

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 THOMAS E. DUNN, individually and as)
 Personal Representative of the Estate of)
 DOROTHEA E. DUNN,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM PIKE JONES, SUSAN BERRY)
 JONES, JASPER DEVELOPMENT AND)
 CONSTRUCTION, LLC, LAND)
 DEVELOPMENT AND CONSULTING)
 SERVICES, INC., LAND DEVELOPMENT)
 SERVICES, INC., and SPJ, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2017-CP-27-0511

**ORDER DENYING DEFENDANTS'
 MOTION TO DIMSMISS**

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 SC Court of Appeals

THIS MATTER came before the Court on April 17, 2018, for a hearing on Defendants' Motion to Dismiss. The hearing was held at the Jasper County Courthouse. Attorney Ben Coppage appeared on behalf of Defendants and argued in favor of the motion. Attorney Bert Utsey appeared on behalf of Plaintiff and opposed the motion.

Defendants sought to dismiss this action based upon the statute of limitations found in S.C. Code Ann. § 15-3-530 and Plaintiff's failure to name an entity known as KGB1934LTD as a Defendant in this action.

South Carolina Rule of Civil Procedure 12(b)(6) provides for the dismissal of any action which fails "to state facts sufficient to constitute a cause of action". The Court's inquiry on a motion to dismiss under this rule is limited to the face of the Complaint. Despite this limitation, when "the allegations of the complaint demonstrate the existence of [an] affirmative defense" the defense may be addressed via a Rule 12(b)(6) motion to dismiss. *Spence v. Spence*, 368 S.C.

106, 123, 628 S.E.2d 869 (2006). Thus, it is only appropriate for the Court to dismiss an action as barred by the applicable statute of limitations if the Complaint itself sufficiently shows that the asserted claims are time-barred. *see Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (construing Fed. R. Civ. P. 12(b)(6)).

For purposes of ruling on a Rule 12(b)(6) motion, the Court must liberally construe the Complaint and presume all well-pled facts and reasonably deducible inferences to be true. *Overcash v. S.C. Elec. & Gas. Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). Therefore, the allegations of the Complaint are stated as facts herein, but only for the purposes of ruling on the Motion to Dismiss.

The Complaint shows that, on March 17, 2015, Plaintiffs obtained a judgment against Defendants William Pike Jones (“Pike Jones”), Jasper Development and Construction, LLC, and Land Development and Consulting Services, Inc. (Complaint, ¶ 14). Plaintiffs filed this action on December 21, 2017, seeking to set aside a fraudulent transfer of property, via a series of deeds, first from Land Development and Consulting Services, Inc. to KGB1934LTD, then from KGB1934LTD to Land Development Services, Inc. (LDS), and then from LDS to SPJ, LLC, a company owned and/or managed by Pike Jones. (Complaint, ¶¶ 13, 25-28).

Defendants claim a three-year statute of limitations applies to this action and began to run on August 14, 2013, the date of the initial deed in the series of transfers described above.

However, since this is an action to aid in executing on the judgment, S.C. Code Ann. § 15-3-530 is “inapposite” to the issue of the timeliness of this action. *Carr v. Guerard*, 365 S.C. 151, 154 n. 5, 616 S.E.2d 429, 430 n. 5 (2005). Rather, the ten-year period of the judgment’s active energy set by S.C. Code Ann. § 15-39-30 applies. A fraudulent transfer action filed by a judgment creditor within this ten-year period is timely. *Gordon v. Lancaster*, 419 S.C. 48, 58,

795 S.E.2d 857, 863 (Ct. App. 2016) (2010 action to set aside fraudulent transfers dating back to 1992 was timely because it was to aid in execution of a 2001 judgment). The present action was filed two years and nine months after the subject judgment and is therefore timely.

Even if the Court were to apply the three-year statute of limitations, this action would be timely. Defendants incorrectly assert the date of the fraudulent transfer triggers the statute of limitations. See *In re J.R. Deans Co.*, 249 B.R. 121, 132-33 (D.S.C. 2000), citing *Means v. Feaster*, 4 S.C. 249 (1873). Instead, if applicable, the statute of limitations in Section 15-3-530 would not begin to run until Plaintiff obtained the judgment, see *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 123 S.E.2d 870 (1962), and had discovered the fraudulent conveyance. *Commercial Credit Loans v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999).

This action was filed less than three years after Plaintiff obtained the judgment and thus would not be time-barred under Section 15-3-530. Moreover, after the judgment, Pike Jones falsely testified on September 9, 2015 that he did not own LDS (Complaint, ¶¶ 20, 22-23); as a result, Plaintiff did not learn until after that date that he was an owner of LDS (Complaint, ¶¶ 22-24), an essential link in discovering the fraudulent nature of the series of transfers. Thus, this action was commenced less than three years after discovery of the fraudulent transfer at issue.

In addition, it was not necessary for Plaintiff to name KGB1934LTD as a necessary Defendant in this action to satisfy the requirements of Rule 19, SCRPC. KGB1934LTD has relinquished all interest in the subject real property. (Complaint, ¶ 26). As a result, any relief granted to Plaintiff will not affect any rights or interest of KGB1934LTD, so there is no necessity to have it named as a party to this action.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is respectfully **DENIED**.

April ____, 2018
Walterboro, South Carolina

JUDGE PERRY M. BUCKNER, III
FOURTEENTH JUDICIAL CIRCUIT



Jasper Common Pleas

Case Caption: Thomas E. Dunn , plaintiff, et al VS William Pike Jones , defendant,
et al
Case Number: 2017CP2700511
Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122