

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.

This matter came before the Court upon Plaintiff's Motion to Restore, which was filed December 7, 2020. A hearing was held on January 5, 2021 via WebEx with consent of all parties. Present at the hearing were Brian T. Smith, counsel for Plaintiff and Martin Kyle Thompson, counsel for Defendants.

On May 6, 2019, all parties consented to the matter being stricken from the roster under South Carolina Rules of Civil Procedure, Rule 40(j). "Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period." Maxwell v. Genez, 356 S.C. 617, 621, 591 S.E.2d 26, 28 (S.C. Sup. Ct. 2003). Upon a motion to restore, the Court may consider the statute of limitations. Personal Care, Inc. v. Theos, 426 S.C. 78, 86, 825 S.E.2d 281, 285 (S.C. Ct. App. 2019). In this case, Defendants argue that the Statute of Limitations has expired and the matter should not be restored. Plaintiff asserts the Statute of Limitations are tolled because of provisions in the S.C. Probate Code and for other equitable reasons. Therefore, the Court grants Plaintiff's Motion to Restore, but does not address the issue of whether the Statute of Limitations is applicable, which can be challenged by Defendants in subsequent proceedings. Plaintiff's case shall be restored upon payment of the filing fee to the Clerk of Court.

It is so Ordered.



Greenville Common Pleas

Case Caption: Lemore Young vs. Darius Jerard Allen , defendant, et al

Case Number: 2017CP2300523

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755