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SC Court of Appeals

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Charleston Laboratories, Inc., Plaintiff, vs. Womble, Carlyle, Sandridge & Rice, LLP, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3768 **ORDER GRANTING DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING SUMMARY JUDGMENT**

BACKGROUND

On October 22, 2019 the Court denied Defendant's ("Womble") Summary Judgment Motion. On October 31, 2019, Defendant thereby filed a Motion to Reconsider. On December 5, 2019, the Court instructed the parties to submit briefs on the issue of the applicability of the statute of limitations only, which is now before the Court. After a review of the materials, the Court hereby grants Defendant's Motion to Reconsider, and grants Summary Judgment as to the Statute of Limitations issue.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 61; 504 S.E.2d 117, 121 (1998) *(citing Hamiter v. Ret. Div. of S.C. Budget & Control Bd.*, 326 S.C. 93, 96, 484 S.E.2d 586, 587 (1997)).

"Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130; 558 S.E.2d 271, 273 (Ct. App. 2001) (*citing Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476; 523 S.E.2d 795 (Ct. App. 1999)). Once the party seeking summary judgment asserts that a genuine issue of

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material fact does not exist, the opposing party may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115; 410 S.E.2d 537, 545 (1991) (*citing* Rule 56(e), SCRCP; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87; 106 S. Ct. 1348, 1356 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323; 106 S. Ct. 2548, 3553-53 (1986)).

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Guald v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 559; 671 S.E.2d 79, 85 (Ct. App. 2008) (citations omitted). "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Id.*

DISCUSSION

The statute of limitations for the cause of action alleged in the Complaint is three years. S.C. Code Ann. § 15-3-530; *Stokes-Craven Holding Corp.*, 416 S.C. at 525, 787 S.E.2d at 489 ("The statute of limitations for a legal malpractice action is three years."). Under South Carolina law, the statute of limitations begins to run when "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535; *see also Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009). Knowledge of the full extent of damages, or even the possibility of damages at all, is immaterial for purposes of a plaintiff being on notice. *Dean*, 321 S.C. at 363, 468 S.E.2d at 647; *see also Binkley v. Burry*, 352 S.C. 286, 297-98, 573 S.E.2d 838, 844-45 (Ct. App. 2002). Thus, this Court analyzes the statute of limitations issue under the purview of when Charleston Laboratories, Inc. ("Charleston Labs") knew or should have known there was a possibility of a claim against Womble.

Under the present facts, the Court concludes that Charleston Labs was aware, or should have been aware, that it had a claim against Womble no later than 2010. On March 25, 2010 David Baddour of Womble had told Charleston Labs' CEO and sole Board Member, Paul Bosse, "if [Dr.

T] doesn't agree to the package it is likely that he'll have a claim on the vested portion of his stock. If [Charleston Laboratories] does nothing to change the status quo, it is likely that [Dr. T] will simply sit tight and do nothing, until such time as the stock becomes worth something, which is when he'll file suit. (March 25, 2010 email from David Baddour to Paul Bosse.) Then, on May 18, 2010, Dr. T's attorney contacted Charleston Labs and stated that it was Dr. T's position that he owned at least 4.25% of the fully diluted equity. (May 18, 2010 email from David Willbrand to David Baddour). These two communications put Charleston Labs on notice, or should have put Charleston Labs on notice, that there was a possibility of a claim against Womble. A plaintiff's ignorance of the "full extent of the damage is immaterial" in setting the accrual date. *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

> [O]nce a reasonable person has reason to believe that some right of his has been invaded or that some claim against another party might exist, the requirement of reasonable diligence to investigate this information further takes precedence over the inability to ascertain the amount of damages or even the possibility that damages may be forthcoming at all.

Binkley v. Burry, 352 S.C. 286, 297-98, 573 S.E.2d 838, 844-45 (Ct. App. 2002) (internal quotations omitted). As noted above, the statute of limitations begins to run from the point of some injury and "not when advice of counsel is sought or full-blown theory of recovery is developed." *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993). Charleston Labs had a duty to exercise reasonable diligence and act with some promptness to investigate further what allowed Dr. T to have a claim when they received the two email communications on March 25, 2010 and May 18, 2010. Thus, the three-year statute of limitations on their claim has expired because they knew or should have known about a possibility of the claim in Spring, 2010.

CONCLUSION

Therefore, Defendant's Motion to Reconsider the Order Denying Summary Judgment in regard to the statute of limitations is granted.

And it is SO ORDERED.

Charleston, South Carolina

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Charleston Common Pleas

Case Caption: Charleston Laboratories Inc VS Womble Carlyle Sandridge & Rice LLP

Case Number: 2017CP1003768

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134