

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2014-CP-10-04340

GWENDOLYN BROWN, individually,
and as natural guardian of QUINTEZ
LEE SAPP, DEVILLE KIEZ
SIMMONS, HAROLDETT UNEKE
SIMMONS, and GLENN SIMMONS,

Plaintiffs,

vs.

HOUSING AUTHORITY OF THE
CITY OF CHARLESTON, SOUTH
CAROLINA,

Defendant.

ORDER

2018 MAY -7 AM 11:16
JULIE S. WOODRUFF
CLERK OF COURT

FILED

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SC Court of Appeals

THIS MATTER COMES BEFORE ME on Defendant Housing Authority of the City of Charletson, South Carolina Motion for Summary Judgment filed December 19, 2016 on the grounds that the Plaintiffs failed to file this action within the applicable statute of limitations. Present at the time of the hearing on February 7, 2018 were J. Seth Whipper, counsel for Plaintiffs and William Cox of Howell, Gibson & Hughes, P.A., counsel for Defendants. For the reasons below, I hereby grant Defendants Motion for Summary Judgment in part and deny in part.

BACKGROUND

The Plaintiffs filed the Summons and Complaint on August 4, 2010 and the Amended Summons and Complaint was filed on August 17, 2010. This action was dismissed pursuant to SCRPC Rule 40(j) and then reinstated on November

15, 2013. The Plaintiffs then filed a Second Amended Complaint on August 14, 2017.

The Plaintiffs' Second Amended Complaint alleges that from 2003 to 2009, the Plaintiffs resided in a housing unit owned and operated by the Defendant.

Plaintiff Gwendolyn Brown alleges that she fell through the floor located in the foyer area of her home upon entering the front door on August 9, 2007. Plaintiff Gwendolyn Brown further alleges that this fall resulted in a loss of consciousness and a strained ankle.

All of the Plaintiffs allege that they have suffered various "irritations, discomfort, and restrictions" as a result of their exposure to mold that allegedly existed in the housing unit. The Plaintiffs allege in their Second Amended Complaint that they first became aware of the mold and the connected problems therewith upon the diagnosis of Plaintiff Quintez Sapp, in or about the month of February 2008. All of the Plaintiffs allege they developed symptoms they connect to the presence of mold.

The Plaintiffs have brought causes of action for breach of promise, violations of S.C. Code 27-40-10 et. seq., negligence, and gross negligence.

STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The plain language of

Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and a on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 116 (1991), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

"Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Singleton v. Sherer*, 377 S.C. 185, 197-98 (Ct. App. 2008). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 214 (Ct. App. 2005). Materials used to refute a motion for summary judgment must be those which would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002).

ANALYSIS

Plaintiff Gwendolyn Brown alleges that she fell through the floor in her foyer on August 9, 2007. (Second Amended Complaint p. 3). Pursuant to the South Carolina Tort Claims Act, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the

loss was or should have been discovered. S.C. Code Ann. § 15-78-110. According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citing *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989)). 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. *Id.* (citing *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993)). Here, Gwendolyn Brown knew or should have known that her cause of action arose as a result of her fall on August 9, 2007. Therefore, pursuant to the South Carolina Tort Claims Act and applicable case law, I find the Plaintiff Gwendolyn Brown's claims relating to the fall are barred as she did not file the present action until August 4, 2010 which is outside the applicable two-year statute of limitations. For these reasons, I grant the Defendant summary judgment with respect to Plaintiff Gwendolyn Brown's fall claim.

The Plaintiffs state in their Second Amended Complaint that they first became aware of the alleged effects of the mold in or about February 2008. (Second Amended Complaint p.4). However, on October 4, 2007, attorney Anne L. Peterson-Hutto, wrote a letter on behalf of the Plaintiffs addressed to the Defendant stating that Plaintiffs were aware of the medical conditions they "suffered as a result of mold exposure since they moved in their residence." This letter shows the Plaintiffs had notice of their right to a cause of action and thus the Plaintiffs statute began to run on or before October 4, 2007. However, even


using the Plaintiffs' date of February 2008, Plaintiffs Gwendolyn Brown (DOB 9/28/63), Deville Simmons (DOB 5/9/88), and Haroldlett Simmons (DOB 7/3/89) failed to comply with the applicable two-year statute of limitations. Therefore, pursuant to the South Carolina Tort Claims Act and applicable case law stated above, I find the claims of Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons relating to the alleged mold are barred. Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons did not file the present action until August 4, 2010, which is outside the applicable two-year statute of limitations, and I therefore grant the Defendant summary judgment with regard to their claims.

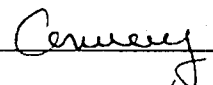
Plaintiffs Quintez Sapp with a date of birth of May 3, 1995 and Glenn Simmons with a date of birth of October 24, 1991 were both minors when the alleged mold exposure occurred in February 2008. S.C. Code Ann. § 15-78-110 allows for their claims to be tolled until they reach the age of eighteen years old. Therefore, their claims are not barred by the statute of limitations.

Taking into consideration the pleadings and the arguments presented at the time of the hearing, I hereby grant the Defendant's motion for summary judgment as to Plaintiffs Gwendolyn Brown, Deville Simmons and Haroldlett Simmons claims and order their claims be dismissed. I deny the Defendant's motion for summary judgment as to the Plaintiffs Quintez Sapp and Glenn Simmons claims as their claims were timely filed given that they were minors when the cause of action arose. It is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendants Motion for Summary Judgment as to the claims of Plaintiffs Gwendolyn Brown, Deville Simmons, and Haroldlett Simmons is GRANTED and their claims are dismissed. The Defendant's Motion for Summary Judgment as to the claims of Quintez Sapp and Glenn Simmons is DENIED.

IT IS SO ORDERED.

By: 
Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit

, South Carolina
March 14, 2018.