THE STATE OF SOUTH CAROLINA
In The 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 REPLY BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

CASES

ARGUMENT

I. THE PROPER STANDARD OF REVIEW IS PURSUANT TO THE SUMMARY JUDGMENT STANDARD

In his initial brief, Respondent states that "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." *Respondent's Initial Brief*, p. 4. While it is true that equitable issues should be tried by a Court and not a jury, there has been no opportunity for fact finding as the Court dismissed Appellant's claim after the hearing on Respondent's motion to dismiss. This proposition does not, however, remove the standard for reviewing a trial court order granting a motion for summary judgment. As Appellant stated in its initial brief, "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)). [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). "Summary judgment is not proper unless it is perfectly clear that no issue of fact is involved and inquiry into fact is not desirable to clarify the application of the law." *Hudsen v. Zenith Engraving Co.,* 273 S.C. 766, 259 S.E.2d 812 (1979). In the current case, the Respondent's motion to dismiss and Appellant's motion to compel discovery were scheduled for the same day. (R. p. 8-9 lines 10-19).

Respondent's argument then devolves into whether or not Appellant has proven by a preponderance of the evidence that an agreement existed, or that any evidence existed under a summary judgment standard. These arguments of course take place after Respondent explicitly admits in his brief that an agreement existed by virtue of the April 25, 2017 letter from Mr. Murdaugh to Appellant. Respondent's brief shows exactly why the trial court erred in granting his motion to dismiss. It's clear that in order to determine whether or not there's a genuine issue of material fact, further inquiry into the matter through the discovery process is required.

Even if the motion was treated as one for dismissal rather than Summary Judgment, it was error for the Court to grant such a motion. 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.

II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BECAUSE EQUITABLE ESTOPPEL APPLIES DUE TO THE CONDUCT OF RESPONDENT WHICH SUGGESTED A LAWSUIT WAS UNNECCESSARY.

In his initial brief, Respondent confirms that there was a prior agreement prior to the statute of limitations deadline, which induced Appellant to refrain from filing an action during the statute period by virtue of the April 25, 2017 Letter from Murdaugh to

UMCI. *Respondent's Initial Brief*, p. 6. Respondent claims that there was an agreement to protect Appellant's interest, but that it had been voided after negative credit entries were placed on Respondent's credit report. (R. p. 41). However, the initial letter from Appellant's counsel memorializing the discussions between the two parties only states that Respondent had asked Counsel for Appellant to inquire about the credit issues, not that such issues would be material to whether or not Appellant was paid what was due under the terms of the Contract. (R. pp. 35-37). In fact the only evidence presented regarding Respondent's claims that the credit reporting issues were conditional to payment was the April 25, 2017 letter from Mr. Murdaugh to Appellant. Of course, this letter was not sent until after the Statute of Limitations had passed. In addition the letter seems to be in complete juxtaposition to the Affidavit of Mr. Masella, which creates a genuine issue of material fact regarding the underlying claims. (R. pp. 35,41).

Respondent's insistence that the negative credit entries were essential to the terms of an agreement rely upon the letter sent after the statute had passed. Respondent did not present any additional correspondence dated after the 2011 Letter from Mr. Masella confirming this assertion. Had Appellant been on notice of these intentions during the period prior to the statute of limitations passing, Respondent would have filed suit to protect its interest.

"Under 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. "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.

Respondent in this case did not present any evidence that he did not intend to honor the initial letter of protection prior to the statute of limitations passing. 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,* Respondent's conduct amounts to, at best, an express representation that the claim would be settled without litigation *or* conduct that *suggested* a lawsuit was not necessary." *Kleckley,* 338 S.C. at 136-37. At the very least Respondent induced Appellant to believe that an amicable adjustment of the claim would be made without suit. *Id.* As a result, Appellant has presented a genuine issue of material fact that could lead a fact-finder to find that Respondent should be equitably estopped from asserting statute of limitations as a defense. *See id.,* at 137.

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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