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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-000265

Sula Adams, ..... Appellant,

v.

PennyMac Loan Services, LLC; The United States of  
America, acting by and through Its Agency, The Secretary of  
Housing and Urban Development; Lanier Law Firm, LLC;  
Abbey Robertson; Investors Title Insurance Company and  
Equifax, LLC, ..... Respondents.

**INITIAL BRIEF OF RESPONDENTS PENNY MAC LOAN SERVICES, LLC,  
INVESTORS TITLE INSURANCE COMPANY, ABBY ROBERTSON, LANIER LAW  
FIRM, LLC, AND UNITED STATES OF AMERICA**

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## STATEMENT OF ISSUE ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DISMISSING PLAINTIFF'S CLAIMS BY FINDING THEY WERE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS?

## STATEMENT OF THE CASE

This matter arose from the sale of Plaintiff's home located at 216 Dairwood Drive in Simpsonville, South Carolina on September 30, 2016. Prior to its sale, Plaintiff's home was encumbered by two mortgages: one PennyMac mortgage and one HUD mortgage. (*See* Compl. ¶¶ 12-13.)

Plaintiff alleged that when she sold her home, the closing attorney only paid off the PennyMac mortgage. (*See* Compl. ¶ 14.) The balance owed for Plaintiff's HUD mortgage remained outstanding. Plaintiff eventually sought recourse with HUD by way of an administrative hearing. (*See* Compl. ¶¶ 17-20.) On October 8, 2020, Plaintiff filed her Complaint, which sought to hold PennyMac, Investors Title, Abby Robertson, Lanier Law Firm, LLC, the United States of America, and multiple other Defendants responsible for her debt to HUD remaining unsatisfied. (*See* Compl. ¶ 20.) After several Defendants apparently settled with Plaintiff, the remaining Defendants each filed Motions to Dismiss the Complaint on a variety of grounds. On February 3, 2021, Judge Perry Gravely granted all Motions to Dismiss by holding that Plaintiffs' claims were barred by the applicable three-year statutes of limitations.

## STANDARD OF REVIEW

This Court reviews the granting of a motion to dismiss under the same standard as the Circuit Court. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014). A court must dismiss a complaint whenever it "fail[s] to state facts sufficient to state a cause of action." Rule 12(b)(6), SCRPC. Although a court must view the allegations and draw reasonable

inferences in the light most favorable to the plaintiff, a court must nonetheless dismiss the complaint if “the facts alleged in the complaint do not support relief under any theory of law.” *Capital City Inc. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

### ARGUMENT

In arguing for dismissal before the Circuit Court, the Defendants in this case asserted that Plaintiff’s claims were barred by the applicable statutes of limitations, even considering *only* the allegations of the Complaint. The Complaint asserted claims for Breach of Contract, Intentional Infliction of Emotional Distress, and Violation of the South Carolina Unfair Trade Practices Act. Plaintiff had only three years in which to bring these claims. *See* S.C. Code Ann. §§ 15-3-530 and 39-5-150; *see also Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005) (“As a general rule, a three-year statute of limitations applies to contract actions in South Carolina.”); *Terry v. Allen Univ.*, No. 2014-UP-192, 2014 WL 2721805, at \*1, n.2 (Ct. App. May 7, 2014) (noting that S.C. Code. Ann. § 15-3-530(5) sets a three year statute of limitations for negligence and intentional infliction of emotional distress claims.).

In her Complaint, Plaintiff admitted that her claims arose exclusively from acts relating to the September 30, 2016 sale of her home (the “Home Sale”). (*See* Compl. ¶¶ 11-15.) The Summons and Complaint was not filed until October 8, 2020, **more than four years** after the Home Sale. So, Plaintiff’s causes of action were untimely based on the date of the Home Sale.

In her Complaint, Plaintiff alleges that she received various letters subsequent to the Home Sale putting her on notice of the issues in this case. Plaintiff claims that she received a letter dated June 12, 2017 from attorney Abby Robertson outlining the issues and acknowledging that the second mortgage had not been satisfied. (*See* Compl. ¶ 16.) Plaintiff also highlighted two letters from HUD, one immediately after the Home Sale and an August 25, 2017 letter from HUD

demanding payment on the outstanding loan and threatening garnishment of wages. (*See* Compl. ¶¶ 15, 17.)

Even if there were some cause to use these later dates for the commencement of the running of the statutes of limitation instead of the initial date of the Home Sale, Plaintiff *still* did not commence this action within three years of her receipt of those letters. Thus, it can hardly be disputed that, on the face of the Complaint alone, Plaintiff's claims are time-barred and the Circuit Court made the correct decision in dismissing Plaintiff's claims.

Plaintiff attempted to salvage her claims by asserting that the statutes of limitations should have been equitably tolled while she was awaiting an administrative decision from HUD on whether her wages could be garnished. However, Plaintiff simply contesting wage garnishment bore no logical relation to her discovery that her HUD mortgage remained unsatisfied. As the Circuit Court correctly noted, Plaintiff should have been aware by September 2016 that she received more proceeds than she was entitled to, which would have alerted her that one of her mortgages remained unsatisfied. Therefore, there were no equitable grounds presented sufficient to justify an equitable tolling of the applicable statute of limitations. *See S.C. Pub. Interest Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 499 n.2, 854 S.E.2d 836, 839 n.2 (2021) (“We note there has never been any allegation of deceit or nefarious conduct in this case, and we see absolutely no evidence of this in the record. Accordingly, equitable doctrines that may apply to suspend or toll a statute of limitations in certain cases, such as estoppel or equitable tolling, have no import here.”); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (stating equitable tolling is judicially created, and it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it); *id.* (providing that the party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use); *id.*

at 116-17, 687 S.E.2d at 33 (“The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” (internal quotation marks omitted)); *id.* at 117, 687 S.E.2d at 33 (“Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.”).

### CONCLUSION

Based upon the foregoing reasons, the judgment of the Circuit Court should be affirmed.



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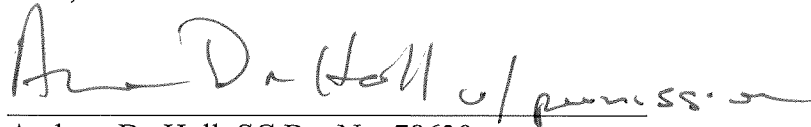
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