

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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Appellate Case No.: 2019-000611

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SC Court of Appeals

University Motor Company, Inc..... Appellant,

v.

Maurice Dawkins ..... Respondent.

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**RESPONDENT'S INITIAL BRIEF**

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**COUNTER-STATEMENT OF ISSUES ON APPEAL**

- I. DID THE TRIAL COURT CORRECTLY HOLD THE STATUTE OF LIMITATIONS EXPIRED WHEN THE SUMMONS AND COMPLAINT WERE FILED NEARLY SEVEN AND A HALF YEARS AFTER AN ALLGED BREACH?

## STATEMENT OF THE CASE

On January 10, 2018, Appellant University Motor Company, Inc. (“Appellant”) filed a complaint in the Richland County Court of Common Pleas against Respondent Maurice Dawkins (“Respondent”) alleging causes of action for breach of contract and unjust enrichment related to a retail installment contract Respondent entered with Appellant on July 26, 2010. (Compl. pp. 1-3). Respondent filed an answer on May 11, 2018. (Answer ¶ 5). In his answer, Respondent raised the statute of limitations as an affirmative defense and asserted that the Appellant’s claims should be dismissed. (Answer ¶ 7).

On September 13, 2018, Respondent filed a motion to dismiss based upon the statute of limitations under S.C. Code Ann. section 15-3-530(1), asserting that the allegations of the complaint described the Respondent as having defaulted on the retail installment contract nearly seven and a half years prior to the commencement of the action. (Mot. to Dismiss). In response, Appellant filed a memorandum in opposition to the motion on January 23, 2019, claiming that the Respondent was barred from raising the statute of limitations as a defense by the doctrine of equitable estoppel. (Return to and Mem. in Opp’n to Def.’s Mot. to Dismiss pp. 3-4). In its memorandum, the Appellant introduced three exhibits purporting to show that Respondent made misleading representations to the Appellant in the form of (1) an affidavit, (2) a letter dated December 6, 2010, and (3) a discovery response. (Aff. of Robert M.P. Masella; Dec. 6, 2010 Letter from Masella to Murdaugh; Def.’s Resp. to Pl.’s 2nd Req. for Admis.). The affidavit contained as an exhibit a letter from Appellant’s counsel to Respondent’s counsel dated September 27, 2011. (Sep. 27, 2011 Letter from Masella to Murdaugh). Additionally, the discovery request contained as an exhibit a letter from Respondent’s counsel to Appellant dated April 25, 2017. (April 25, 2017 Letter from Murdaugh to UMCI).

On February 14, 2019, the court granted Respondent's motion to dismiss based upon the statute of limitations. (Feb. 14, 2019 Order). Appellant moved the court to reconsider its order on February 21, 2019. (Mot. to Recons.). After considering Appellant's arguments and re-examining the grounds for the February 21, 2019 order, the court denied Appellant's motion. (April 2, 2019 Order). Appellant filed its notice of appeal on April 8, 2019. (Notice of Appeal).

### FACTS

This action arises out of a retail installment contract and security agreement Respondent entered on July 26, 2010, to purchase a vehicle for \$20,572.52 from Appellant. (Compl. ¶ 6). Appellant has alleged that Respondent agreed to make 35 consecutive payments beginning on September 9, 2010. (Compl. ¶ 7). Appellant has also alleged that Respondent has been delinquent on payments since August of 2010. (Compl. ¶ 8). On August 21, 2010, Respondent was involved in a serious automobile accident in which the vehicle was destroyed. (Compl. ¶ 9). On December 6, 2010, counsel for Appellant sent a letter to counsel for Respondent providing notice of an alleged lien Appellant would have over any proceeds Respondent would receive from future litigation involving the accident. (Dec. 6, 2010 Letter from Masella to Murdaugh).

On September 27, 2011, counsel for Appellant sent a second letter to counsel for Respondent. (Sep. 27, 2011 Letter from Masella to Murdaugh). The letter memorialized a prior conversation that occurred sometime in September 2011 between counsel in which Appellant requested that Respondent protect its alleged interest in the proceeds received from any future litigation concerning the destroyed vehicle. (*Id.*). The letter reiterated the request for protection of the lien. (*Id.*). The letter also served to notify counsel for Respondent that Appellant would potentially be unable to satisfy a contemporaneously made request from Respondent that his credit not be negatively impacted by any reporting from Appellant. (*Id.*).

On April 25, 2017, counsel for Respondent sent a letter to Appellant informing it that he had recently learned that Appellant had in fact caused the placement of negative entries on Respondent's credit. (April 25, 2017 Letter from Murdaugh to UMCI). This letter documented that Respondent had agreed to protect the alleged lien only under the condition that there would be no negative reporting on Respondent's credit. (*Id.*). The letter also advised that since the Appellant had failed to uphold its end of the protection agreement, the proceeds of litigation would not be distributed to Appellant. (*Id.*).

Appellant subsequently filed its complaint on January 10, 2018. (*See generally* Compl.). On January 23, 2019, counsel for Appellant filed an affidavit claiming that the parties had "agreed" and that Appellant's lien would be satisfied. (Masella Aff.). The affidavit is silent regarding the terms of the agreement or the fact that counsel for Respondent had previously conditioned his agreement on Appellant's abstention from negative credit reporting.

### **STANDARD OF REVIEW**

Determining the appropriate standard of review on appeal turns on whether the underlying issue is legal or equitable. *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728 (Ct. App. 2017). The defense of estoppel is equitable in nature. *Quattlebaum v. Taylor*, 45 S.C. 512, 23 S.E. 617, 619 (1896). Therefore, a defense of equitable estoppel interposed in a law case should be tried by the court, and not the jury, as an equitable issue. *Gaymon v. Richland Memorial Hosp.*, 327 S.C. 66, 68, 488 S.E.2d 332, 333 (1997) (citing *Knight v. Stroud*, 212 S.C. 39, 46 S.E.2d 169 (1948)). The summary judgment standard would be inappropriate in this instance, as the summary judgment mechanism serves to dispose of legal issues when there is not a genuine issue of material fact for the jury to determine. In a defense of equitable estoppel, the trial court serves as the factfinder. *Gaymon*, 327 S.C. at 68, 488 S.E.2d at 333.

Thus, on appeal from an equitable issue, the appellate court “may find facts in accordance with its view of the preponderance of the evidence.” *Lollis*, 421 S.C. at 477, 807 S.E.2d at 728 (citation omitted). This “broad scope” of review does not require that the appellate court disregard the findings of the trial court, nor does it relieve the appellant of the burden of showing that the trial court erred in its findings. *Id.* at 478, 807 S.E.2d at 728 (citations omitted). The appellate court should “accord great deference” to trial court findings where matters of credibility are involved. *Id.* at 483, 807 S.E.2d at 731 (citation omitted).

### ARGUMENT

#### **I. THE APPELLANT FAILED TO CARRY ITS BURDEN OF SHOWING BY A PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT WAS BARRED FROM CLAIMING THE STATUTE OF LIMITATIONS AS A DEFENSE UNDER THE DOCTRINE OF EQUITABLE ESTOPPEL.**

Equitable estoppel prevents a party from pleading or proving an otherwise important fact.

*Maher v. Tietex Corp.*, 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998).

The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped.

*Id.* A party will be equitably estopped from asserting the statute of limitations by either (1) expressly representing that the claim will be settled without litigation, or (2) conduct which suggests that a lawsuit is not necessary. *Id.* at 380, 500 S.E.2d at 209.

Appellant has claimed that Respondent should be estopped from claiming the statute of frauds as a defense because counsel for the Respondent misled Appellant’s counsel into believing that its lien on Respondent’s litigation proceeds would be protected. The Appellant has failed to show by a preponderance of the evidence that a valid agreement existed between the

parties guaranteeing the Respondent would unconditionally protect Appellant's lien. On the contrary, there is evidence in the record suggesting that Respondent only offered his protection of the lien so long as Appellant refrained from any negative credit reporting on the Respondent. (*See* April 25, 2017 Letter from Murdaugh to UMCI).

The September 27, 2011, correspondence between counsel for Appellant and Respondent documents that Appellant requested that Respondent protect the subject lien. (Sep. 27, 2011 Letter from Masella to Murdaugh). It also documents that Respondent requested that Appellant refrain from any negative reporting and that counsel did not believe Appellant would be able to uphold its end of the bargain. (*Id.*). The letter does not contain language purporting that an agreement had been reached at that time between the parties.

No further evidence of an agreement between the parties exists in the record until the April 25, 2017, correspondence. In this letter, counsel for Respondent explicitly states that an agreement had been reached between the parties, that the agreement was conditioned on Appellant's promise to refrain from negative reporting, and that Appellant had violated the terms of the agreement. (April 25, 2017 Letter from Murdaugh to UMCI). When read together with the September 27, 2011, correspondence, the reasonable conclusion is that the parties entered an agreement to protect the lien on a condition that the Appellant believed it would not be able to uphold from the moment the agreement was entered.

In support of its memorandum in opposition to Respondent's motion to dismiss, Appellant submitted an affidavit stating that an agreement had been reached between the parties, and that the lien would be protected. (Masella Aff.). However, the affidavit does not explicitly state that this was the sole term of the agreement. The affidavit also does not describe the agreement. By contrast, the September 27, 2011, and April 25, 2017, letters indicate that

Respondent wished to have his credit protected in exchange for protecting the Appellant's lien, and that Appellant did not believe it would be able to uphold its end of the bargain. The Appellant could not have relied upon an agreement that it knew it would likely not be able to adhere to from the moment of its creation.

The Appellant has not shown by a preponderance of the evidence that its version of the agreement ever existed. Furthermore, the Appellant has not clearly shown that the trial court erred in concluding that the Appellant had not carried its burden of proving each element of its equitable estoppel claim.

Alternatively, even under a summary judgment standard, the Appellant has not pointed to any evidence showing that there was ever a valid agreement to protect the lien that was *not* conditioned on Appellant's abstention from negatively reporting on Respondent's credit. The affidavit submitted by Appellant does not controvert the correspondence documenting that Respondent only agreed to protect the lien so long as no negative reporting was performed. Rather, the affidavit merely reiterates that Respondent had agreed to protect the lien, which does not contradict the Respondent's contentions. In the light most favorable to the Appellant, the Appellant and Respondent both entered an agreement with an awareness that the Appellant was not likely to uphold its end of the bargain. This does not satisfy the elements of equitable estoppel. As such, the trial court's decision granting Respondent's motion to dismiss should not be disturbed and deference should be given to its finding of facts in this matter.

### **CONCLUSION**

As the factfinder, the trial court did not err in its decision, as the Appellant has clearly failed to carry its burden of establishing by a preponderance of the evidence that it relied on a false representation by Respondent. While Respondent asserts and has produced correspondence

documenting that the protection agreement was premised on a request from Respondent that there be no negative reporting on his credit, Appellant has not produced any evidence directly contradicting this assertion. For the foregoing reasons, the trial court's order dismissing Appellant's action should not be reversed.

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

September 4, 2019  
Hampton, South Carolina

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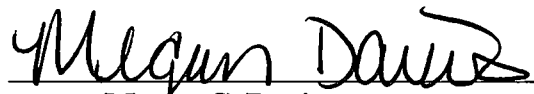
Maurice Dawkins, ..... Respondent.

**CERTIFICATE OF SERVICE**

This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Counsel for the Respondents, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **Respondent's Initial Brief** to:

Robert P. Jackman, Esquire  
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**Attorney for Appellant**

September 4<sup>th</sup>, 2019  
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Megan C. Davis

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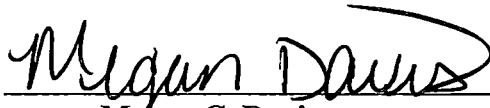
Maurice Dawkins ..... Respondent,

**CERTIFICATE OF SERVICE**

This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Counsel for the Respondents, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **Respondent's Designation of Matter to be Included in Record on Appeal** to:

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**Attorney for Appellant**

September 4, 2019  
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\_\_\_\_\_  
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The Honorable Jenny Abbott Kitchings  
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SC Court of Appeals

*Re: University Motor Company, Inc. v. Maurice Dawkins  
Appellate Case No.: 2019-000611*

Dear Ms. Kitchings:

Please find enclosed the original and one copy of Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Certificate of Service in the above-referenced matter. Please file the original and return a clocked copy of each in the envelope provided.

By copy of this letter, Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal are being served on all counsel of record.

With kind regards, I am

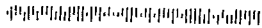
Sincerely,



William F. Barnes, III

WFB/mcd  
Enclosures as stated

cc: Robert P. Jackman, Esquire



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