2d 69 (Ct. App. 1989)). Another purpose is to protect “potential defendants from protracted fear of litigation.” Id.

In this instance, the single issue before the court is whether Wilson’s claims, as asserted in this action, are time-barred as a matter of law. The determination of this issue hinges on two considerations. First, because the parties disagree as to the applicable statute of limitations, the court must determine what limitation period applies. Second, the court must determine whether there is any factual dispute as to whether Wilson filed his complaint within the applicable period of limitations.

A. Plaintiff’s claims are subject to a three-year statute of limitations.

As an initial matter, I find and conclude that each of Wilson’s claims is governed by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530 (Law. Co-op. 2005). That statute requires that “an action upon a contract, obligation or liability, express or implied” must be commenced within three years following accrual of the claim. Wilson’s complaint is

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based entirely upon the alleged acts or omissions of Jayma as a partner in the men's business venture, and includes specific causes of action for breach of fiduciary duty and fraud. Our Court of Appeals has held that each of those causes of action is subject to a three-year statute of limitations. Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009)(breach of fiduciary duty); Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009)(fraud).

In opposition to Jayma's motion, Wilson argues that his claims are not subject to the three-year statute of limitations of § 15-3-530. Instead, Wilson argues that his claims are subject either to the twenty-year statute of limitations of § 15-3-520 (actions upon a sealed instrument, bond or other contract in writing secured by a mortgage of real property) or to the ten-year statute of limitations set forth in § 15-3-340 (action by an individual for recovery of real property). I disagree.

Section 15-3-520(b) (action on a sealed instrument) is plainly inapplicable to this case. In making this determination, the court need look no further than the definition of "sealed instrument" set forth in Lyons v. Fidelity Nat'l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015). In Lyons, the Court of Appeals defined a sealed instrument as "an instrument in which the *bound party* has affixed a personal seal, recognized as providing indisputable evidence of the validity of the underlying obligations." Id. at 125, 781 S.E.2d at 131-32 (emphasis added). In this case, neither the deed to the Disputed Tract nor the mortgage covering the Disputed Tract was signed or "sealed" by Jayma. Jayma is not the "bound party" of either instrument, and Wilson's claims against Jayma are not "an action on a sealed instrument."

Nor do Wilson's claims fall within § 15-3-520(a), as an action on a "bond or other contract in writing secured by a mortgage of real property." The focus of § 15-3-520(a) is not a mortgage, but rather a written contract that is secured by a mortgage. There is no evidence that

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Jayma signed any "written contract secured by a mortgage" and Wilson's complaint does not allege that he seeks to enforce any such contract.

Wilson's claims also are not governed by the ten year statute of limitations set forth in § 15-3-340. Our Supreme Court has specifically held that an action to set aside a deed on the basis of fraud is not an "action for the recovery of real property." McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Such claims are, instead, an "action for relief on the ground of fraud," and subject to the "general" statute of limitations - a six-year limitations period when McKinnon was decided. That limitations period has since been reduced to three years, and is now codified as § 15-3-530(7)(Law. Co-op. 2005). Reviewing Wilson's complaint, as McKinnon instructs, the court notes that Wilson alleges Jayma obtained title to the Disputed Tract through a fraudulent deed. Wilson's action to set aside that deed is, therefore, subject to a three-year statute of limitations and not the ten-year statute of §15-3-340.

B. The undisputed factual record establishes that Wilson did not commence This action within three years of the accrual of his claims, and his entire Complaint is subject to dismissal as a matter of law.

The question of when a claim accrues for purposes of calculating the statute of limitations is generally a question of fact. The statute begins to run when "the underlying cause of action reasonably ought to have been discovered." Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). When there is conflicting evidence as to whether a claim has accrued for purposes of the statute of limitations, the issue must be submitted to a jury. When the evidence is conclusive, the question may be decided as a matter of law.

In this case, there is no material issue of fact in dispute as to the accrual of Wilson's claims. The undisputed evidence conclusively establishes that Wilson had knowledge of facts

which put him on notice of harm or injury from Jayma's alleged conduct at least by September 12, 2008, the date an attorney sent a demand letter on Wilson's behalf. In fact, there is even evidence in the record that Wilson had discovered Jayma's alleged fraud as early as March 6, 2008, when he wrote Jayma that he had been "deceived, defrauded, tricked and shammed." Given these undisputed facts, it is implausible that Wilson did not believe he had been injured by, at latest, September 12, 2008. As a matter of law, the statute of limitations required Wilson to file his complaint on or before September 12, 2011, the third anniversary of that date. His complaint was not filed until April 2012, several months after the statute of limitations had expired.

Wilson argues that, even if his claims are subject to a three year statute of limitations, the limitations period was equitably tolled by Jayma's conduct. South Carolina's courts have held that a defendant may be estopped from asserting the statute of limitations "if the defendant's conduct has induced the delay that otherwise would give operation to the statute [of limitations]." Moates, 322 S.C. at 175, 470 S.E.2d at 403 (citing Vines v. Self Memorial Hosp., 314 S.C. 305, 443 S.E.2d 909 (1994)). Here, the record is devoid of any evidence that Jayma made representations or took actions that lulled Wilson into a belief that the issues between the parties would be resolved without litigation. Jayma's silence, such as not responding to Plaintiff's correspondence, cannot be relied upon as conduct that would toll the statute of limitations.

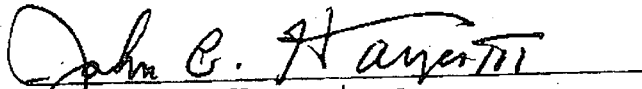
In an affidavit, Wilson directs the court's attention to a 2011 email from Jayma as evidence that the two parties were "still arguing over profits of [the] job." A review of that email provides no support for Plaintiff's position that the statute of limitations was equitably tolled by Jayma's conduct. The email is not an offer of resolution without litigation, but rather a

castigation of Plaintiff in which Jayma makes clear his position that he does not owe the Plaintiff anything. No reasonable reading of that email could be construed as words or actions that "induced" the Plaintiff to delay filing his complaint.

Order

For the reasons set forth herein, the court finds and concludes, as a matter of law, that Plaintiff's claims were not commenced within the applicable statute of limitations. There is no evidence in the record that Defendant induced Plaintiff's inaction, and there is no basis to equitably toll the statute of limitations on Plaintiff's claims. Plaintiff's claims are time-barred, and Defendant is, therefore, entitled to summary judgment. Motion granted.

September 22nd, 2017


John C. Hayes, III
Circuit Court Judge #8