THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

Circuit Case No. 2018-CP-40-0187
Appellate Case No. 2019-000611

University Motor Company, Inc...Appellant,

v.

Maurice Dawkins..Respondent,

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Trial Court committed prejudicial error in dismissing Appellant's claim based upon a defense that the claim should be barred by the statute of limitations. A Motion to dismiss should not be granted if it appears from the allegations on the face of the Complaint that Plaintiff could prevail on a theory of the case. Appellant alleges Respondent should have been estopped from asserting the statute of limitations after making false and/or misleading representations to Appellant. Appellant relied upon such representations until the falsity of the statements were discovered.

STATEMENT OF THE CASE

Appellant University Motor Company, Inc. ("Appellant") filed suit against Respondent Maurice Dawkins ("Respondent") for breach of contract and unjust enrichment on January 10, 2018. (R. pp. 8-9). On September 13, 2018, Respondent filed a motion to dismiss based upon a statute of limitations defense pursuant to S.C. Code Ann. § 15-3-530(1). (R. pp. 23-24).. Appellant filed its *Return to and Memorandum in Opposition to Defendant's Motion to Dismiss* on January 23, 2018. Several exhibits were presented contemporaneously with the *Return to and Memorandum in Opposition to Defendant's Motion to Dismiss,* including a *Correspondence from Robert M.P. Masella to Richard A. Murdaugh,* an *Affidavit of Robert M.P. Masella,* and *Defendant's Response to Plaintiff's Second Requests for Admission.* A hearing on Respondent's Motion to Dismiss was held on January 28, 2019. The Court did not immediately rule upon the issue at the time of the hearing. (R. p. 8 lines 17-18).

By Order, dated February 14, 2019, the Court granted Respondent's Motion to Dismiss based upon the statute of limitations. (R. pp. 1-2). Appellant filed and served a Motion to Reconsider pursuant to Rule 59, SCRCP on February 21, 2019. (R. pp. 42-46). Appellant's Motion to Reconsider was denied by Form 4 Order dated April 2, 2019. (R. pp. 3-4). This appeal followed.

STANDARD OF REVIEW

When materials outside of the pleadings are presented and relied upon by a trial court in rendering a decision, a motion to dismiss is converted into one for summary judgment. *See* Rule 12(b)(6), SCRCP; *See also Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 454, 814 S.E.2d 643, 655 (Ct.App. 2018). "An appellate court reviews the granting of summary judgment under the same standard applied by the circuit court." *Skywaves I. Corp. v. Branch Banking & Trust Co.,* 423 S.C. at 454 (*citing Wells v. City of Lynchburg,* 331 S.C. 296, 501 S.E.2d 746 (Ct.App. 1998)). "A [circuit] court should grant a motion for summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* (citing Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.* (*citing Noack Enterprises, Inc. v. Country Corner Interiors, Inc.,* 290 S.C. 475, 351 S.E.2d 347 (Ct.App. 1986)).

Even if the Court determines that the Motion to Dismiss was not converted into a Motion for Summary Judgment, it is still bound by the same standard of review as a trial court. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632, 699 S.E.2d 699, 703 (Ct.App. 2010)("In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court.") A motion to dismiss cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *See United Educational Distributors, LLC v. Educational Testing Services*, 350 S.C. 7, 564

S.E.2d 324, 327-28 (Ct.App. 2002). "The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.*

STATEMENT OF THE FACTS

Appellant alleges that the parties entered into a Retail Installment Contract and Security Agreement on July 26, 2010 in which Respondent agreed to purchase a vehicle from Appellant. (R. p. 7). Appellant alleges that Respondent agreed to pay the balance of the vehicle via 35 consecutive payments beginning on September 9, 2010. (R. pp. 8). Appellant alleges that Respondent became delinquent in his payments in August of 2010. (R. pp. 8).

Respondent's delinquency was caused, in part, due to an auto accident in which he was involved on August 21, 2010. The accident resulted in protracted litigation in Hampton County, whereby Respondent filed suit against several different defendants. The case number for the lawsuit is 2011-CP-25-00252. On December 6, 2010, prior to the initiation of litigation, Appellant's counsel sent correspondence to counsel for Respondent providing notice of Appellant's lien. (R. pp. 29-33).

On September 27, 2011, Counsel for Appellant requested that Respondent protect their interest as a loss payee and satisfy the lien out of any proceeds received from the auto wreck litigation. (R. pp. 35-37). The letter also noted that any adverse credit reporting would be addressed by Appellant after the lien was satisfied. (R. pp. 35-37). Respondent indicated that he would protect Appellant's lien interest after the personal injury litigation had concluded. (R. pp. 39-41).

On April 25, 2017, almost six years after receiving notice from Appellant, Respondent informed Appellant that he no longer intended to protect Appellant's interest in the lawsuit proceeds. (R. pp. 41). After failing to settle the matter out of court, this suit was filed on January 10, 2018.

ARGUMENT

I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN GRANTING RESPONDENT'S MOTION TO DISMISS BECAUSE RESPONDENT WAS BARRED FROM ASSERTING THIS DEFENSE DUE TO THE EQUITABLE DOCTRINE OF ESTOPPEL.

Generally, the language of S.C. Code Ann. § 15-3-530(1) states actions for breaches of contract must be brought within three years from the date the action accrues. "The discovery rule determines the date of accrual for a breach of contract action." *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct.App. 1998) In *Maher*, the Respondent was originally hired by Appellant in 1985 under a "fifty percent bonus plan." *Id.* at 331 S.C. 375. Appellant subsequently ended the fifty percent bonus plan in 1987. *Id.* Respondent continued to work for Appellant from 1987 to 1994 when he was terminated by Appellant and brought suit for breach of contract. *Id.* During the trial, Respondent testified that he only received an affirmative answer about the plan from Appellant in 1994. *See Id.* In ruling for Appellant that Respondent's claims were barred by the statute of limitations, the Court noted that Respondent's testimony during the course of the trial revealed he believed as early as 1989 that Appellant did not plan on fulfilling the terms of the fifty percent plan and that based on these conversations, a person with common knowledge and experience would be on notice that a claim might exist, which would start the clock on the statute of limitations. *Id.* at 331 S.C. 380.

However, *Maher* also goes on to discuss certain defenses to a claim that the statute of limitations has run. First, *Maher* notes that the doctrine of Estoppel has been invoked in a number of situations involving a statute of limitations. *See Maher*, 331 S.C. 371, 381, 500 S.E.2d 204, 209. The Court noted that in Workers' Compensation law, estoppel will toll the statute of limitations during a period of reliance if an employer

induces a claimant to believe the claim is compensable and will be taken care of without its being filed within the period required by statute. *Id. (citing Rogers v. Spartanburg Regional Medical Ctr.,* 328 S.C.419, 491 S.E.2d 708, 710 (Ct.App. 1997)). The Court also noted that estoppel was also used in cases involving settlements. *Id.* In these cases, estoppel may be used as a defense to the statute of limitations where a party has expressly represented that a claim will be settled without litigation or where a party has engaged in conduct that *suggests* a lawsuit is not necessary. *Id.* (*citing Black v. Lexington Sch. Dist. No. Two*, 327 S.C. 55, 488 S.E.2d 327 (1997)). Finally, the Court noted that:

> 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; (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.

Maher v. Tietex Corp., 331 S.C. 371. 381, 500 S.E.2d 204, 209 (Ct.App. 1998)(*quoting Brayboy v. Ewing,* 311 S.C. 272, 273, 428 S.E.2d 731, 732 (Ct.App. 1993)).

The Court in *Maher* denied Respondent's estoppel claims. It stated that Respondent did not rely on any misconduct alleged on the part of Appellant. While Appellant did misrepresent certain aspects of its financial condition, these misrepresentations were not relied upon when determining whether or not he was not receiving the proper bonus amount pursuant to his contract. *Id.*, 331 S.C. at 382. The Court also stated that Respondent did not satisfy the prong of estoppel which required

him to lack knowledge or the means of knowledge as to the truth as to the facts in question. *Id.* While the Court noted that Appellants silence as to the true manner of the bonus structure satisfied the conduct element of estoppel, it also noted that Respondent had the means of knowledge of the true facts and that he failed to discover the facts using these means. *Id.*

Indeed, "[u]nder South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *Kleckley v. Northwestern Nat'l Cas. Co.,* 338 S.C. 131,136, 526 S.E.2d 218 (2000)(citing *Black v. Lexington Sch. Dist. No. 2.*, 327 S.C. 55, 488 S.E.2d 327 (1997)). "Such inducement may consist of an express representation that the claim will be settled without litigation or conduct that suggests a lawsuit is not necessary." *Id.*, 338 S.C. at 136-37.

In *Kleckley*, the appellant suffered injuries after falling on the premises of a Hardee's restaurant. *See id.*, 338 S.C. at 134. At the time of the injury, the Hardee's was insured by a policy that covered certain medical expenses provided that such expenses were incurred and reported within one year of the date of injury. *See id.* The appellant incurred and reported expenses to the insurer and inquired about the existence of medical pay coverage. However, after numerous attempts at contact with the insurer, the appellant was not informed of the coverage until after three years. *See Id.* At this point, the insurer denied the claim based upon the fact that she had not reported the bills within the one year policy deadline. *See id.* On appeal, the Supreme Court stated that the insurer was estopped from asserting a statute of limitations defense "because their lack of communication with [Appellant] was the sole reason she allowed the statute of

limitations to elapse." *Kleckley*, 338 S.C. at 137.

In the case at bar, Appellant placed Respondent on notice of the lien in 2010. (R. pp. 30, 35-37). Appellant relied upon Respondent's representations that the lien amount would be protected until 2017, whereby Respondent decided to claim that Respondent no longer owed a duty to Appellant regarding the lien. (R. pp. 39-41). Appellant notified Respondent in 2011 that the credit reporting issues would be resolved upon satisfaction of the lien. (R. pp. 35-37). Respondent's claims in 2017 that these issues relieved him of his duty to protect Appellant's lien interest are, at best, disingenuous. Respondent's representations that he would protect the interests of Appellant during the pendency of the lawsuit were false and/or misleading and were relied upon by Appellant when it delayed the filing of a suit at an earlier date. Unlike in *Maher*, Appellant had no knowledge or means of knowledge regarding Respondent's intention to no longer protect its interest in the auto wreck settlement until Respondent provided Appellant with notice on April 25, 2017. (R. pp. 39-41).

Indeed, the facts of this case are in line with those in *Kleckley v. Northwestern Nat'l Cas. Co.* as there was no indication that Respondent did not intend to honor the initial letter of protection, which was communicated to Appellant prior to the expiration of the statute of limitations. (R. pp. 39-41). Respondent was aware of the credit reporting situation in 2011, but chose not to communicate that he no longer intended to acknowledge his agreement to protect Appellant's claim until 2017. (R. pp. 39-41). As in *Kleckley,* As the Court stated in *Kleckley*, "such inducement may consist of an express representation that the claim will be settled without litigation *or* conduct that *suggests* a lawsuit is not necessary." *Kleckley,* 338 S.C. at 136-37. "The defendant's conduct may

also involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to forbear exercising the right to sue." *Id.* Respondent's actions clearly induced Appellant to forbear exercising its right to recover, he should be equitably estopped from asserting statute of limitations as a defense. *See id.*, at 137.

Appellant's Complaint clearly alleges that Respondent agreed to satisfy its lien out of the proceeds of his automobile wreck litigation. (R. pp. 8-9). A motion to dismiss cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *See United Educational Distributors, LLC v. Educational Testing Services*, 350 S.C. 7, 564 S.E.2d 324, 327-28 (Ct.App. 2002). "The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action." *Id.* In this case, the Complaint clearly asserts a set of facts that would allow Appellant to prevail if proven.

CONCLUSION

For the foregoing reasons, the Order granting Respondent's motion to dismiss should be reversed and this matter should be remanded to the lower court for a trial on the merits of the case. Appellant has alleged Respondent should be estopped from asserting a statute of limitations defense in this matter due to the fact he made false and/or misleading representations that were relied upon by Appellant when it deferred filing this suit on the promise it would be paid out of proceeds of Respondent's automobile wreck litigation. Respondent has alleged these facts on the face of its complaint and as a result, Respondent's motion to dismiss should not have been granted.

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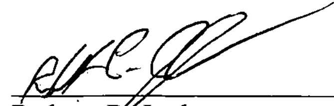

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