

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Commons Pleas
The Honorable John C. Hayes, III

Case No.: 2012-CP-29-498
Appellate Case No.: 2017-002223

Mark WilsonAppellant,

v.

Keith JaymaRespondent.

Respondents' Initial Brief

July 24, 2018

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TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal.....1

 I. Whether the trial court’s determination that a plaintiff did not file suit within three years of the date his claims accrued is binding as the law of the case where the plaintiff did not challenge that determination on appeal.

 II. Whether the trial court properly held that a plaintiff’s claims were subject to a three-year statute of limitations where each of the claims arose from the defendant’s alleged breach of a partnership agreement and where none of the claims was an “action on a sealed instrument.”

 III. Whether the trial court properly determined that a plaintiff’s claims were barred by expiration of the statute of limitations when the plaintiff did not file suit within three years of the date his claims accrued.

Statement of the Case.....1

Statement of the Facts.....2

Standard of Review.....4

Arguments

 I. Because Wilson did not appeal the trial court’s determination that Wilson failed to file this action within three years following the date his alleged Claims accrued, that determination is the law of the case.5

 II. The trial court properly held that Wilson’s lawsuit was not an “action upon a sealed instrument” and, therefore, Wilson’s claims were subject to a three-year statute of limitations and not a twenty-year statute of limitations.6

 III. The trial court properly determined that Wilson’s claims expired when he did not file suit within three years of the date his claims accrued.8

Conclusion10

TABLE OF AUTHORITIES

Bowen v. Lee Process Sys. Co., 342 S.C. 232, 536 S.E.2d 86 (Ct. App. 2000).....4

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005).....7

Gecy v. South Carolina Bank & Trust, 422 S.C. 509, 812 S.E.2d 750 (Ct. App. 2018)4

Lyons v. Fidelity Nat’l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015).....6

M & M Grp., Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262 (Ct. App. 2008)4

Mazloom v. Mazloom, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009).....7

McAlhany v. Carter, 415 S.C. 54, 781 S.E.2d 105, (2015)5

McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953).....7

Moates v. Bobb, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996)8

Rumpf v. Massachussetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004)...5, 8

Turner v. Millman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2006).....7

STATUTES AND RULES

Rule 56(c) S.C. R. Civ. P.4

51 Am. Jur.2d, Limitation of Actions § 18, at 603 (1970)8

STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court's determination that a plaintiff did not file suit within three years of the date his claims accrued is binding as the law of the case where the plaintiff did not challenge that determination on appeal.
- II. Whether the trial court properly held that a plaintiff's claims were subject to a three-year statute of limitations where each of the claims arose from the defendant's alleged breach of a partnership agreement and where none of the claims was an "action on a sealed instrument."
- III. Whether the trial court properly determined that a plaintiff's claims were barred by expiration of the statute of limitations when the plaintiff did not file suit within three years of the date his claims accrued.

STATEMENT OF THE CASE

Appellant, Mark Wilson ("Wilson"), filed this action in the Court of Common Pleas for Lancaster County, South Carolina on April 5, 2012. *See* Summons and Complaint. Wilson's complaint alleged that he and Respondent, Keith Jayma ("Jayma"),¹ entered a partnership to build and sell houses in 2005. Wilson alleged that Jayma had breached the parties' partnership agreement and otherwise defrauded Wilson. *See* Complaint at 2-4. His complaint included claims for unjust enrichment, breach of duty in a partnership, specific performance, resulting trust and negligent misrepresentation. *Id.* 3-6. On August 13, 2012, Jayma answered and counterclaimed. *See* Answer.

In September 2013, the parties entered a consent order designating this case as complex litigation and assigning it to Judge John C. Hayes, III. *See* Consent Order, filed Sep. 18, 2013. On July 30, 2015, Judge Hayes entered a Consent Order for Substitution of [Jayma's] Counsel. *See* Consent Order, filed July 30, 2015.

¹ Initially, Wilson named two additional defendants. Wilson later dismissed the other defendants. *See* Stipulation of Dismissal, filed July 17, 2012.

On October 5, 2015, Jayma filed an amended answer and counterclaim. *See* Amended Answer and Counterclaims, filed Oct. 5, 2015. Jayma's amended answer included a statute of limitations defense. *Id.* at 4. Jayma then moved for summary judgment or partial summary judgment on September 30, 2016, asserting that each of Wilson's claims was barred by the applicable statute of limitations. Def. Motion for Summary Judgment, filed Sept. 30, 2016.

Defendant's motion for summary judgment was heard on August 15, 2017. Order at 1. On September 27, 2017, Judge Hayes issued an order granting Jayma's motion for summary judgment and dismissing Wilson's complaint. *Id.* Wilson appeals from that order.

STATEMENT OF FACTS

Wilson and Jayma entered a business relationship in April 2005, when Jayma and a friend² loaned \$32,000 to Wilson. That loan was evidenced by a written promissory note and secured by a mortgage, both of which were signed by Wilson. Wilson's mortgage granted Jayma a security interest in 63 acres of land that Wilson owned in Lancaster County, South Carolina (the "Lancaster Property").³ *See Exhibits A and B* to Affidavit of Keith Jayma, filed Sep. 30, 2016 (hereafter "Jayma Aff.")

A few months after that initial transaction, Wilson and Jayma decided to form a partnership for the purpose of building and selling a "spec" home in a subdivision in Waxhaw, North Carolina. Jayma Aff. ¶ 3. Wilson, a licensed general contractor, agreed to oversee construction of the spec home, while Jayma agreed to secure financing for the parties' venture. *Id.* The men envisioned that they would sell the completed home at a profit, and then split that profit. They had no written partnership agreement.

² Jayma's friend, Wilbur Streeter, was originally named as a defendant in this lawsuit.

³ In his order, the trial judge referred to this property as the "Disputed Tract."

On September 19, 2005, Jayma purchased a lot at 10010 Strike the Gold Lane in Union County, North Carolina and closed on a \$1,000,000 construction loan. Jayma Aff. ¶ 3. Soon thereafter, Wilson began construction of the planned spec home.

It soon became apparent that the cost to construct the planned spec home would exceed \$1,000,000. Wilson proposed to transfer some portion⁴ of the Lancaster Property to Jayma, so that Jayma could then use the land as collateral to secure additional funds for construction of the spec home. Wilson dep. at 81; Ex. 9 to Wilson dep. at 2.

On November 4, 2005, Wilson signed a deed, transferring the entirety of the Lancaster Property to Jayma. Order Granting Summary Judgment at 2 (hereafter, "Order"). Jayma then obtained a \$194,000 line of credit from SunTrust Bank, mortgaging the Lancaster Property as collateral. *See* Complaint ¶ 10; Jayma Aff. ¶ 8.

Construction of the spec home took longer, and cost more, than expected. As construction dragged on and costs ballooned, the men's relationship soured. By the time the spec home was completed in 2007, Wilson and Jayma had become openly antagonistic toward one another. Jayma Aff. ¶5. Their only communications were through emails and written correspondence. They had exhausted their construction loan, as well as the additional funds that Jayma had borrowed against the Lancaster Property. Id. ¶ 8.

On March 6, 2008, Wilson sent a lengthy fax to Jayma, accusing him of various alleged wrongs. Jayma Aff. ¶6 and Ex. C thereto. Wilson claimed that he had been "tricked" into transferring the Lancaster Property to Jayma and also accused Jayma of fraud, forgery and misappropriation of partnership assets. Ex. C to Jayma Aff.

⁴ There is a factual dispute concerning the acreage Wilson offered to transfer. Wilson contends that he only offered to transfer 25 acres of his land to Jayma, rather than the entire tract of land. In considering Jayma's motion for summary judgment, the trial court construed that factual dispute "in a light most favorable to Wilson." *See* Order at 2 n.2.

Eventually, Jayma secured a contract to sell the “spec” home, albeit at a loss. Jayma Aff. ¶ 7. On September 12, 2008, just after Jayma’s sale of the spec home closed, an attorney representing Wilson sent a certified letter to Jayma. Jayma Aff. ¶ 9. That letter accused Jayma of breaching his fiduciary duties to Wilson and of misappropriating partnership assets. Ex. D to Jayma Aff.. The letter also asserted that Wilson had been tricked into conveying “63 acres of land . . . rather than the intended 25 acres” to Jayma Id. Wilson’s lawyer threatened litigation if Jayma did not provide “a proper accounting . . . and reconvey[] the Lancaster County land to Mr. Wilson.” Id. Jayma did not respond to the attorney’s letter.

Following sale of the “spec” home, Wilson and Jayma continued to exchange barbs by letter, fax and email. At one point, in July 2011, Wilson wrote:

I had a well-respected law firm contact you to try and resolve our issues before a full blow investigation was started. . . . Unfortunately, I was unable to pursue you in court at that time [because] for over 2 years I have been dealing with the sub-prime mortgage [mess] you got me into.

Ex. E. to Jayma Aff. Wilson finally filed this lawsuit in April 2012.

STANDARD OF REVIEW

“In reviewing an order for summary judgment, the appellate court applies the same standard which governs the trial court under rule 56 of the South Carolina Rules of Civil Procedure.” Gecy v. South Carolina Bank & Trust, 422 S.C. 509, 515, 812 S.E.2d 750, 754 (Ct. App. 2018)(quoting M & M Grp., Inc. v. Holmes, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008)). An order granting summary judgment should be affirmed 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). “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).

ARGUMENT

- I. Because Wilson did not appeal the trial court’s determination that Wilson failed to file this action within three years following the date his alleged Claims accrued, that determination is the law of the case.

The single question raised by Wilson’s appeal is whether the trial court properly determined his claims were barred by expiration of the statute of limitations. The trial court concluded that Wilson’s claims were governed by the general three-year statute of limitations codified at S.C. Code Ann. § 15-3-530, and also found that Wilson had failed to commence this action within three years after the date his claims accrued. Order at 7-8. Based upon those findings, the trial court granted summary judgment and dismissed Wilson’s complaint.

On appeal, Wilson argues that the trial court applied the wrong statute of limitations. However, he does not challenge the trial court’s finding that Wilson’s claims accrued on or before September 12, 2008. Order at 6-7. He does not challenge the trial court’s finding that Wilson failed to commence this action within three years following accrual of his claims. Id. at 7. Nor does he argue that the trial court erred when it refused to extend the statute of limitations through the doctrine of equitable tolling. Id. at 7-8. Consequently, the trial court’s determination of those issues is the law of the case, and Wilson is bound by those findings. *See Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 398, 593 S.E.2d 183, 189 (Ct. App. 2004)(“Any unappealed portion of the [circuit] court’s judgment is the law of the case, and must therefore be affirmed.”). If the three year statute of limitations applies, as the trial court concluded, then Wilson’s claims are time-barred as a matter of law.

- II. The trial court properly held that Wilson’s lawsuit was not an “action upon a sealed instrument” and, therefore, Wilson’s claims were subject to a three-year statute of limitations and not a twenty-year statute of limitations.

Wilson’s appellate arguments focus primarily on his contention that his lawsuit was “an action on a sealed instrument,” subject to the twenty-year limitations period of S.C. Code Ann. § 15-3-520(b), rather than the three-year limitations period of S.C. Code § 15-3-530. In his brief, Wilson points to several documents that he contends are “sealed instruments.” *See* Appellant’s Amended Brief at 1, 4, 6, 7; *see* S.C. Code § 15-3-520 (Law. Co-op. 2005). Because of those documents, Wilson contends that he was entitled to bring this lawsuit at any time within twenty years following accrual of his claims. However, Wilson’s interpretation of § 15-3-520 is erroneous and his contention that his lawsuit was an action upon a “sealed instruments” is incorrect.

As an initial matter, none of the documents identified in Wilson’s brief as a “sealed instrument” is actually one that Wilson could enforce through litigation. Two of the documents upon which Wilson relies (a deed⁵ and mortgage⁶ covering the Lancaster Property) were signed and “sealed” by Wilson, not by Jayma. *See* Order at 5 (citing Lyons v. Fidelity Nat’l Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015)). A third document, Jayma’s “Sun Trust Credit Line Mortgage,”⁷ is a contract between Jayma and Sun Trust Mortgage. Wilson was not a party to that instrument and would have no right to enforce it. That leaves only the parties’ construction contract. While the signature lines of the parties’ construction contract contain the

⁵ *See* Appellant’s Amended Brief at 4.

⁶ *See* Id. at 7.

⁷ *See* Id. at 6.

word “seal,” that document was simply a contract for services. *See* Ex. 4 to Wilson dep. That document evidences an agreement by Wilson to build a house and an agreement by Jayma to pay a specified price. *Id.* Nothing about the parties’ construction contract “clearly evidences an intent to create a sealed instrument.” *See Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005).

Moreover, no cause of action in Wilson’s lawsuit actually sought to enforce any of the documents he has labeled as “sealed instruments.” The crux of Wilson’s lawsuit was (a) to recover money that he contended Jayma wrongly took from their partnership; and (b) to invalidate a deed that Wilson alleged he was “tricked” into signing. *See* Complaint at 4-5. The causes of action set forth in Wilson’s complaint included negligent misrepresentation, breach of fiduciary duty and a claim to set aside Wilson’s deed on the basis of fraud. *Id.* As the trial court properly recognized, each of those claims would be subject to a three year statute of limitations. *See* Order at 5; *see also* S.C. Code Ann. § 15-3-530 (Law. Co-op. 2005); *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. 2006)(fraud); *McKinnon v. Summers*, 224 S.C. 331, 79 S.E.2d 146 (1953)(action to set aside deed on the basis of fraud).⁸ The so-called “sealed instruments” listed in Wilson’s brief were simply evidence in the parties’ case - none of them was actually the subject of Wilson’s lawsuit. As the trial court properly recognized, Wilson’s lawsuit was not “an action upon a sealed instrument” and the twenty-year statute of §15-3-520 did not apply to his claims.⁹ Order at 5. This court should affirm that determination.

⁸ As the trial court recognized, when *McKinnon* was decided, South Carolina’s general statute of limitations was six years.

⁹ In opposition to Jayma’s motion for summary judgment, Wilson also argued that, if the twenty-year limitations period of § 15-3-520 did not apply, then the ten-year limitations period

III. The trial court properly determined that Wilson's claims expired when he did not file suit within three years of the date his claims accrued.

As discussed above, the trial court found that Wilson's claims accrued by, at latest, September 12, 2008. *See* Order at 7. Wilson has not appealed that finding, and it is now the law of the case. Rumpf, 357 S.C. at 398, 593 S.E.2d at 189. Under the applicable statute of limitations, Wilson was *required* to file suit on or before September 12, 2011, but he did not file suit until April 2012. Consequently, the claims asserted in his complaint were time-barred and the trial court properly dismissed Wilson's suit on summary judgment.

As the trial court recognized in granting summary judgment, "statutes of limitations are not simply technicalities." Order at 4 (quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)(citing 51 Am. Jur.2d, Limitation of Actions § 18, at 603 (1970)).

On the contrary, they have long been respected as fundamental to a well-ordered judicial system. 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. Statutes of limitations "relieve the courts of the burden of trying stale claims" and they protect "potential defendants from protracted fear of litigation." Moates, 322 S.C. at 176, 470 S.E.2d at 404.

Such considerations are particularly pertinent in this case, where Wilson's claims arose from a verbal partnership agreement that he and Jayma entered in 2005 and which Jayma allegedly breached in 2007 or 2008. It would frustrate one of the fundamental tenets of our judicial system if Wilson's alleged claims could be pursued through litigation begun as late as 2028. By then, critical witnesses would have vanished or perished, important facts would be

of § 15-3-340 (action for recovery of real property) applied. The trial court also rejected that argument. Order at 6. Wilson has not appealed that portion of the trial court's order.

forgotten and evidence might be lost or destroyed. It is incomprehensible that South Carolina's legislature would have intended potential defendants, such as Jayma, to remain subject to potential liability for such a protracted period of time. It is equally incomprehensible that the legislature would allow a plaintiff in Wilson's position to "sit" on his claims for 19 years, three hundred sixty-four days before he was required to file suit. The trial court correctly determined that Wilson's claims were subject to our state's "general" three-year statute of limitations.

Our appellate courts have repeatedly held, and § 15-3-530 dictates, that claims like those set forth in Wilson's complaint are subject to a three year statute of limitations. *See* S.C. Code Ann. §15-3-530 (Law. Co-op. 2005)(action upon "a contract, obligation, or liability, express or implied"). When Wilson did not commence his lawsuit within that time period, his claims were extinguished as a matter of law. The trial court properly granted summary judgment, and that decision should be affirmed on appeal.

CONCLUSION

The trial court correctly determined that Wilson's claims were barred by expiration of the statute of limitations. Wilson's claims accrued on or before September 12, 2008, yet he did not file this action until April 2012. By then, the statute of limitations had expired, and his claims were barred. Because none of Wilson's claims was an "action on a sealed instrument," Wilson was not entitled to the twenty-year statute of limitations of South Carolina Code § 15-3-520. The trial court properly granted summary judgment, and that decision should be affirmed on appeal.

July 24, 2018



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PROOF OF SERVICE

The undersigned certifies that he has served Respondent's Initial Brief and Designation of Matter to be Included in Record on Appeal by depositing a copies of same in the United States Mail, postage prepaid, on July 24, 2018, addressed to pro se Appellant, Mark Wilson, 2506 Kings Farm Way, Indian Trail, NC 28079.



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RE: *Mark Wilson vs. Keith Jayma*
Appellate Case No.: 2017-002223

Dear Ms. Kitchings:

I have enclosed the original and one copy each of Respondent's Initial Brief and Designation of Matter to Be Included on Record of Appeal. Please file the originals and return the clocked copies to me in the envelope I have enclosed.

By copy of this letter, I am serving copies of Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal upon Appellant.

Thank you and please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads 'L. Melia Sweatt'. The signature is fluid and cursive, written over the typed name and title.

L. Melia Sweatt
Paralegal

/lms

Enclosure

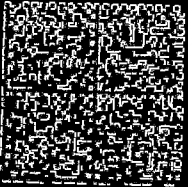
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