

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In the Court of Common Pleas

Frank Addy, Jr., Circuit Court Judge

Case No. 2021-CP-36-00349

Appellate Case No. 2021-000179

Daniel Pruitt, Appellant,

v.

Kyle Parker, Pope & Hudgens Attorneys, PA, Respondents.

**FINAL BRIEF OF RESPONDENTS KYLE PARKER AND POPE & HUDGENS
ATTORNEYS, PA**

John E. Cuttino (S.C. Bar No. 1519)
Jessica W. Laffitte (S.C. Bar No. 100256)
GALLIVAN, WHITE & BOYD, P.A.
P.O. Box 7368
Columbia, South Carolina 29205
Telephone: (803) 779-1833
Facsimile: (803) 779-1767
ATTORNEYS FOR RESPONDENT

RECEIVED

AUG 24 2021

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....3

STANDARD OF REVIEW.....5

ARGUMENT6

 I. The Circuit Court Did Not Err in Dismissing the Complaint Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.....6

 A. The Circuit Court Appropriately Dismissed Appellant’s Legal Malpractice Complaint for Failure to File the Required Expert Affidavit7

 B. The Circuit Court Appropriately Dismissed Appellant’s Legal Malpractice Complaint for Lack of Proximate Cause and Damages.....8

 II. The Circuit Court Did Not Err in Dismissing the Complaint on the Grounds that it was Barred by the Statute of Limitations.....10

CONCLUSION13

TABLE OF AUTHORITIES

Cases

<i>Argoe v. Three Rivers Behavioral Center</i> , No. 2007-CP-32-1981, 2008 WL 8185836 (S.C. Com. Pl. July 03, 2008)	7
<i>Barnes v. Seigler</i> , No. CIV.A. 5:11-1156-MBS, 2012 WL 265409 (D.S.C. Jan. 30, 2012)	8
<i>Benton v. Roger C. Peace Hosp.</i> , 313 S.C. 520, 443 S.E.2d 537 (1994)	11
<i>Doe v. Howe</i> , 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005)	8, 9
<i>Eadie v. Krause</i> , 381 S.C. 55, 671 S.E.2d 389 (Ct. App. 2008)	8
<i>Gentry v. Yonce</i> , 337 S.C. 1, 522 S.E.2d 137 (1999)	6
<i>Gray v. State Farm Auto Ins. Co.</i> , 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997)	6
<i>Hadfield v. Gilchrist</i> , 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000)	5
<i>Harris Teeter, Inc. v. Moore & Van Allen, PLLC</i> , 390 S.C. 275, 701 S.E.2d 742 (2010)	6, 7, 9
<i>Henkel v. Winn</i> , 346 S.C. 14, 550 S.E.2d 577 (Ct. App. 2001)	6, 8
<i>H & H of Johnston, LLC v. Old Republic Nat. Title Ins. Co.</i> , 405 S.C. 469, 748 S.E.2d 72 (Ct. App. 2013)	8
<i>Holmes v. Haynsworth, Sinkler, & Boyd, P.A.</i> , 408 S.C. 620, 760 S.E.2d 399 (2014)	9
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	10
<i>Kreutner v. David</i> , 320 S.C. 283, 465 S.E.2d 88 (1995)	12
<i>Maher v. Tietex Corp.</i> , 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998)	11, 12
<i>Mali v. Odom</i> , 295 S.C. 78, 367 S.E.2d 166 (Ct. App. 1988)	7
<i>Manning v. Quinn</i> , 294 S.C. 383, 356 S.E.2d 24 (1988)	9
<i>Parks v. Characters Night Club</i> , 345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001)	5, 6
<i>Roe v. Doe</i> , 28 F.3d 404 (4th Cir.1994)	11
<i>RWE NUKEM Corp. v. ENSR Corp.</i> , 373 S.C. 190, 644 S.E.2d 730 (2007)	10

<i>Rydde v. Morris</i> , 381 S.C. 643, 675 S.E.2d 431 (2009)	6
<i>Santee Portland Cement Co. v. Daniel Int'l Corp.</i> , 299 S.C. 269, 384 S.E.2d 693 (1989)	10
<i>Snell v. Columbia Gun Exch., Inc.</i> , 276 S.C. 301, 278 S.E.2d 333 (1981)	11
<i>State v. McClinton</i> , 369 S.C. 167, 631 S.E.2d 895 (2006)	10
<i>State v. Burton</i> , 356 S.C. 259, 589 S.E.2d 6 (2003)	7
<i>Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.</i> , 280 S.C. 232, 312 S.E.2d 20 (Ct. App. 1984)	5
<i>Wiggins v. Edwards</i> , 314 S.C. 126, 442 S.E.2d 169 (1994)	11
<i>Williams v. Condon</i> , 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)	6

Statutes

S.C. Code Ann. § 18-7-170	5
S.C. Code Ann. § 15-36-100.....	2, 7, 8
S.C. Code Ann. § 15-3-530.....	10

Court Rules

Rule 12(b)(6), SCRCPP	1, 6
Rule 220 (c) SCACR	10

Other:

Wilburn Brewer, Jr., Expert Testimony in Legal Malpractice Cases, 45 S.C. L. REV. 727, 766 (1994)	8
---	---

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court erred in ordering a dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.**

- II. Whether the Circuit Court erred in ordering a dismissal pursuant to Sections 15-3-530(1) of the South Carolina Code.**

STATEMENT OF THE CASE

On May 19, 2020, Appellant Daniel Pruitt filed this legal malpractice action in Magistrate's Court, against Respondent Kyle Parker and Respondent Pope & Hudgens, P.A. arising from Respondents' representation of Appellant in a probate matter regarding his uncle's wills, and challenges thereto. Appellant sought "the return of all lawyer fees in the amount of \$7,174.33 plus interest" and contended that the "lack of communication, the ineffective assistance of counsel, and the obvious conflict of interest makes this case of attorney misconduct egregious and the return of all fees justified." (ROA p. 6). Respondent did not support his Complaint with an expert affidavit, as required by S.C. Code Ann. § 15-36-100(B).

On June 18, 2020, Respondents filed an Answer to the Complaint in Magistrate's Court and on June 25, 2020, Respondents filed a Motion to Dismiss or, alternatively, for Summary Judgment, which was heard on July 13, 2020. On July 17, 2020, Judge Barry Koon, Magistrate in Newberry County, granted Respondents' Motion. Judge Koon's Order found that Appellant had not established a cause of action for professional negligence/legal malpractice as to Respondents. He further found that construing Appellant's Complaint liberally and in the light most favorable to Appellant, the Complaint could also be read as asserting a cause of action for breach of contract, but that such claim would be barred by the three (3) year statute of limitations per S.C. Code § 15-3-530(5).

On August 14, 2020, Appellant filed a notice of appeal with the Circuit Court pursuant to Rule 18(a) of the South Carolina Rules of Magistrates Court. The Circuit Court heard arguments on January 11, 2021 and affirmed the Magistrate's order on January 13, 2021 (the "Order"). The Circuit Court found that Appellant failed to file an expert affidavit in support of the professional negligence allegedly committed by Respondents. The Circuit Court also held that after the

Probate Court relieved Respondents as counsel, Appellant retained new counsel and was ultimately successful in the underlying litigation. The Circuit Court therefore held that per case law, Appellant had suffered no injury. Furthermore, the Circuit Court also agreed with the Magistrate Court that Appellant knew or should have known of any alleged breach of contract as early as December 11, 2016, but certainly no later than February 22, 2017 when Respondents were relieved as counsel and therefore, Appellant's May 19, 2020 filing of the Complaint was not within the applicable statute of limitations which expired, at the latest, on February 22, 2020.

Appellant filed a Notice of Appeal with this Court on February 10, 2021.¹

STATEMENT OF FACTS

On March 10, 2014, Appellant Daniel Pruitt signed a retainer with Respondents in a probate matter regarding his uncle's wills. (ROA p. 3). Appellant alleged that a new will, drafted during his uncle's dementia and just before his death and excluding his original heirs, was invalid and not of his uncle's own doing. (ROA p. 3). Appellant contends that as the months wore on after hiring Respondents, he complained to them about the lack of progress on the matter. (ROA p. 3). Appellant contends that Respondent Parker's filing of summary judgment, and the motion's subsequent denial in July 2016, was inappropriate and that Respondent Parker failed to communicate Appellant's issues regarding the will to the court. (ROA p. 3).

In his Complaint filed in Magistrate's Court, Appellant contended that Respondent Parker's trial strategy, including the noticing of the depositions of his uncle's doctors, was redundant and unnecessary in the face of affidavits from them. (ROA p. 4). Appellant notes that in August 2016, after receiving a settlement offer from the opposition, Appellant wrote to

¹ It was received by the Court on February 16, 2021.

Respondent Parker expressing his frustrations with the case and the opposing counsel, including opposing counsel's alleged acting as a witness to the new and challenged will. (ROA p. 4).

Appellant contends that over the next several months, he also sent Respondent Parker several emails and a voicemail regarding opposing counsel, but did not receive a response from Respondent Parker. (ROA pp. 4-5). In response to a December 6, 2016 email correspondence from Appellant, Respondent Parker informed Appellant that moving to disqualify opposing counsel was an option if that was the course Appellant wanted to pursue. (ROA p. 5). Respondent Parker also explained that he believed he had responded to Appellant's previous emails, but learned there had been an unexplained issue with their email system. (ROA p. 5). Appellant responded on December 11, 2016, stating in pertinent part: "Coincident with nearly three years of foot dragging, non-zealous representation for his client, but an uncomfortably high regard for lawyer Pyatt [opposing counsel] by lawyer Parker. I've lost confidence in lawyer Parker and Pope & Hudgens. Return your fees, \$6,674.33 and I'll seek new counsel." (ROA p. 5).

The parties thereafter exchanged several emails, with Respondent Parker noting that if Appellant would not take his advice about trial strategy, he would move to be relieved from representation, further noting that it was clear there was a breakdown in the attorney-client relationship, and confirming he would move to withdrawal as counsel. (ROA pp. 5-6). Appellant continued to be dissatisfied with Respondent Parker's representation and strategic choices, contending that Respondent Parker had "mucked" up the case and insisting he "need[s] his money back" and later demanding Respondent Parker "[r]eturn your fees" and he will find new counsel. (ROA pp. 5-6).

Respondents indeed filed a Motion to Withdraw as counsel in the Probate Court and on February 22, 2017 the motion was granted by Probate Court Judge Nobles.² Appellant also received his case file on February 17, 2017. (ROA p. 6). Appellant contends that upon receipt of his file, he found a November 20, 2013 internal memo noting a conversation with James Bookman regarding the desire for Appellant's uncle to change his will. (ROA p. 6). Appellant contends this is was a conflict of interest, requiring disclosure and waiver by him.

In his Complaint, Appellant sought "the return of all lawyer fees in the amount of \$7,174.33 plus interest" and contended that the "lack of communication, the ineffective assistance of counsel, and the obvious conflict of interest makes this case of attorney misconduct egregious and the return of all fees justified." (ROA p. 6).

STANDARD OF REVIEW

Because this case originated in Magistrate's Court, South Carolina Code Ann. Section 18-7-170 (1985) is applicable. Specifically, Section 18-7-170 provides that on appeal from Magistrate's Court, the Circuit Court may make its own findings of fact. *Parks v. Characters Night Club*, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001); *see also Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 312 S.E.2d 20 (Ct. App. 1984). However, on appeal from a Circuit Court's affirmance of a magistrate's order, an appellate court's scope of review is more limited. The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law. *Hadfield v. Gilchrist*, 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000). Thus, this Court's review is limited whether the Circuit Court order is

² Perplexingly, Appellant opposed Respondents' Motion to Withdraw despite his demands of and complaints about Respondents.

controlled by an error of law or is unsupported by the facts. *Parks*, 345 S.C. 490, 548 S.E.2d at 608.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *See Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case). Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001).

ARGUMENT

I. The Circuit Court Did Not Err in Dismissing the Complaint Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

In order to prevail in a cause of action for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (citing *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). Failure to establish any one of the four elements of legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001).

“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003).

The Circuit Court affirmed the dismissal of Appellant’s legal malpractice Complaint for two reasons: failure to file an expert affidavit and lack of a legally cognizable injury. This Court should affirm.

A. The Circuit Court Appropriately Dismissed Appellant’s Legal Malpractice Complaint for Failure to File the Required Expert Affidavit

“[G]enerally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony.” *Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745. A plaintiff in a legal malpractice case must ordinarily establish by expert testimony the standard of care, unless the subject matter is of common knowledge to laypersons. *Mali v. Odom*, 295 S.C. 78, 80, 367 S.E.2d 166, 168 (Ct. App. 1988). Indeed, the reasoning behind the expert affidavit requirement is that a “layperson does not possess the requisite knowledge of the duties and responsibilities of an attorney who is acting within the context of property transfers and probate proceedings to be able to properly evaluate whether such an attorney performed his duties in keeping with the standard of care.” *Argoe v. Three Rivers Behavioral Center*, No. 2007-CP-32-1981, 2008 WL 8185836 (S.C. Com. Pl. July 03, 2008).

The requirement of an affidavit is also codified. In an action for damages against an attorney, “the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B). If the affidavit is not timely filed, “the complaint is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1).

It is undisputed that Appellant did not, and has not, filed the mandatory expert affidavit. Additionally, the “common knowledge” exception is inapplicable. *See H & H of Johnston, LLC v. Old Republic Nat. Title Ins. Co.*, 405 S.C. 469, 474, 748 S.E.2d 72, 74 (Ct. App. 2013) (affirming dismissal of claims against attorney pursuant to § 15-36-100 because plaintiff failed to file expert affidavit); *Barnes v. Seigler*, No. CIV.A. 5:11-1156-MBS, 2012 WL 265409, at *2 (D.S.C. Jan. 30, 2012) (dismissing *pro se* plaintiff's legal malpractice claim for failure to file expert affidavit and holding that for breaches of professional duty arising exercise of legal judgment, more than “common knowledge” is required to evaluate whether his actions violate the standard of care owed by members of his profession).

Even viewing the Complaint in a light most favorable to Appellant, Appellant's failure to file the required expert affidavit is fatal to this action and this Court should affirm the Circuit Court's Order.

B. The Circuit Court Appropriately Dismissed Appellant's Legal Malpractice Complaint for Lack of Proximate Cause and Damages.

As noted, a failure to establish any one of the four elements of legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel*, 346 S.C. at 18, 550 S.E.2d at 579. In establishing proximate cause in a South Carolina legal malpractice action, the plaintiff must establish that the attorney's negligence was a “but for” cause of the plaintiff's damages. *See Eadie v. Krause*, 381 S.C. 55, 64, 671 S.E.2d 389, 393 (Ct. App. 2008).

“In order to prove causation in these cases, the plaintiff must prove that but for the attorney's conduct, the plaintiff would have obtained a better outcome in the underlying case.” *Id.* “Under the case-within-a-case concept, the test is objective. Therefore, the test is not what the outcome *would have been*, but rather what it *should have been*.” *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2007) (emphasis added) (citing Wilburn Brewer, Jr., *Expert*

Testimony in Legal Malpractice Cases, 45 S.C. L. Rev. 727, 766 (1994)). “The question of the success of the underlying claim . . . is a question of law.” *Id.* (citing *Manning v. Quinn*, 294 S.C. 383, 386, 356 S.E.2d 24, 25 (1988) (holding that likelihood of success of underlying case was a question of law “and decision of that question on summary judgment motion is appropriate”).

Moreover, expert testimony is typically required to prove proximate cause. Indeed, integral to defeating summary judgment on a claim for legal malpractice is expert testimony expressly stating that the Plaintiff “most probably” would have obtained a better result in the underlying matter “but for” the alleged breach of an attorney's standard of care. *See Doe v. Howe*, 367 S.C. at 445-46, 626 S.E.2d 25 (Ct. App. 2005) (affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have received a greater settlement “but for” the attorney's breach of the standard of care); *Harris Teeter*, 390 S.C. at 290-91, 701 S.E.2d 750 (affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have obtained a better outcome had the attorneys not breached their standard of care). The question of the success of the underlying claim is a question of law. *Holmes v. Haynsworth, Sinkler, & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399 (2014) (citing *Howe*, 367 S.C. at 442, 626 S.E.2d at 30).

In its ruling affirming the Magistrate Court's dismissal, the Circuit Court held that Appellant was “ultimately successful in the underlying litigation” and “[t]herefore, per case law he has suffered no injury.” (ROA p. 64). It is undisputed that Appellant was ultimately successful in the underlying matter. Further, there has been a) no allegation and b) no expert identified to establish that Appellant somehow would have obtained a better result (if such a thing exists) “but for” a breach of the standard of care (which also must be identified by expert

affidavit). Thus, even construing all reasonable inferences in favor of Appellant, the Circuit Court properly dismissed the legal malpractice Complaint and this Court should affirm.³

II. The Circuit Court Did Not Err in Dismissing the Complaint on the Grounds that it was Barred by the Statute of Limitations.

Appellant misconstrues the Circuit Court's order as barring his legal malpractice claim on the basis of the statute of limitations. To the contrary, the Circuit Court's Order liberally construes Appellant's Complaint, reasoning that even if it could be construed as a breach of contract claim (presumably to avoid its shortcomings as a legal malpractice claim), Appellant's claim nonetheless fails because it is barred by the applicable statute of limitations.

Per South Carolina Code Ann. § 15-3-530(1), the statute of limitations for a breach of contract is three (3) years. Under the discovery rule, a breach of contract action accrues on the date the injured party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence. *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007) (citing *State v. McClinton*, 369 S.C. 167, 173, 631 S.E.2d 895, 898 (2006) (breach of contract action generally accrues at the time the contract is breached)); *see also Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 271, 384 S.E.2d 693, 694 (1989) (discovery rule applies in contract actions), *overruled on other grounds by Atlas Food Sys. Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d

³ To the extent the Circuit Court's Order was not specifically based on proximate cause, "a respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (noting it would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review and it also could violate the principle that a court usually should refrain from deciding unnecessary questions). As such, this Court can affirm on this ground in any event. 220(c), SCACR.

858 (1995); *see also* *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) (applying the discovery rule to a breach of contract action).

A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist. *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994) (citing *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 278 S.E.2d 333 (1981)). The test is objective. *Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169 (1994). The statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to “act with some promptness.” *Snell*, 276 S.C. at 303, 278 S.E.2d at 334. ““South Carolina's statute of limitations requires ‘very little to start the clock.’” *Maher v. Tietex Corp.*, 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir.1994) (applying South Carolina law)).

In *Maher v. Tietex Corp.*, the plaintiff brought a cause of action for breach of contract on September 28, 1994, regarding the fifty percent bonus plan that was to be part of his compensation package. The Court of Appeals held that Maher’s own testimony indicated his claim was barred by the statute of limitations. 331 S.C. at 377, 500 S.E.2d at 207. Maher's testimony reveals he believed at the time of these conversations that he was not getting the bonus money to which he felt entitled. Twice, in 1989 and 1990, he raised his “questions” about the plan, and twice, by his own words, he “walked away” without “really getting” a satisfactory response to his concerns. *Id.* at 377-78, 500 S.E.2d at 207-08. Even though Maher denied that he was told to “forget about the bonus plan,” the Court of Appeals held it was clear from his testimony that he understood his advancement would lead to other forms of bonus compensation

which would offset the fact that he was not getting the money from the “fifty percent bonus plan.” *Id.* at 379, 500 S.E.2d at 208.

The Court of Appeals held that Maher's admitted dissatisfaction with this response is clear evidence that he knew, could have known, or should have known at that time that he might have a cause of action over the fifty percent bonus plan. *Id.* at 380, 500 S.E.2d at 208 (holding that certainly, by the time he was first demoted in April of 1991, it should have been apparent to him that the company had withdrawn the “carrot” of advancement with which it had attempted to ease Maher's concerns about money due him under the “fifty percent bonus plan”); *Cf. Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995) (plaintiff should have been aware of potential breach of fiduciary duty, since attorney failed to respond over an eighteen-month period to repeated requests for a mortgage and title policy).

As evidenced by the record and Appellant's Complaint, Appellant a) expressed dissatisfaction with Respondents and b) in writing demanded the return of legal fees paid to Respondents on at least two (2) separate occasions: December 11, 2016 and December 14, 2016. If Appellant is contending that a contract was breached and that legal fees he had paid should be returned/refunded to him as a result of that breach, his demands of December 11, 2016 and December 14, 2016 display that he knew he had a potential breach of contract cause of action on those dates. Further, liberally giving Appellant the benefit of every doubt, which the trial court did, Appellant certainly knew he had a potential cause of action when the Probate Court issued its Order on February 22, 2017 granting the Respondents' Motion to be relieved as counsel. Nonetheless, Appellant delayed well over three (3) years thereafter before filing his pro se Complaint on May 19, 2020. The trial court liberally construed Appellant's Complaint which it

had every right to do, but still dismissed the Complaint as barred by the applicable statute of limitations.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court affirm the Circuit Court's Order dismissing Appellant's Complaint.

Respectfully submitted,

GALLIVAN, WHITE & BOYD P.A.

By: 

JOHN E. CUTTINO, S. C. Bar #1519
Jessica W. Laffitte, S.C. Bar # 100256
1201 Main Street (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 724-1714
FAX: (803) 779-1767
jcuttino@gwblawfirm.com
jlaffitte@gwblawfirm.com

August 23, 2021

RECEIVED

AUG 24 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
In the Court of Common Pleas

Frank Addy, Jr., Circuit Court Judge

Case No. 2021-CP-36-00349

Appellate Case No. 2021-000179

Daniel Pruitt, Appellant,

v.

Kyle Parker, Pope & Hudgens Attorneys, PA, Respondents.

CERTIFICATION

The undersigned certifies that Respondents' Final Brief, served August 23, 2021, complies with Rule 211(b), SCACR.

GALLIVAN, WHITE & BOYD P.A.

By: 

JOHN E. CUTTINO, S. C. Bar #1519
Jessica W. Laffitte, S.C. Bar # 100256
1201 Main Street (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 724-1714
FAX: (803) 779-1767
jcuttino@gwblawfirm.com
jlaffitte@gwblawfirm.com

August 24, 2021