THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

2018-001089

Gwendolyn Brown, individually, and as natural guardian of Quintez Lee Sapp, Deville Kiez Simmons, Haroldett Uneke Simmons, and Glenn Simmons, Plaintiffs,

Of whom Gwendolyn Brown, Deville Kiez Simmons, and Haroldett Uneke Simmons are.....Appellants,

vs.

Housing Authority of the City of Charleston, South Carolina.....Respondent.

AMENDED INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR WHEN IT APPLIED THE TWO-YEAR STATUTE OF LIMITATIONS FOUND IN THE SOUTH CAROLINA TORT CLAIMS ACT TO THIS TORT CLAIM AGAINST A GOVERNMENTAL ENTITY?

STATEMENT OF THE CASE

The Appellants filed the Summons and Complaint on August 4, 2010 and filed the Amended Summons and Complaint on August 17, 2010. This action was dismissed pursuant to SCRCP Rule 40(j) and then reinstated on November 15, 2013. The Appellants then filed a Second Amended Complaint on August 14, 2017, which alleges that from 2003 to 2009, the Plaintiffs resided in a housing unit owned and operated by the Respondent, Housing Authority of the City of Charleston ("Housing Authority").

Gwendolyn Brown ("Ms. 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. She further alleges that this fall resulted in a loss of consciousness and a strained ankle. Ms. Brown and her four children all 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. Ms. Brown and her children further allege in their Second Amended Complaint that they first became aware of the mold and the connected problems therewith upon the diagnosis of Quintez Sapp, in or about the month of February 2008. Subsequently, Ms. Brown and all four of her children allegedly developed symptoms they connect to the presence of mold. They have brought causes of action for breach of promise, violations of S.C. Code 27-40-10 et. seq., negligence, and gross negligence.

Housing Authority brought a motion for summary judgment under multiple theories, including that the claims were time barred because they were filed outside the proscribed statute of limitations. Oral arguments were heard

February 7, 2018, and on May 7, 2018 the trial court entered an order granting in part Housing Authority's motion for summary judgment as to claims brought by Ms. Brown and two of her children, Deville Simmons and Haroldlett Simmons, concluding that they were barred by the statute of limitations. Housing Authority was served with a notice of appeal on June 11, 2018.

ARGUMENTS

I. The statute of limitations set forth in the South Carolina Tort Claims Act controls in this case.

The issue before the Court is whether, in a suit alleging a tort arising from a landlord/tenant relationship against a governmental entity, the Court should apply the two-year statute of limitations set forth by the South Carolina Tort Claims Act ("TCA") or the three-year statute of limitations set forth by the South Carolina Residential Landlord Tenant Act ("RLTA").

The TCA "restores the tort immunity of governmental entities except as waived by the Act itself." *Benton v. Robert C. Peace Hosp.*, 313 S.C. 520, 523, 443 S.E.2d 537, 538, rehearing denied (1994). The TCA provides the exclusive means of relief for all tort claims against governmental entities. *See Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). The statute itself explicitly provides that "[t]he remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents . . . ." S.C.Code Ann. § 15–78–20(b) (Supp.2002).

Later, the statute again reinforces that "[the Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C.Code Ann. § 15–78–70(a) (Supp.2002).

When interpreting the TCA with other statutes, the TCA controls. This principle was exemplified in *Benton v. Robert C. Peace Hosp.*, where a negligence action against a rehabilitation hospital that was both a government health care facility and a charitable organization was found to be governed by the Tort Claims Act (§§ 15-78-10 et seq.), rather than the liability statute for charitable organizations (§ 33-55-200), because the Tort Claims Act clearly states that it provides the *exclusive remedy* for governmental torts such as those at issue. *See Benton, supra*, 313 S.C. at 523.

Ms. Brown and her children have brought their claims under the RLTA, codified at S.C. Code Ann. §§ 27-40-10, et seq. (while Ms. Brown frames one of her claims as a "breach of promise," any alleged promise to her in this landlord/tenant context would arise under the RLTA). This Court held in *Watson v. Sellers* that "the RLTA explicitly creates a cause of action **in tort** . . . ." 299 S.C. 426, 436, 385 S.E.2d 369, 373 (Ct.App. 1989) (emphasis added). Again, the *exclusive* remedy for an action in tort against a governmental entity is the TCA. Appellants cite a number of cases in an attempt to reconcile the different statute of limitations provisions provided by the TCA and the RLTA in their favor. However, none of those cases deal with a tort claim brought against a state actor, which is the heart of this case. Because they are suing a governmental entity in tort, Ms. Brown and her children must comply with the TCA; it is the

identity of the defendant as a state actor, and not the statutory source of the tort claim, that controls.

Any action brought pursuant to the TCA is forever barred unless 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, Ms. Brown knew or should have known that her cause of action arose as a result of her fall on August 9, 2007. Therefore, when she filed her claim on August 4, 2010, the two year statute of limitations imposed by the TCA had already expired. Ms. Brown and her children who are party to this appeal, Deville Simmons and Haroldlett Simmons, had notice of their cause of action at least as early as October 4, 2007, when attorney Anne L. Peterson-Hutto wrote a letter on their behalf addressing medical conditions they "suffered as a result of mold exposure since they moved in their residence." (Letter to the City of Charleston Housing Authority dated October 4, 2007). Again, when the claim was filed on August 4, 2010, the two year statute of limitations had already expired. This is true even if, arguendo, we were to accept as true the allegation

that Ms. Brown and her children first became aware of the alleged effects of the mold in or about February 2008, two and one-half years before they filed their claim.

CONCLUSION

Any action based in tort against a governmental entity must be brought under the Tort Claims Act – it is the exclusive remedy. Because Appellants' claims sound in tort and are brought against a governmental entity, the Appellants are subject to the limitations imposed by the Tort Claims Act, including its two-year statute of limitations. Because the lower court correctly applied the two-year statute of limitations found in the Tort Claims Act to this case and correctly concluded that Appellants' claims were filed more than two years after they had reason to know about their claim, we ask that this Court affirm the trial court's order.

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July 8, 2016

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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2018-001089

Gwendolyn Brown, individually, and as natural guardian of Quintez Lee Sapp, Deville Kiez Simmons, Haroldett Uneke Simmons, and Glenn Simmons, Plaintiffs,

Of whom Gwendolyn Brown, Deville Kiez Simmons, and Haroldett Uneke Simmons are.....Appellants,

vs.

Housing Authority of the City of Charleston, South Carolina.....Respondent.

PROOF OF SERVICE

I certify that I have served the Amended Initial Brief of Respondent and Amended Designation of Matter on Gwendolyn Brown, Deville Kiez Simmons, and Haroldett Uneke Simmons by depositing a copy of it in the United States Mail, postage prepaid, on July 8, 2019, addressed to their attorney of record, J. Seth Whipper, Esquire, Whipper Law Firm, Post Office Box 70070, North Charleston, SC 29415.

{Signature Page Follows}

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July 8, 2019

Hon. Jenny Abbott Kitchings
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Re: Gwendolyn Brown, individually, and as natural guardian of Quintez Lee Sapp, Deville Kiez Simmons, Haroldett Uneke Simmons, and Glenn Simmons vs. Housing Authority of the City of Charleston, South Carolina
2014-CP-10-043
Civil Action No.: 2018-001089
Our File No: 11845 MBL

Dear Ms. Kitchings:

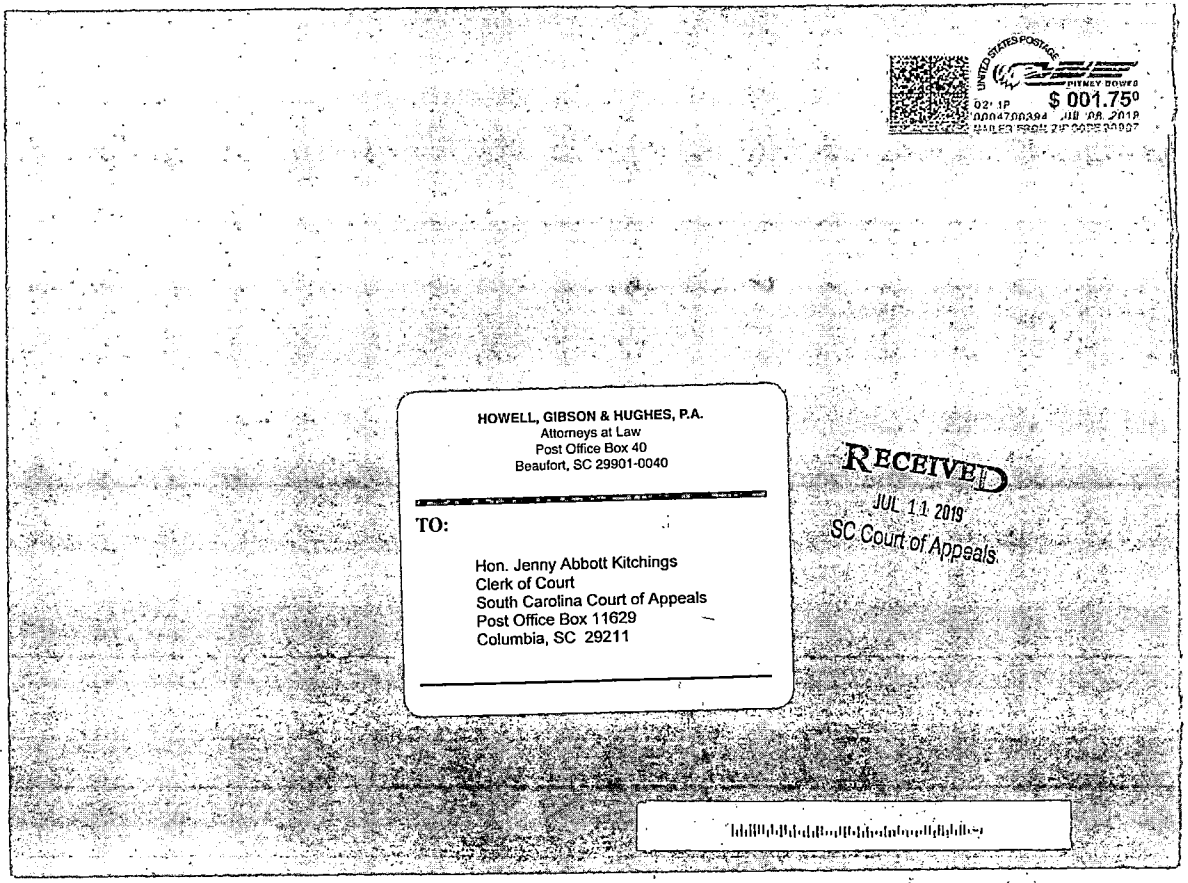
Please find enclosed herewith for filing *Amended Initial Brief of Respondent* and *Amended Designation of Matter* with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

Mary Bass Lohr
MBL/ad
Enclosure
cc: J. Seth Whipper



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