

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,

RECORD ON APPEAL

Robert P. Jackman
MASELLA LAW FIRM, P.A.
917 Calhoun Street
Columbia, SC 29201
Tel: 803.748.9990
rjackman@masellalaw.com
Attorney for Appellant

Richard Alexander Murdaugh
William F. Barnes, III
PETERS, MURDAUGH, PARKER,
ELTZROTH, & DETRICK, P.A.
P.O. Box 457
Hampton, SC 29924
Tel: 803.943-2111
amurdaugh@pmped.com
wbarnes@pmped.com
Attorneys for Respondent

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF RICHLAND |) | CIVIL ACTION NO.: 2018-CP-40-00187 |
| |) | |
| UNIVERSITY MOTOR COMPANY, INC. |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER GRANTING DEFENDANT'S |
| |) | MOTION TO DISMISS |
| |) | |
| MAURICE DAWKINS, |) | |
| Defendant. |) | |

THIS MATTER COMES BEFORE THE COURT on Defendant's Motion to Dismiss based on the statute of limitations. The Court fully considered the Motion presented, the Opposition submitted to the Motion, the affidavits and evidence presented, and the arguments of counsel. For the reasons discussed below, the Court grants Defendant's Motion to Dismiss.

I. STATEMENT OF FACTS

This action arises out of a Retail Installment Contract and Security Agreement Defendant entered into on July 26, 2010 to purchase a vehicle for \$20,572.52 from Plaintiff. Plaintiff alleges that Defendant was to make 35 consecutive payments beginning on September 9, 2010 of \$502.02, ending with a final payment of \$501.82. On August 21, 2010, Defendant was involved in an automobile accident where the vehicle at issue was destroyed. According to the Plaintiff, Defendant has been delinquent on these payments since August of 2010. Plaintiff filed this action against Defendant on January 10, 2018. After getting served on April 11, 2018 with the Summons and Complaint, Defendant filed his Answer on May 11, 2018. The Answer asserted as an affirmative defense the statute of limitations.

II. CONCLUSIONS OF LAW

Under South Carolina law, an action for breach of contract must be brought within three years from the date the action accrues. S.C. Code Ann. § 15-3-530(1). "The discovery rule determines the date of accrual for a breach of contract action." Maher v. Tietex Corp., 331 S.C. 371, 376-77, 500

S.E.2d 204, 207 (Cl. App. 1998). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." Id. The Court of Appeals in Maier held the breach of contract claim is barred by the statute of limitations. Id. at 385, 500 S.E.2d at 211.

Here, the Defendant defaulted on the contract nearly seven and a half years prior to the filing of this action. Under section 15-3-530(1), the appropriate time to initiate the current action should have been within three years of the accrual date. Maier at 376-77, 500 S.E.2d at 207 ("[A] breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party . . . discovered the breach . . ."); Accordingly, the Plaintiff's action is barred by the statute of limitations.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is granted.

IT IS SO ORDERED!

Robert E. Hood
Chief Administrative Judge
Fifth Judicial Circuit

February _____, 2019
Columbia, South Carolina



Richland Common Pleas

Case Caption: University Motor Company Inc vs Maurice Dawkins
Case Number: 2018CP4000187
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-02-14 09:56:50 page 3 of 3

ELECTRONICALLY FILED - 2019 Feb 14 10:29 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

University Motor Company Inc
PLAINTIFF(S)

Maurice Dawkins
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Pursuant to Rule 59(e), SCRPC, this matter is before the Court on Plaintiff University Motor Company, Inc.'s Motion to Reconsider Order Dated February 12, 2019. After considering the arguments and re-examining the grounds for the Order dated February 12, 2019, Plaintiff University Motor Company, Inc.'s motion is hereby Denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/02/2019.

Empty box for NAMES OF TRADITIONAL FILERS SERVED BY MAIL

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Apr 02 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Apr 02 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187



Richland Common Pleas

Case Caption: University Motor Company Inc vs Maurice Dawkins
Case Number: 2018CP4000187
Type: Order/Electronic Form 4

So Ordered.

s/ R.E. Hood #2164

Electronically signed on 2019-04-02 11:27:34 page 3 of 3

ELECTRONICALLY FILED - 2019 Apr 02 3:11 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

University Motor Company, Inc.,

Plaintiff,

-v-

Maurice Dawkins,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2018-CP-40-_____

COMPLAINT

2018 JAN 10 PM 12:15
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The Plaintiff, University Motor Company, Inc. ("Plaintiff" or "University"), complains of the Defendant, Maurice Dawkins ("Defendant"), would respectfully show unto the Court as follows:

1. Plaintiff, University Motor Company, Inc. is a South Carolina corporation organized, existing and registered pursuant to the laws of the state of South Carolina and does business within the County of Richland, state of South Carolina.
2. The Plaintiff is informed and believes that the Defendant, Maurice Dawkins, is a citizen and resident of Richland County, South Carolina.
3. Plaintiff and Defendant entered into a Contract in Richland County, South Carolina.
4. Jurisdiction of this action and of the Defendants herein is proper in Richland County, South Carolina.
5. Venue in this action is proper in Richland County, South Carolina.
6. The Defendant entered into a Retail Installment Contract & Security Agreement¹ on July 26, 2010 in which Defendant agreed to purchase a vehicle for \$20,572.52 from Plaintiff.

¹Retail Installment Contract & Security Agreement, Exhibit A.

7. The Defendant agreed to pay the unpaid balance by making 35 consecutive payments of \$502.02 beginning on September 9, 2010 and 1 final payment of \$501.82.

8. Defendant has failed to make his monthly payments. The Defendant has been delinquent on payments since August of 2010.

9. After purchasing the vehicle, Defendant was involved in an automobile accident on August 21, 2010, whereby the secured property was destroyed.

10. The aforementioned auto accident resulted in protracted litigation in Hampton County, whereby Plaintiff filed suit against several different defendants. The case number for the lawsuit is 2011-CP-25-00252.

11. Upon information and belief the litigation ended in 2017, whereby Defendant received settlement proceeds from several defendants.

12. Defendant agreed to pay off the principle balance of the loan from the settlement proceeds from the aforementioned lawsuit.

13. Defendant has failed to pay off the principle balance of the loan from the settlement proceeds

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

14. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if set forth here verbatim.

15. Plaintiff and Defendant entered into a binding contract effective on July 26, 2010, whereby Defendant agreed to pay Plaintiff \$20,572.52, which includes interest and a down payment, in exchange for an automobile.

16. Defendant has refused to pay Plaintiff the amount due under the terms of the contract and pursuant to the terms of the agreement he had with Plaintiff regarding the settlement proceeds from Defendant's personal injury lawsuit.

17. As a direct and proximate result of this breach, Plaintiff is entitled to actual damages, punitive damages and any other relief to be determined by a trier of fact.

18. Plaintiff is informed and believes that the proceeds of the personal injury lawsuit are currently in Defendant's attorney's trust account and requests that such funds be held there until this Court makes a final determination regarding this cause of action.

FOR A FOURTH CAUSE OF ACTION

(Unjust Enrichment)

16. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if set forth here verbatim.

17. Plaintiff conferred a benefit upon Defendant by tendering an automobile to Defendant in exchange for Defendant's promise to pay Plaintiff \$20,572.52.

19. Plaintiff has received settlement proceeds from his automobile accident and has failed to pay Defendant for the outstanding balance owed for the purchase of the vehicle.

20. As a result of such unjust enrichment, Plaintiff has been damaged in an amount to be determined by the trier of fact.

WHEREFORE, the Plaintiff prays:

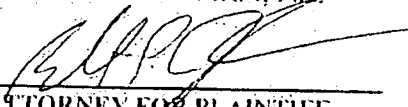
- a) For judgment against the Defendant awarding the Plaintiff actual damages;
- b) For judgment against the Defendant awarding the Plaintiff punitive damages;
- c) For judgment against the Defendant awarding the Plaintiff reasonable attorney's fees;
- d) Requiring Defendant's personal injury attorney hold the funds from the personal injury settlement in escrow until this Court makes a final determination regarding this cause of action.

- e) For judgment against the Defendant awarding the Plaintiff the costs of this action;
and
f) For such other and further relief as the court may deem just and proper.

Columbia, South Carolina
January 6, 2018

Respectfully Submitted,

MASELLA LAW FIRM, P.A.



ATTORNEY FOR PLAINTIFF
Robert P. Jaekman, SC Bar # 78755
917 Calhoun Street
Columbia, South Carolina 29201
(803) 748-9990
E-Mail: rjaekman@miasellalaw.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
UNIVERSITY MOTOR COMPANY, INC.)
)
Plaintiff,)
)
v.)
)
MAURICE DAWKINS,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-40-00187

**DEFENDANT'S ANSWER
TO COMPLAINT**

**TO: ROBERT P. JACKMAN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF,
UNIVERSITY MOTOR COMPANY, INC.:**

The Defendant, Maurice Dawkins, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the complaint which is not specifically admitted, qualified, or denied.
2. Defendant admits the allegations of paragraphs 1, 2, 3, 4, 5, 9, 10;
3. Defendant denies the allegations of paragraphs 7, 8, 11, 12, 13, 16, 17, 18, 20 (improperly numbered 17), 21 (improperly numbered 19), 22 (improperly numbered 20).
4. Defendant is without sufficient information to admit or deny the allegations of paragraphs 14 and 19 (improperly numbered as 16) and therefore denies the allegations.
5. Defendant admits paragraph 6 to the extent that he entered into a retail installment contract¹ with Plaintiff but denies the remaining allegations of paragraph 6 and demands strict proof thereof.

¹ Although referenced in the Complaint that the Retail Installment Contract was attached as Exhibit A it was not attached to the Complaint filed with the Richland County Clerk of Court or the copy served on the Defendant.

6. Defendant admits paragraph 15 to the extent he entered into a contract with Plaintiff but denies the remaining allegations of paragraph 15 and demands strict proof thereof.

FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)

7. Plaintiff's claims are barred by the applicable statute of limitations and must be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE
(Res Judicata and/or Collateral Estoppel)

8. Plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel. Plaintiff's claims regarding the validity of this debt has been presented to a tribunal and already ruled upon.

FOR A THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim)

9. Plaintiff's Complaint fails to state a claim upon which relief may be granted pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Reservation/Non-Waiver)

10. Defendant reserves the right to rely on other affirmative defenses that may be unknown at this time.

Wherefore, Defendant, Maurice Dawkins, having answered, prays the complaint be dismissed with costs to the Plaintiff.

[SIGNATURE PAGE TO FOLLOW]

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

BY: /s/ R. Alexander Murdaugh

R. Alexander Murdaugh

William F. Barnes, III.

101 Mulberry Street East

P.O. Box 457

Hampton, SC 29924

Phone: (803) 943-2111

amurdaugh@pmped.com

wbarnes@pmped.com

Attorneys for the Defendant

May 11, 2018
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
County of Richland)
UNIVERSITY MOTORS, INC.,)
PLAINTIFF,)
vs.)
MAURICE DAWKINS,)
DEFENDANT,)

COURT OF COMMON PLEAS
2018CP4000187

TRANSCRIPT OF RECORD

January 28, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

ROBERT JACKMAN, ESQ.
Attorney for the Plaintiff

FRANKLIN BARNES, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Okay. We're on the record in
2 2018-CP-40-187. This is University Motor Company vs.
3 Maurice Dawkins. Mr. Jackman is here on behalf of the
4 plaintiffs, and Mr. Barnes, Franklin Barnes, is here on
5 behalf of the defense.

6 You don't have that said many times, do you, Mr.
7 Barnes?

8 MR. BARNES: I don't, Judge.

9 THE COURT: Make a record of it.

10 All right. We're here on the plaintiff's motion to
11 compel. Tell me what's going on, Mr. Jackman.

12 MR. JACKMAN: Actually, I think it would be
13 appropriate to hear defendant's motion to dismiss first.

14 THE COURT: Okay.

15 MR. JACKMAN: And if -- you know, the case is not
16 dismissed, obviously, I think we're going do a scheduling
17 order for 30 days on the discovery.

18 THE COURT: Okay. All right. Is that okay with you,
19 Mr. Barnes?

20 MR. BARNES: I'll have a proposal that I think might
21 resolve everything.

22 THE COURT: Okay. All right. Sounds good.

23 MR. BARNES: Thank you, Your Honor. May it please
24 the Court. William Barnes here for the defendant, Maurice
25 Dawkins.

1 Your Honor, this is a -- as the roster notes, a Claim
2 and Delivery action brought by University Motor Company
3 against Mr. Dawkins. This arises out of a July 26th,
4 2010, retail installment contract that Mr. Dawkins signed
5 related to a vehicle, a truck, a Toyota truck he
6 purchased.

7 Mr. Murdoch and I represented Mr. Dawkins in a case
8 he had that occurred in Hampton County on the morning of
9 August 21st of 2010, so roughly, three weeks to a month
10 after the purchase of the truck.

11 He stopped to help an overturned Budget Rental truck
12 blocking both southbound lanes of I-95, went back to the
13 Budget truck to get the two occupants of the truck out.
14 Some other folks stopped, as well.

15 In the process, after getting the folks out of the
16 overturned Budget truck, a tractor-trailer came along,
17 plowed into the Budget truck, damaged Mr. Dawkins' truck
18 and injured about four or five people. Fortunately, no
19 one was killed in that accident.

20 We handled the personal injury case. And there has
21 been some allegations that Mr. Murdoch was on notice of a
22 lien from the proceeds of this settlement, a guy by the
23 name of Clint Wokter or Wakter (phonetic), I hope I'm
24 saying that right, with University Motors. I think the
25 understanding was that we would agree to protect the

1 interest from the proceeds in the event there was no
2 negative damage done to Mr. Dawkins' credit.

3 This case played out over a period of several years.
4 Phillip and I tried a portion of it against the remaining
5 defendant in late 2017. At the time we settled with one
6 defendant, it was learned that Mr. Dawkins' credit had
7 been impacted, and there was some negative reporting on
8 his credit.

9 What occurred at that point in time, Mr. Murdoch let
10 Mr. Wakter know about the settlement proceeds and,
11 basically, said hey, part of our agreement was that there
12 would be no negative impact done to Mr. Dawkins' credit,
13 which there was. We believe that voids our agreement.

14 Mr. Wakter, obviously not happy, makes a complaint
15 against Mr. Murdoch based on Rule 1.15 of the Rules of
16 Professional Conduct, that he had an interest in these
17 proceeds. That process played out and was determined that
18 there was no obligation under the Rules of Professional
19 Conduct and that complaint was dismissed.

20 After that was dismissed in January of --
21 January 10th of 2018, the Summons and Complaint was filed
22 in this action, some -- almost seven-and-a-half years
23 after the alleged breach of this contract. And so, we
24 filed an answer on Mr. Dawkins' behalf in May of 2018,
25 included with that -- or we subsequently filed a motion to

1 dismiss based on the statute of limitations.

2 We asserted in our answer and the statute of
3 limitations an affirmative defense, and given the passage
4 of time here, we believe that 15-3-530, Subsection 1
5 governs a three-year statute of limitations for the breach
6 of contract action.

7 You, obviously, have the discovery rule. They
8 clearly had the ability to discover the breach of contract
9 shortly after Mr. Dawkins stopped making payments in
10 August or September of 2010.

11 And one proposal we had made, I spoke with
12 Mr. Jackman briefly before the hearing, I don't believe he
13 spoke with his client at University Motors, is that we
14 will tee this up before the Court on the issue of the
15 statute of limitations.

16 In the event the Court rules against us, we will
17 confess judgment -- Mr. Dawkins will confess judgment in
18 the amount of 15,262.78, which I believe is what
19 Mr. Wakter said he would be agreeable to accepting in
20 exchange for that.

21 We will also agree to waive any appellate right. The
22 inverse of that is they will also allow the Court to make
23 a determination on the statute of limitations and will
24 waive any appellate right, depending on what plays out and
25 how the Court rules on this statute of limitations issue.

1 I think he'll address whether he's talked to his client
2 and whether they agree with that proposal.

3 THE COURT: Okay. All right.

4 Mr. Jackman?

5 MR. JACKMAN: Thank you, Your Honor. I brought that
6 to my client in the past, a few months ago. At that point
7 in time, he wasn't super agreeable to it, but I'll bring
8 it up again. You know, sometimes it's sort of a situation
9 where you put the cost of an appeal in front of
10 somebody. --

11 THE COURT: Right.

12 MR. JACKMAN: -- that they start to see the light.

13 You know, I don't have any -- I don't think there's
14 any dispute as to the basic facts here. The question is
15 whether the defendant should be estopped from, basically
16 asserting the statute of limitations affirmative defense
17 based upon the conversations that they had with University
18 Motors through their counsel.

19 My memo that I filed on Wednesday, there was
20 correspondence between the two lawyers' offices. Our
21 contention is that they were placed on notice; that it was
22 an automated credit reporting system that we would have
23 addressed after the lien was satisfied back in 2011 when
24 they were put on notice of that.

25 Again, in 2017, that was when the dispute blew up

1 between Mr. Dawkins and University Motors about whether or
2 not, you know, the agreement still existed. But at that
3 point, you know, it had been beyond what the statute of --
4 been had, you know. We've -- we've not had that issue.

5 And, you know, basically, our intention is we didn't
6 really have any way of knowing whether or not they were
7 going to pay out of the claims of the settlement of this
8 automobile accident. That, you know, and on a motion for
9 dismissal, you know, the standard is pretty clear.

10 If there's any set of facts under which somebody can
11 move forward on it, it needs to be denied, and the
12 complaint basically says that there was an agreement. I
13 think, at the very least, discovery needs to play out,
14 figure out whether or not that was the case or not.

15 THE COURT: All right. Anything else, Mr. Barnes?

16 MR. BARNES: Nothing, Your Honor.

17 THE COURT: Okay. I'll let y'all know my decision by
18 the end of week. Thank you.

19 MR. JACKMAN: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 (Whereupon, the proceedings were concluded.)
22
23
24
25

CERTIFICATE OF REPORTER:

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 28th day of
January, 2019.

June 4, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
UNIVERSITY MOTOR COMPANY, INC.)
)
Plaintiff,)
)
v.)
)
MAURICE DAWKINS,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2018-CP-40-00187

DEFENDANT'S MOTION TO DISMISS

**TO: ROBERT P. JACKMAN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF,
UNIVERSITY MOTOR COMPANY, INC.:**

PLEASE TAKE NOTICE that the Defendant, Maurice Dawkins, moves at a date and time set by the Court for an order dismissing this action on the statute of limitations. The basis of this action is that the statute of limitations expired prior to the Plaintiff's filing of this lawsuit. For the reasons set forth below, this action must be dismissed.

This action arises out of a Retail Installment Contract and Security Agreement Defendant entered into on July 26, 2010 to purchase a vehicle for \$20,572.52 from Plaintiff. (Compl. ¶ 6). Plaintiff alleges that Defendant was to make 35 consecutive payments beginning on September 9, 2010. (Compl. ¶ 7). According to the Complaint, "Defendant has been delinquent on payments since August of 2010." (Compl. ¶ 8). On August 21, 2010, Defendant was involved in an automobile accident where the property was destroyed. (Compl. ¶ 9). Plaintiff filed this action against Defendant on January 10, 2018. (Compl.). After getting served on April 11, 2018 with the Summons and Complaint, Defendant filed his Answer on May 11, 2018. (Ans.). The Answer asserts as an affirmative defense the statute of limitation. (Ans. ¶ 7).

Under South Carolina law, an action for breach of contract must be brought within three years from the date the action accrues. S.C. Code Ann. § 15-3-530(1). "The discovery rule determines the date of accrual for a breach of contract action." Maher v. Tietex Corp., 331 S.C. 371, 376-77, 500

S.E.2d 204, 207 (Ct. App. 1998). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." Id. The Court of Appeals in Maier held the breach of contract claim is barred by the statute of limitations. Id. at 385, 500 S.E.2d at 211.

Based on the Plaintiff's allegations in the Complaint, Defendant defaulted on the contract nearly seven and a half years prior the filing of this action. As a result, the Summons and Complaint were filed more than three years from the accrual date in violation of § 15-3-530(1). Plaintiff's Complaint must be dismissed based on the expiration of the statute of limitation.

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

BY: /s/William F. Barnes, III
R. Alexander Murdaugh
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
amurdaugh@pmped.com
wbarnes@pmped.com
Attorneys for the Defendant

September 13, 2018
Hampton, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

University Motor Company, Inc.,

Plaintiff,

-v-

Maurice Dawkins,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2018-CP-40-0187
RETURN TO AND MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS

TO: DEFENDANT, BY AND THROUGH HIS COUNSEL R. ALEXANDER
MURDAUGH, ESQUIRE:

AND NOW come Defendant, by and through their undersigned counsel, and files the
within Return to and Memorandum of Law in Opposition of Defendant's Motion to Dismiss

I. STATEMENT OF FACTS

Plaintiff and Defendant entered into a Retail Installment Contract and Security Agreement
on July 26, 2010, in which Defendant agreed to purchase a vehicle for \$20,572.52 from Plaintiff.
Defendant agreed to pay the balance of the vehicle via 35 consecutive payments of \$502.02
beginning on September 9, 2010 and a final payment of \$501.82. Defendant became delinquent in
his payments in August of 2010.

Defendant's delinquency was caused, in part, due to an auto accident he was involved in on
August 21, 2010. The accident resulted in protracted litigation in Hampton County, whereby
Plaintiff 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, Plaintiff's counsel
sent correspondence to counsel for Defendant providing notice of Plaintiff's lien. A copy of this
letter is attached hereto as Exhibit "A." On September 27, 2011, Counsel for Plaintiff requested
that Defendant protect their interest as a loss payee and satisfy the lien out of any proceeds
received from the auto-wreck litigation. An Affidavit testifying to the authenticity of this letter is
attached hereto as Exhibit "B." The letter also noted that any adverse credit reporting would be
addressed by Plaintiff after the lien was satisfied. On April 25, 2017, almost six years after

receiving notice from Plaintiff. Defendant informed Plaintiff that he no longer intended to protect Plaintiff's interest in the lawsuit proceeds. Defendant has admitted the truth and accuracy of this document, which is attached hereto as Exhibit "C" along with Defendant's responses to Plaintiff's requests for admission. After failing to settle the matter out of court, this suit was filed on January 10, 2018. Defendant filed his motion to dismiss on September 13, 2018.

II. ARGUMENT

First, Plaintiff is in agreement with Defendant that 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. Defendant relies further on *Maheer v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Cl.App. 1998), which states that "the discovery rule determines the date of accrual for a breach of contract action." In *Maheer*, 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, *Maheer* also goes on to discuss certain defenses to a claim that the statute of limitations has run. First, *Maheer* notes that the doctrine of Estoppel has been invoked in a number of situations involving a statute of limitations. *See Maheer*, 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 (Cl.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. Fidex Corp., 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Cl.App. 1998) (quoting *Brayboy v. Ewing*, 311 S.C. 272, 273, 428 S.E.2d 731, 732 (Cl.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.*

In the case at bar, Plaintiff placed Defendant on notice of the lien in 2010 and of the credit reporting procedures in 2011. Plaintiff relied upon Defendant's representations that the lien amount would be protected until 2017, whereby Defendant decided to claim that Defendant no longer owed a duty to Plaintiff regarding the lien. See Exhibit C. As previously stated, Plaintiff notified Defendant in 2011 that the credit reporting issues would be resolved upon satisfaction of the lien. Defendant's claims in 2017 that these issues relieved him of his duty to protect Plaintiff's lien interest are, at best, disingenuous. Defendant's representations that he would protect the interests of Plaintiff during the pendency of the lawsuit were false and/or misleading and were relied upon by Plaintiff when it delayed the filing of a suit at an earlier date. Unlike the Respondent

in Maher, Plaintiff had no knowledge or means of knowledge regarding Defendant's intention to no longer protect its interest in the auto wreck settlement until Defendant provided Plaintiff with notice on April 25, 2017.

Plaintiff's complaint clearly alleges that Defendant agreed to satisfy its lien out of the proceeds of his automobile wreck litigation. 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 (Cl.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 Plaintiff to prevail if proven.

VI. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss should be denied and he 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 Plaintiff when it deferred filing this suit on the promise it would be paid out of proceeds of Defendant's automobile wreck litigation. Plaintiff has alleged these facts on the face of its complaint and as a result, Defendant's motion to dismiss cannot and should not be granted. *See Id.*

Respectfully Submitted,

MASELLA LAW FIRM, PA

s/Robert P. Jackman
Robert P. Jackman
917 Calhoun Street
Columbia, SC 29201
(803) 748-9990
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

January 23, 2019

EXHIBIT

A

MASELLA LAW FIRM, P.A.

Robert M.P. Masella
Attorney at Law

5 Palmetto Commons

December 6, 2010.

Richard H. Brundage, Jr.

517 Chestnut Street
Columbia, SC 29204
(803) 745-8900

Mr. Richard Alexander Murdaugh, Esq.
P.O. Box 457
Hampton, SC 29924-0457

Delivered via facsimile
(803) 914-2014

1325 West Garden Street
Columbia, SC 29207
(803) 533-0400

Facsimile
(803) 745-9200

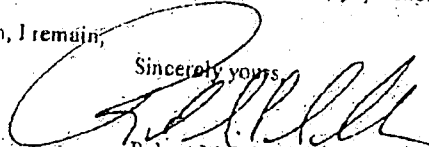
Re: Maurice Dawkins & University Motors Co., Inc.

Dear Mr. Murdaugh:

Thank you for taking my call today. As I mentioned I have a friend who is the owner of University Motor's Company, Inc., a used car dealer here in Columbia. They are the lien holder of Mr. Dawkins automobile. I have enclosed, for your information, the pay ledger which shows the pay off on the vehicle involved as \$12,858.56. Please contact me at your convenience if you have any questions.

With warm appreciation, I remain,

Sincerely yours,


Robert M.P. Masella

ELECTRONICALLY FILED - 2019 Jan 23 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

Bank of Montreal Company, Inc.
 Regular Payment Ledger Card Run By: DWACTOR On 12/08/2010 @ 12:15:57 P

Customer: DAWKINS, MAURICE
 Const: 50145
 Vehicle: 2004 GREEN TOYOTA TUNDRA
 VIN: 5TBET34154S45880 Tag: GKH17
 Payments: 35M @ \$502.02 & Last 1 @ \$501.82

Total Balance \$18,103.57
 Paid Due Amt \$1,537.06
 Accrued Interest \$376.89
 Rem Defr Interest \$6,221.50
 Prin Balance \$11,846.00

PayOff Amount: \$12,858.86
 Orig. Due: 08/09/2010
 Last Paid Date: 08/09/2010
 Next Due: 12/09/2010
 Pre-payment: \$0.00
 Start Balance: \$18,072.57

| Cd | Paid / Due | IntEam | Leib | AmtDue | OtherDus | AmtPaid | PaidDus | Payment Reference | Paid | Balance | User In | Web |
|----|-----------------------------------|--------|-------|----------|----------|---------|----------|-------------------|------|-----------|------------|-----|
| PR | 08/09/2010 PAY: PY-01: Recd 19534 | | | | | | | | | | | |
| PY | 09/09/2010 | 336.57 | 12.00 | 502.02 | 0.00 | 5.00 | 5.00 | VSR APRV 032297 | | 18,057.57 | RORYN LANE | |
| PY | 10/09/2010 | 327.27 | 12.00 | 502.02 | 0.00 | 0.00 | 509.02 | | 89 | 18,079.57 | JCHAMBERS | |
| PY | 11/09/2010 | 317.87 | 12.00 | 502.02 | 0.00 | 0.00 | 1,023.04 | | 58 | 18,091.57 | JCHAMBERS | |
| | | 981.66 | | 1,506.06 | | 5.00 | 1,537.06 | | 27 | 18,103.57 | JCHAMBERS | |
| | | | 36.00 | | 0.00 | | 1,537.06 | | | 18,103.57 | | |



MASELLA LAW FIRM, P.A.
Civil, Criminal & Family Litigation

10

FAX COVER SHEET

917 Calhoun Street, Columbia, South Carolina 29201 (803) 748-9990 (fax) (803) 748-9948
 1045 West Oakland Avenue, Rock Hill, South Carolina 29732 (803) 980-4400

| | |
|-------------------------|------------------------|
| Recipient: | <i>Mr. Mordough</i> |
| Recipient's Fax Number: | <i>914 2014</i> |
| Reference: | <i>Maurice Dawkins</i> |
| Date: | <i>12/6/10</i> |

SENT BY

- Urgent
- Reply ASAP
- Please comment
- Please review
- For your information

- ROBERT M. P. MASELLA
- S. PRENTISS COUNT'S
- REYNOLDS H. BLANKENSHIP, JR.
- EVA J. GLENN
- KERI HARLING
- DANA WILKES

Total pages, including cover: 3

Comments:

Thank you.

This message may contain information that is confidential or privileged under an attorney-client relationship. It is intended only for use of the individual or entity to which it is addressed, and any other dissemination, distribution, or copying of this communication is strictly prohibited and may be illegal under federal or state law. If you have received this communication in error, please notify us immediately by replying to this facsimile by telephone us at (803) 748-9990 (collect) and returning the facsimile by United States Mail to: 917 Calhoun Street, Columbia, South Carolina 29201. Thank you.

ELECTRONICALLY FILED - 2019 Jan 23 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2019CR4000187

ELECTRONICALLY FILED - 2019 Jan 23 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

TRANSMISSION REPORT

P.1

(MON) DEC 6 2010 18:28

User / Account :
DESTINATION : 18039142014
DEST. NUMBER : 18039142014

DOCUMENT# : 7528438-347
TIME STORED : DEC 6 18:28
TX START : DEC 6 18:28
DURATION : 38sec
COM. MODE : ECM

F-CODE :

PAGES : 3page
RESULT : OK



MASELLA LAW FIRM, P.A.
Civil, Criminal & Family Litigation

FAX COVER SHEET

917 Calhoun Street, Columbia, South Carolina 29201 (803) 748-9990 (fax) (803) 743-9948
1045 West Oakland Avenue, Rock Hill, South Carolina 29732 (803) 980-4300

| | |
|-------------------------|------------------------|
| Recipient: | <i>Mr. Woodruff</i> |
| Recipient's Fax Number: | <i>914 2014</i> |
| Reference: | <i>Harriet Dawkins</i> |
| Date: | <i>12/6/10</i> |

EXHIBIT

B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

University Motor Company, Inc.,

Plaintiff,

-v-

Maurice Dawkins,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2018 - CP-40-0187

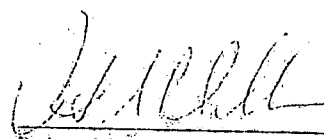
AFFIDAVIT OF ROBERT M.P.
MASELLA

I, Robert M.P. Masella, do hereby aver the following:

In 2010 my firm represented Plaintiff in this action and after hearing of the Defendant's automobile accident which included a vehicle which was financed by Plaintiff I contacted counsel for the Defendant. About the outstanding amounts due to Plaintiff, I was informed my client's interests would be protected and on December 6, 2010, I provided Mr. Murdaugh with a letter and payment ledger for the subject vehicle.

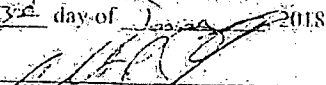
I again spoke with Mr. Murdaugh in September of 2011 and asked him to protect University Motors interest as loss payee among other things. I followed up with a letter dated September 27, 2011 which is attached as Exhibit A.

We agreed and I was assured by Mr. Murdaugh that once the Defendant's civil action was settled, my firm's client would be paid on the outstanding amounts due by Mr. Dawkins.



Robert M.P. Masella

SWORN TO BEFORE ME this
23rd day of January 2018.


Notary Public for South Carolina

My Commission Expires: 3/23/20

EXHIBIT

A

MASELLA LAW FIRM, P.A.

September 27, 2011

ROBERT M.P. MASELLA
ATTORNEY AT LAW

S. PRECINCTS COURTS

REPRESENTED BY H. BARKER, JR.

517 Calhoun Street
Columbia, SC 29201
(803) 746-9950

1045 West Orange Avenue
Rt. 1, Columbia, SC 29237
(803) 410-4400

FAX (803) 746-9346

Mr. Richard Alexander Murdaugh, Esq.
PO Box 457
Hampton, SC 29924-0457

10

RE: Maurice Dawkins v. University Motor Company, Inc.

Dear Mr. Murdaugh:

As we discussed over the phone last week, I am requesting you protect my client University Motor Company, Inc.'s interest, as loss payee, for the loan financing the 2004 Toyota Tundra he sold your client Maurice Dawkins.

Additionally, you requested I speak with University Motor Company, Inc. about Mr. Dawkins credit. University Motor Company, Inc.'s program automatically reports the payments made or missed to the credit bureaus. We are not able to do anything for Mr. Dawkins now; however, once the debt is paid my client will be able to make adjustments which should help Mr. Dawkins repair his credit as best as possible.

As of now we are showing Mr. Dawkins owes a balance financed of \$11,680.55 and interest earned on the loan of \$3,421.78 for a total of \$15,102.33.

Please contact me if you have any questions. With kind regards, I remain,

Sincerely yours,

ROBERT M. P. MASELLA, ESQ.
MASELLA LAW FIRM, P.A.
917 Calhoun Street
Columbia, SC 29201

RMPM/ejg

cc: University Motor Company, Inc.

ELECTRONICALLY FILED - 2019 Jan 23 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

EXHIBIT

C

| | | |
|---------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF RICHLAND |) | CIVIL ACTION NO.: 2018-CP-40-0187 |
| |) | |
| University Motor Company, Inc., |) | |
| Plaintiff, |) | |
| |) | DEFENDANT'S RESPONSE |
| v. |) | TO PLAINTIFF'S SECOND |
| |) | REQUESTS FOR ADMISSIONS |
| Maurice Dawkins, |) | |
| Defendant. |) | |

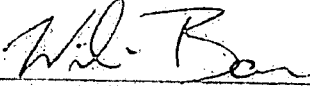
TO: ROBERT P. JACKMAN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF, UNIVERSITY MOTOR COMPANY, INC.;

The Defendant, Maurice Dawkins, (hereinafter "Defendant"), responds to Plaintiff's Second Requests for Admissions as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of a letter sent by your attorney to Plaintiff on April 25, 2017.

RESPONSE: Defendant admits.

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

By: 

William E. Barnes, III
R. Alexander Murdaugh
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Attorneys for Defendant

August 29, 2018
Hampton, South Carolina

EXHIBIT

A

Law Offices
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION
OVER 100 YEARS OF LEGAL SERVICE EST. 1916

JOHN I. PARKER
DAVID E. HENDERSON
MARK D. LILL
RANDOLPH MURDAUGH, II
KORNEI I. CROSEY
R. ALEXANDER MURDAUGH
REH C. VITSEY, II
RANDOLPH MURDAUGH III
GRAHAM E. HOLMES
LEE D. COFF
MATTHEW V. CREECH
LEAGUE E. GRICH
STEVEN D. MURDAUGH
WILLIAM T. BARNES, III
AUSTIN H. CROSEY
REBE E. ALGER

RANDOLPH MURDAUGH, SR.
1987-1993
RANDOLPH MURDAUGH, II
1915-1983
J. RONDEE FITZRE, JR.
1927-2000
J. PAUL DETRICK
1946-2016
CLYDE A. ELTZROTH III - RET.

April 25, 2017

University Motor Company, Inc
633 S. Assembly Street
Columbia, SC 29201


Re: *Maurice Dawkins*

Dear Sir or Madam:

I have recently learned that you have caused the placement of negative entries on Maurice Dawkins' credit. As you know, we sent you a letter of protection confirming that payment would be made directly out of lawsuit proceeds in return for you holding his billings and not reporting to credit agencies. By negatively reporting, you have voided the letter of protection. You are hereby advised that I will disburse these funds to Maurice Dawkins on May 10, 2017. If you want to discuss this matter please feel free to contact me.

With kind regards, I am

Sincerely,



R. Alexander Murdaugh

RAM/khj

MAILING: PO BOX 457, HAMILTON, SOUTH CAROLINA 29924-0457
TELEPHONE (803) 943-2111 • TOLL FREE (866) 943-2113 • FACSIMILE (803) 943-3943 • WEBSITE: www.pmped.com

ELECTRONICALLY FILED - 2019 Jan 23 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000187

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

University Motor Company, Inc.,

-v-
Maurice Dawkins,

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2018-CP-40-0187

MOTION TO RECONSIDER

Plaintiff University Motor Company, Inc. (hereinafter "UCMI") moves this Court to reconsider this matter pursuant to Rule 59, SCRPC and has submitted this motion within ten (10) days of the notice of the entry of judgment of the Court's Order filed February 12, 2019. In its Order, the Court failed to address the issue of whether Defendant should be estopped from asserting the statute of limitations defense based upon his representations to UCMI in 2010 that UCMI's lien would be protected and Defendant's subsequent representations in 2017 that UCMI's lien would not, in fact, be protected. UCMI also believes the Order of Dismissal did not address how UCMI could have had discovered Defendant's true intentions prior to the statute of limitations deadline.

I. STATEMENT OF FACTS

UCMI and Defendant entered into a Retail Installment Contract and Security Agreement on July 26, 2010 in which Defendant agreed to purchase a vehicle for \$20,572.52 from UCMI. Defendant agreed to pay the balance of the vehicle via 35 consecutive payments of \$502.02 beginning on September 9, 2010 and 1 final payment of \$501.82. Defendant became delinquent in his payments in August of 2010.

Defendant's delinquency was caused, in part, due to an automobile accident he was involved in on August 21, 2010. The accident resulted in protracted litigation in Hampton County, whereby Defendant filed suit against several different entities. The case number for the lawsuit is 2011-CP-25-00252. On December 6, 2010, prior to the initiation of litigation, UCMI's

counsel sent correspondence to counsel for Defendant providing notice of UCMI's lien. A copy of this letter is attached hereto as Exhibit "A." Additionally, at some point, Counsel for Defendant reaffirmed Defendant's intention to protect UCMI's lien out of the lawsuit settlement proceeds. This letter of protection was acknowledged in Defendant's Counsel's letter to UCMI on April 25, 2017, which is attached hereto as Exhibit "B." On September 27, 2011, Counsel for UCMI requested that Defendant protect their interest as a loss payee and satisfy the lien out of any proceeds received from the auto mobile accident litigation. An Affidavit testifying to the authenticity of this letter is attached hereto as Exhibit "C." The letter also noted that any adverse credit reporting would be addressed by UCMI after the lien was satisfied. On April 25, 2017, almost six years after receiving notice from UCMI, Defendant's counsel informed UCMI, via written correspondence that he no longer intended to protect UCMI's interest in the lawsuit proceeds. Defendant has admitted the truth and accuracy of this document, which is attached hereto as Exhibit "D" along with Defendant's responses to UCMI's requests for admission. While Defendant's letter to UCMI claims the prior letter of protection is void, it fails to account for UCMI's notice provided on September 27, 2011, which specifically states UCMI could not effect any changes to the credit reports. It was only on April 25, 2017, that UCMI truly received notice that Defendant did not intend to honor his contractual obligations and at that time did a cause of action accrue against Defendant. After discovering Defendant did not comply with his obligation, UCMI filed this suit on January 10, 2018, less than eight months after UCMI received notice of Defendant's failure to honor his end of the contract. Defendant filed his motion to dismiss on September 13, 2018.

II. ARGUMENT

Initially, UCMI agrees that 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. Further, Defendant relies on *Maier v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Cl.App. 1998), which states that "the discovery rule determines the date of accrual for a breach of contract action." In *Maier*, 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, *Mahe*r goes further and discusses certain defenses to a claim that the statute of limitations has expired. First, *Mahe*r notes that the doctrine of Estoppel has been invoked in a number of situations involving a statute of limitations. See *Mahe*r, 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 (Cl.App. 1997)). The Court also noted that estoppel was 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.

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

The Court in *Mahe*r 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.*

In the case at bar, UCMI placed Defendant's counsel on notice of the lien in 2010 and of the credit reporting procedures in 2011. UCMI relied upon Defendant's counsel's representations (which can be attributed to his client's) that the lien amount would be protected using proceeds from Defendant's personal injury settlement until 2017; when Defendant provided notice in writing to UCMI that he no longer intended to satisfy UCMI's lien. See *Shelton v. Bressant*, 312 S.C. 183, 312 S.C. 208, 439 S.E.2d 833 (1993) (client bound by attorney's actions in settlement of a case; acts of attorney are directly attributable to and binding upon client); See *Exhibit D*. Defendant also acknowledged in his 2017 letter to UCMI that he had previously notified UCMI in writing that he intended to pay UCMI from his lawsuit proceeds. *Id.* UCMI notified Defendant in 2011 that the credit reporting issues would be resolved upon satisfaction of the lien. Defendant has not disputed that he received notice of UCMI's position in 2011 and has not provided the Court with any evidence that he gave any written notice prior to 2017 that he intended to withdraw the promise to protect UCMI's interests by paying UCMI what was owed from the automobile accident personal injury proceeds. Defendant's claims in 2017 that these issues relieved him of his duty to protect UCMI's lien interest are, at best, disingenuous. Defendant's representations that he would protect the interests of UCMI during the pendency of the lawsuit were false and/or misleading and were relied upon by UCMI when it delayed the filing of a suit at an earlier date. Unlike the Respondent in *Maher*, UCMI had no knowledge or means of knowledge regarding Defendant's intention to no longer protect its interest in the automobile wreck settlement until Defendant provided UCMI with notice on April 25, 2017.

UCMI's complaint clearly alleges that Defendant agreed to satisfy its lien out of the proceeds of his automobile accident, personal injury litigation. 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 (Cl.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 UCMI to prevail if proven.

VI. CONCLUSION

For the foregoing reasons, The Court should reconsider granting Defendant's motion to dismiss and should estopp him 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 Plaintiff when it deferred filing this suit on the assurance that UCMI's lien would be paid out of proceeds of Defendant's automobile accident litigation. UCMI could not have discovered Defendant's true intentions prior to Defendant's 2017 letter. UCMI has alleged these facts on the face of its complaint and as a result, Defendant's motion to dismiss cannot and should not be granted. *See id.*

Respectfully Submitted

s/Robert P. Jackman
Robert P. Jackman
917 Calhoun Street
Columbia, SC 29201
(803) 748-9990
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

February 21, 2019

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-40-0187

Maurice Dawkins

Respondent,

v.

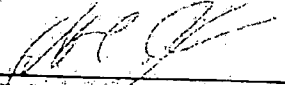
University Motor Company,
Inc.,

Appellant.

NOTICE OF APPEAL

Appellant University Motor Company (Plaintiff) appeals the Order of the Honorable Robert E. Hood dated February 14, 2019. Appellant received written notice that its motion to reconsider was denied on April 2, 2019.

April 5, 2019


Robert P. Jackman
SC Bar No. 78755
917 Calhoun Street
Columbia, SC 29201
Tel: (803) 748-9990
rjackman@masellaalaw.com

Other Counsel of Record:
William F. Barnes, III
Peters, Murdaugh, Parker, Eltzroth & Detrick
P.O. Box 457
Hampton, SC 29924
Phone 803) 943-2111

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

University Motor Company, Inc.,

Plaintiff,

-v-

Maurice Dawkins,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action #: 2018 -CP-40-0187

CERTIFICATE OF SERVICE

I, MacKenzie Wise, paralegal at Masella Law Firm, P.A., do hereby certify that the Plaintiff's request for transcript and a copy of Plaintiff's Notice of Appeal were served upon Respondent/Defendant by depositing said papers via US Mail, postage prepaid, on this 1st day of May, 2019, with the first class postage duly affixed thereto and addressed as follows:

R. Alexander Murdaugh
William Franklin Barnes, III
P.O. Box 457
Hampton, SC 29924



MacKenzie Wise, Paralegal
MASELLA LAW FIRM, P.A.
917 Calhoun Street
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 24 2019

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

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 10, 2019



Robert P. Jackman
Masella Law Firm, P.A.
917 Calhoun Street
Columbia, SC 29201
SC Bar No. 78755
(803) 748-9990
Attorney for Appellant