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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SC Court of Appeals

IN THE COURT OF COMMON PLEAS

Elvia Stoppiello and Gilberto Garcia,

Plaintiffs,

vs.

William D. Turner and Charter
Communications, LLC,

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

C.A. No. 2018-CP-23-03034

THIS MATTER IS BEFORE the court on the motion to dismiss of Defendants, William D. Turner and Charter Communications, LLC. A hearing was held before me on November 28, 2018, at which time Plaintiffs were represented by Brian T. Smith and Defendants were represented by Michelle Deluca Yarbrough, of Gallivan, White & Boyd, P.A. The court hereby orders that Defendants' motion to dismiss be GRANTED with prejudice.

FACTUAL ALLEGATIONS

This matter arises out of an automobile accident which occurred on April 21, 2015 between Plaintiff Elvia Stoppiello (hereinafter referred to as "Plaintiff Stoppiello") and Defendant William D. Turner (hereinafter referred to as "Defendant Turner"). At the time of the automobile accident, Defendant Turner was acting within the scope of his employment with Defendant Charter Communications, LLC (hereinafter referred to as "Defendant Charter").

On May 24, 2018, Plaintiffs filed a complaint against Defendants seeking to recover for injuries Plaintiff Stoppiello sustained in the automobile accident. Plaintiffs' complaint alleges that Plaintiff Stoppiello had headaches and sought medical treatment following the automobile

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accident. Accordingly, Plaintiffs knew or should have known that there was a viable cause of action against Defendants on April 21, 2015, the date of the accident.

STANDARD OF REVIEW

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may move to dismiss a complaint based upon “failure to state sufficient facts to constitute a cause of action.” *Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); *O’Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See *Holy Loch Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); *Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); *O’Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

Pursuant to Rule 8(a), “[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief” See *South Carolina Nat’l Bank v. Joyner*, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) (“[T]he principal purpose of pleadings is to inform the pleader’s adversary of legal and factual positions which he will be required to meet on trial.”). Rule 8(a), “requires a litigant to plead the ultimate facts which will be proved at trial.” *Clark v. Clark*, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (1973); *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) (“Ultimate facts fall

somewhere between the verbosity of evidentiary facts and the sparsity of ‘legal conclusions.’). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

CONCLUSIONS OF LAW

An injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 503 S.E.2d 761, 766 (S.C. Ct. App. 1998). Pursuant to South Carolina Code Sections 15-3-530(5) and 15-3-535, Plaintiffs' claims must have commenced within three years after they knew or by exercise of reasonable diligence should have known that they had a cause of action. Plaintiffs, however, filed their action on May 24, 2018 and, therefore, failed to file their action within the time allowed by the statute of limitations. Accordingly, their claim for damages is barred by the statute of limitations under South Carolina law.

ORDER

IT IS HEREBY ORDERED that the Plaintiffs' complaint be dismissed in its entirety with prejudice.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Elvia Stoppiello , plaintiff, et al vs. William D Turner , defendant, et al
Case Number: 2018CP2303034
Type: Order/Other

So Ordered

s/Letitia H. Verdin, SC Judge 2162