

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

Case No. 2018-CP-32-1854
Appellate Case No. 2019-001181

Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC,Appellant,

v.

Fisher Tank Company, f/k/a Fisher Tank Company, Inc.,Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court properly rule that Respondent should be granted partial summary judgment as to Appellant's Causes of Action for Negligence and Bailment for Mutual Benefit on the grounds that the claims are barred by the Statute of Limitations set forth in S.C. Code § 15-3-530(5)?

2. Did the lower court properly rule that Respondent should be granted partial summary judgment as to Appellant's claims for interest?

STATEMENT OF THE CASE

This is an appeal from the Lexington County Court of Common Pleas by Appellant, Twin Bridge Logistics, LLC n/k/a Twin Bridge Transport, LLC (hereinafter also referred to as "Twin Bridge"), from a partial summary judgment entered in favor of the Respondents, Fisher Tank Company, f/k/a Fisher Tank Company, Inc. (hereinafter also referred to as "Fisher Tank"). The Appellant is in the business of providing freight carrier services and provided hauling services to the Respondent from approximately 2004 to 2012. (S.J. Order p. 3). The Appellant and Respondent had an ongoing business relationship for many years. *Id.* While no written contract existed between Appellant and Respondent, there was a verbal contract where Appellant would provide logistics and related services to Respondent and Respondent would pay Appellant for those services. (Compl. ¶ 4). Appellant always performed the services requested by Respondent under the verbal contract to completion and satisfied its obligations. (Compl. ¶ 6).

Respondent was in physical possession and control of a step-deck trailer owned and used by Appellant. (Compl. ¶ 33). Appellant used the step-deck trailer in serving Respondent's logistics needs and the trailer was locked in Respondent's building, which was enclosed by a locked fence. *Id.* Appellant's step-deck trailer was in good condition and was delivered to Respondent in trust

for the specific purpose of facilitating Respondent's logistics needs. *Id.* Appellant and Respondent had a mutual understanding and agreement that the step-deck trailer was to be physically possessed by Respondent for several days and thereafter returned to Appellant. (Compl. ¶ 40). On November 10, 2009, the step-deck trailer was stolen from the Respondent's facility, after Respondent had moved the step-deck trailer outside of its locked building and locked fence. (S.J. Order p. 3). The step-deck trailer was not recovered until 2012 as the result of a police investigation. (LaMotte Aff. 7).

Appellant was completely unaware of the substantial amount of damage to its stolen step-deck trailer until the trailer was recovered in 2012. *Id.* There was no way that Appellant could have known about the extent of the damage to the step-deck trailer until it recovered the trailer in 2012. (LaMotte Aff. 8). Appellant first made a request for payment of actual damages arising out of the theft of the step-deck trailer on April 15, 2013. (S.J. Order p. 3). This request for payment of actual damages was rejected by Respondent. *Id.* Thus, on July 2, 2014, Appellant filed a claim for six different causes of action against Respondent, including claims for negligence, bailment for mutual benefit, and interest. *Id.*

On January 11, 2018, Respondent filed a motion requesting partial summary judgment against Appellant on a few different claims, specifically the claims for breach of contract, negligence, bailment for mutual benefit, and interest. (Def.'s Mot.) On June 21, 2019, the lower court granted Respondent's partial summary judgment motion for the negligence, bailment for mutual benefit, and interest claims. (S.J. Order p. 7). The lower court granted partial summary judgment for the negligence and bailment for mutual benefit claims based on the statute of limitations having run. *Id.* The lower court granted partial summary judgment for the interest claim because there was no written agreement in place. *Id.* The decision to grant partial summary

judgment on these claims led Appellant to file a notice of appeal with the South Carolina Court of Appeals on July 16, 2019.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (2008); *Austin v. Beaufort County Sheriff's Office*, 377 S.C. 31, 659 S.E.2d 22, (2008), *rehearing denied*. A summary judgment must be rendered if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56 SCRPC. *Boyd v. Bellsouth Telephone and Telegraph Co., Inc.*, 369 S.C. 410, 633 S.E.2d 136 (2006). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Wogan v. Kunze*, 379 S.C. 581, 666 S.E.2d 901 (2008), *rehearing denied*; *Zurcher v. Bilton*, 379 S.C. 132, 666 S.E.2d 224 (2008).

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING THE RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE CLAIMS OF NEGLIGENCE AND BAILMENT FOR MUTUAL BENEFIT BECAUSE THE STATUTE OF LIMITATIONS HAD NOT RUN BY THE TIME APPELLANT FILED ITS CLAIM.

The lower court erred in granting the Respondent's motion for partial summary judgment on the claims of negligence and bailment for mutual benefit because Appellant could not have known about the damages to its step-deck trailer until after recovering the trailer. Looking at the timeline of events, when Appellant discovered that there was damage to its step-deck trailer that had been stolen, it should have had three years from then (2012) to file a claim before the statute

of limitations expired. The Appellant filed its claim on July 2, 2014, well within three years of discovering the damage to the step-deck trailer.

According to § 15-3-530(4) of the South Carolina Code, “an action for taking, detaining or injuring any goods or chattels including an action for the specific recovery of personal property” must be brought within three years or the claim will be forever barred. S.C. Code Ann. § 15-3-530(4) (1976). “Under the discovery rule, the statute of limitations begins to run from the date the claimant knew or should have known that, by the exercise of reasonable diligence, a cause of action exists.” *Holmes v. National Service Industries, Inc.*, 395 S.C. 305, 309, 717 S.E.2d 751, 753 (2011). “Under the discovery rule, the statute does not run from the date of the negligent act, but from the date when the *injury* resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence.” *McClain v. Jarrard*, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct.App. 2003); *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (Ct.App. 1989).

The Appellant’s claim for negligence and bailment for mutual benefit arose when the Appellant recovered the step-deck trailer on April 15, 2013. While the Appellant knew it had been deprived of possession of the stolen trailer, there was no way for Appellant to absolutely know or understand that the trailer had been physically damaged or the extent of such damage, until after it had recovered the step-deck trailer. Furthermore, Appellant is not seeking damages related to the loss of use of the step-deck trailer. The Appellant is seeking damages for the cost to repair the damages to the step-deck trailer discovered after the trailer was recovered in 2012. Appellant could not have known that the trailer was damaged or the extent of the damage prior to having the trailer returned in 2012. If Appellant was seeking damages for the loss of use of the step-deck trailer or the value of the trailer for what it was worth at the time it was stolen, then it would be correct to

rule that Appellant's claim is barred by the statute of limitations. However, Claimant is only seeking damages for the costs to repair the step-back trailer once Appellant recovered the trailer in 2012.

Appellant's lack of knowledge of the damages to the step-deck trailer is further evidenced by an affidavit of Glenn LaMotte, the authorized member of Appellant. According to the affidavit, Mr. LaMotte could not have had any way of knowing about the damage to the step-deck trailer or the extent of the damage to the trailer until it was recovered in 2012. (LaMotte Aff. ¶ 8). The reason Appellant was unable to discover the damages to the step-deck trailer until 2012 is that law enforcement had recovered the trailer as part of a criminal investigation and was using the trailer as evidence. (LaMotte Aff. ¶ 8). Law enforcement did not allow Appellant to recover the trailer until after the investigation had been completed in 2012, which is when Appellant discovered the damage to the trailer. (LaMotte Aff. ¶ 8).

It is clear that the lower court erred in granting summary judgment to Respondent on this claim. The lower court erred in finding that the statute of limitations for this claim began to run on November 10, 2009. This would be true if Appellant were seeking to recover damages for the loss of use of the trailer or the value of the trailer when it was stolen, but that is not what Appellant is seeking. Appellant is seeking damages for the cost to repair the trailer from damage that resulted after the trailer had been stolen from Respondent. Appellant did not learn of these damages until 2012 and the statute of limitations should not have not started until Appellant recovered the trailer. Even if the Court is unsure as to when the statute of limitations did actually start, there is enough evidence presented to raise a question of material fact for a fact-finder to determine. Thus, the ruling granting summary judgment on the issues of negligence and bailment for mutual benefit should be vacated.

II. THE LOWER COURT ERRED IN GRANTING THE RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE CLAIM FOR INTEREST BECAUSE THE MEASURE OF DAMAGES FOR CONVERSION OF THE TRAILER IS THE VALUE OF THE PROPERTY CONVERTED PLUS INTEREST AND APPELLANT WOULD OTHERWISE BE ENTITLED TO STATUTORY INTEREST IF IT PREVAILS ON ITS CLAIMS.

The lower court erred in granting Respondent's motion for partial summary judgment on the claim of interest because Appellant is entitled to interest as a part of damages for the conversion claim. The claim for conversion was not contested by Respondent on the partial summary judgment motion filed with the lower court. In a conversion of personal property claim, the proper measure of damages is "the value of the property with interest thereon." *Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc.*, 276 S.C. 196, 199, 277 S.E.2d 885, 886 (1981); *Gregg v. Bank of Columbia*, 72 S.C. 458, 52 S.E. 195 (1905).

It would be improper to provide summary judgment across the board as to an interest claim because it is a part of the measure of damages for the conversion claim. If summary judgment were to bar any claim for interest in this matter, it would not allow for Appellant to properly recover damages for its conversion claim. Based on the rule set out in *Industrial Welding Supplies* and summary judgment not being granted as to Appellant's conversion claim, the Court should rule that Appellant is entitled to interest as to the conversion claim as a measure of damages.

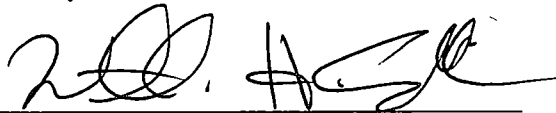
Furthermore, there is a transportation bill for services that Appellant provided Respondent and the Respondent has not paid Appellant for those services. The unpaid services are from a freight bill for a load of steel that Appellant delivered on behalf of Respondent. The freight bill was for approximately \$1100.00. Appellant, if it prevails on its claim related to this freight bill and any other claims are allowed to proceed, could also be awarded statutory interest. Therefore, the lower court's grant of summary judgment on Appellant's claim for interest was in error.

Being that Appellant could be owed interest as a measure of damages for the conversion claim and statutory interest for the unpaid freight bill and other claims, the lower court erred in granting summary judgment as the interest claim across the board. The Court should vacate this ruling to allow Appellant to properly recover interest as a measure of damages for the conversion claim and the unpaid freight invoice.

CONCLUSION

This Court should overturn and vacate the partial summary judgment order of the lower court as to granting Respondent summary judgment for the negligence, bailment for mutual benefit, and interest claims.

Respectfully submitted,

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