

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Steven M. Bernard and Deborah J. Bernard,)
On Behalf of Themselves and all others)
Similarly Situated,)
)
Plaintiffs,)

Civil Action No. 2015-CP-10-0020

v.)

ORDER DENYING PLAINTIFFS'
MOTION TO ALTER OR AMEND ORDER

3 Chisolm Street Homeowners)
Association, Inc.,)
)
Defendant.)

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SC Court of Appeals

FILED
JULIE J. LARSEN, CLERK OF COURT
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This matter is before this Court on the Plaintiffs' Motion to Alter or Amend Order filed December 17, 2018. After careful consideration of the Plaintiffs' motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded. Accordingly, this Court hereby denies Plaintiffs' motion. In addition, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary and thereby decides this motion on the written record and submissions filed by the parties.

On December 7, 2018, this Court issued an Order granting the Defendant's Motion for Summary Judgment based upon the expiration of the statute of limitations. The Court ruled that the Plaintiff's negligence action against the Defendant 3 Chisolm Street Homeowners Association, Inc. ("HOA") is time barred regardless of whether the applicable statute of limitations is S.C. Code Ann. § 33-31-820(f) or S.C. Code Ann. § 15-3-530(5). In their Rule 59(e) motion, the Plaintiffs are critical that the Court even considered the timeliness of the filing of their Complaint under S.C. Code Ann. § 15-3-530(5). The Plaintiffs insist that the HOA did not raise S.C. Code Ann. § 15-3-530(5) as a basis for dismissal until the filing of its reply memorandum, and as a result, they

claim to be prejudiced in opposing a statute of limitations defense pursuant to S.C. Code Ann. § 15-3-530(5). This Court disagrees. The record reflects that the Plaintiffs raised and fully discussed S.C. Code Ann. § 15-3-530(5) and the application of the discovery rule in its opposition memorandum filed October 16, 2018. In fact, in that memorandum, the Plaintiffs write: “The statute of limitations that applies to the instant case is S.C. Code § 15-3-530(5).” Therefore, the Plaintiffs cannot reasonably object to the HOA’s discussion of S.C. Code Ann. § 15-3-530(5) on reply or that this Court examined and addressed the application of S.C. Code Ann. § 15-3-530(5) in ruling on the summary judgment motion. The Plaintiffs have not been legally prejudiced.

In their Rule 59(e) motion, the Plaintiffs also argue that this Court failed to properly apply the holding in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016). This Court disagrees for several reasons.

First, the accrual rule in the *Stokes-Craven* case was never cited to nor argued to this Court by the Plaintiffs prior to the filing of their Rule 59(e) motion. *See, Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (2014) (“a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not”).

Second, *Stokes-Craven* is a legal malpractice case, and the accrual rule as announced in that case has never been extended to other types of causes of action. In fact, the Supreme Court specifically recognized that “the case that we address today is a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney’s alleged malpractice.” *Stokes-Craven*, 787 S.E.2d at 494. The Supreme Court referred to “that particular scenario” and pointed out that “there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling.” *Id.* The present case as brought against the HOA is not a legal malpractice action. The Plaintiffs are suing the HOA, not any attorneys. Thus, the

accrual rule in *Stokes-Craven* has no applicability to the present case.

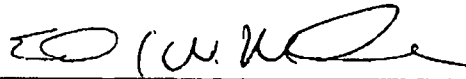
Third, in its recent decision in *Personal Care, Inc. v. Theos*, Op. No. 5628 (S.C. Ct. App. filed February 20, 2019), the Court of Appeals ruled -- in a legal malpractice action -- that the *Stokes-Craven* accrual rule does not apply where the cause of action is not predicated on an adverse judgment. The Court of Appeals explained: “We do not believe that the *Stokes-Craven* decision eliminated the discovery rule in favor of a separate bright-line rule that all legal malpractice claims accrue on the date an adverse judgment is entered against the client.” Instead, the Court of Appeals determined that the client’s cause of action was predicated on an allegedly defamatory letter written by the lawyer being sued. Thus, even if the *Stokes-Craven* accrual rule could be extended beyond the realm of legal malpractice cases, it would still have no applicability to the case at bar. In this case, as in *Personal Care*, the Plaintiffs’ claim against the HOA is not predicated on an adverse judgment. In fact, the Plaintiffs do not allege as a basis for their Complaint that the HOA was negligent in failing to timely file the Water Intrusion Lawsuit, which is the lawsuit that proceeded through an appeal to the Court of Appeals. Instead, as this Court described in its Order, the Plaintiffs allege in their Complaint that the HOA “was negligent in failing to follow the Glick Report’s advice to pursue additional forensic testing, which resulted in the HOA’s failure to uncover the foundation defects until 2014, which resulted in the Foundation Defects Lawsuit being filed after the statute of limitations expired.” (Order filed December 7, 2018, p. 5). As this Court has already ruled, that alleged negligent act was discovered or reasonably should have been discovered more than three years prior to the filing of this lawsuit on January 22, 2015.

Moreover, even if the *Stokes-Craven* accrual rule does apply to this case, it would have no bearing on the application of the statute of limitations set forth in S.C. Code Ann. § 33-31-820(f). As addressed in the Order filed December 7, 2018, this Court reiterates that S.C. Code Ann. § 33-31-820(f) is applicable to claims brought against a nonprofit corporation and thus bars the

Plaintiffs' negligence claim against the HOA.

IT IS, THEREFORE, ORDERED that the Plaintiffs' Motion to Alter or Amend Order is hereby denied.

AND IT IS SO ORDERED.

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EDWARD W. MILLER
Presiding Circuit Court Judge,
Ninth Judicial Circuit

June 19, 2019