

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
  
Civil Action No. 2020-CP-22-00991

**RECEIVED**  
**Jan 18 2022**  
**SC Court of Appeals**

Michael Mares and Emergency Power, LLC, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Bradley Douglas Marx (deceased) and )  
Catherine Marx, individually and as )  
Personal Representative of the Estate of )  
Bradley Douglas Marx, )  
 )  
Defendants. )  
 )

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

This matter comes before the Court upon the Motion of Defendant Catherine Marx, as Personal Representative of the Estate of Bradley Douglas Marx (incorrectly identified as “Bradley Douglas Marx (deceased)” and Defendant Catherine Marx, individually, seeking an Order dismissing the Complaint filed in this action against Defendants by the plaintiffs, Michael Mares and Emergency Power, LLC. A hearing on the Motion was held on November 12, 2021, in Georgetown, South Carolina. Present at the hearing was Plaintiffs’ counsel, Reese R. Boyd, III, Esquire. Audra M. Byrd, Esquire of Turner Padgett Graham & Laney, PA, appeared at the hearing on behalf of Defendants. For the reasons set forth below, the Motion to Dismiss filed by Defendants is GRANTED.

**I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

According to the allegations of the Complaint, Plaintiff Mares and Bradley Douglas Marx, deceased, formed a limited liability company, Plaintiff Emergency Power, LLC (hereinafter the “Company”), in or about September of 1996 in the State of Michigan. Both were members of the Company, each owning a 50% membership in the Company. In 2018, Plaintiffs allege Bradley

Douglas Marx moved to Georgetown County, South Carolina, and purchased a home with his wife, Defendant Catherine Marx. On November 24, 2019, Bradley Douglas Marx died, and Defendant Catherine Marx was appointed to serve as Personal Representative of his Estate on April 8, 2020, by the Georgetown County Probate Court.

Thereafter, on September 1, 2020, Plaintiffs presented and filed a Notice of Claim to the Estate of Bradley Douglas Marx and with the Georgetown County Probate Court. In the Notice of Claim, Plaintiffs asserted claims against the Estate, alleging the Estate was liable for Mr. Marx's alleged embezzlement from the Company beginning on or about April 16, 2013, purportedly continuing until the time of his death in November of 2019. The Notice of Claim presented by Plaintiffs in the Probate Court mirrors closely the Complaint filed in the present action. Upon receipt and consideration of Plaintiffs' Notice of Claim, counsel for the Estate filed a Notice of Disallowance of Claim with the Probate Court on October 16, 2020, and mailed the Notice to counsel for Plaintiffs on October 22, 2020, as evidenced by the Proof of Delivery filed with the Probate Court and of which this Court takes judicial notice. The Notice of Disallowance contained a warning, as required by statute, Plaintiffs' claims would be forever barred unless a legal proceeding was commenced within thirty days after the mailing of the Notice of Disallowance.

Plaintiffs did not commence an action in the Probate Court and instead, filed the present action on December 7, 2020, asserting causes of action against all Defendants for Conversion, Unjust Enrichment, and Constructive Trust. Specifically, Plaintiffs allege Mr. Marx used the Company's credit card to make personal purchases, transferred Company funds to his personal banking account, withdrew Company funds to purchase a personal vehicle not used for Company purposes, and paid himself unapproved bonuses using Company funds. In response to the Complaint, Defendants filed the present Motion to Dismiss on January 11, 2021. In the Motion,

Defendants argue the Complaint should be dismissed as untimely, relying primarily upon the applicable time limitations of the non-claim statute at issue. A hearing on the Motion to Dismiss was held before the Honorable Judge Steven H. John, Resident Circuit Court Judge for the Fifteenth Judicial Circuit, on February 4, 2021, via electronic communications where both parties were represented by counsel. At the conclusion of the hearing, the Court took the matter under advisement after Plaintiffs' counsel presented additional argument regarding the potential for liability insurance coverage, which if applicable, could affect the Court's decision. Both parties submitted supplemental briefs to the Court on the issue.

Thereafter, on February 8, 2021, Judge John sent correspondence to counsel for both parties, continuing the Motion hearing for ninety (90) days, during which time the parties were to conduct discovery on the existence of any applicable liability insurance coverage for the claims asserted by Plaintiffs against Defendants. Upon the expiration of the Court-ordered discovery period, Judge John advised counsel the Motion would be placed back upon the general motion roster for hearing on the issues of liability insurance coverage, as well as the application of the South Carolina Supreme Court Order, issued April 3, 2020, related to the extension of time and forgiveness of procedural defaults because of the COVID-19 pandemic.<sup>1</sup> At the request of Defendants' counsel, once discovery was completed on the issue of liability insurance coverage, the Motion was scheduled for hearing before this Court on November 12, 2021, over nine months after discovery was ordered. Prior to the hearing on the Motion, Defendant Catherine Marx filed with the Court an affidavit, produced to Plaintiffs during the course of discovery, in which she swore and affirmed, under penalty of perjury, she had no knowledge of the existence of a liability

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<sup>1</sup> A true and accurate copy of the correspondence from the Court to counsel for the parties was provided to this Court during its hearing on the Motion and made part of its record.

insurance policy providing coverage to any Defendant for the claims and conduct asserted in the Complaint. During discovery, Plaintiffs produced four liability insurance policies, and Defendants produced a policy of insurance providing liability coverage involving the use of a motor vehicle. As of the date of the hearing of this Motion, no party could identify a policy of liability insurance which would provide coverage to any Defendant for the conduct and claims alleged by Plaintiffs in the Complaint.

## II. LEGAL STANDARD

A trial court may properly grant a motion to dismiss for failure to state facts sufficient to constitute a cause of action when facts alleged in the complaint, along with all reasonable inferences deducible therefrom, do not entitle the plaintiff to recovery on any theory of the case. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

When an action is barred by the expiration of the applicable statute of limitations, a defendant may move pursuant to Rule 12(b)(6) for dismissal of an action. Spell v. S.C. Dept. of Hwys. & Pub. Trans., 292 S.C. 228, 355 S.E.2d 860 (1987). When deciding a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court should consider only the allegations set forth on the face of the complaint. Stiles, at 300, 457 S.E.2d at 602 (1995). As such, the Court’s consideration of the Motion to Dismiss must be confined to the four corners of the Complaint. Id.

However, in this case, Defendants have moved to dismiss the Complaint under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, asserting the claims are time-barred by

the non-claim statute and the applicable time limitations contained within the statute. While a Rule 12(b)(6) motions are normally determined by reference solely to the allegations of the Complaint, where, as here, Defendants premise their Motion upon the timeliness of Plaintiffs' filing suit, in the interest of justice and judicial economy, the Court may withhold a determination until such time as Plaintiffs have had a full and fair opportunity to conduct discovery so as to enable them to address the timeliness of filing. In such cases, Plaintiffs may present evidence or facts which tend to disprove the grounds for the Motion, even if not contained in the Complaint. See e.g., Coker v. Nationwide Mutual Insurance Co., 243 S.C. 170, 175-176, 133 S.E.2d 122, 125 (1963). Additionally, allowing Plaintiffs a full and fair opportunity to conduct discovery on the issue of timeliness provides Plaintiffs with additional time in which to amend their pleadings to overcome new issues raised in the Motion to Dismiss. Id. In this case, no amendment was filed, and no additional evidence or facts were presented to the Court by Plaintiffs to overcome the issues of timeliness raised in the Motion to Dismiss.

To the extent the Court, after the initial hearing and subsequent order permitting discovery on the issue of the existence of liability insurance coverage, is considered to have converted the Motion to Dismiss to one for summary judgment on the issue of liability insurance coverage, the Court applies the applicable legal standard for motions seeking summary judgment. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party. George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001). At the summary judgment stage of litigation, the court does not weigh conflicting evidence

with respect to a disputed material fact. S.C. Prop. & Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleading. Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. Id. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment. Id.; Barr v. City of Rock Hill, 330 S.C. 640, 642, 500 S.E.2d 157, 158 (Ct. App. 1998); Pryor v. Northwest Apartments, Ltd., 321 S.C. 524, 526, 469 S.E.2d 630, 632 (Ct. App. 1996). Likewise, it is not sufficient to create an inference which is not reasonable or an issue of fact that is not genuine. "The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408-409, 396 S.E.2d 638, 639-640 (Ct. App. 1990) (citing Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984)).

### III. ANALYSIS AND CONCLUSIONS OF LAW

#### A. **PLAINTIFFS' CLAIMS WERE NOT FILED WITHIN ONE YEAR OF THE DEATH OF BRADLEY DOUGLAS MARX.**

As alleged in the Complaint filed by Plaintiffs, Bradley Douglas Marx died on November 24, 2019, and Defendant Catherine Marx was appointed to serve as Personal Representative of his Estate on April 8, 2020. Plaintiffs filed the present action on December 7, 2020, more than one year after the death of Bradley Douglas Marx in violation of the time deadlines contained in the South Carolina Probate Code. In relevant part, the South Carolina Probate Code provides the following:

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; *are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following:*

(1) *one year after the decedent's death; . . .*

S.C. Code Ann. § 62-3-803 (emphasis supplied).

The Probate Code defines ‘claims’ as “liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent.” S.C. Code Ann. § 62-1-201(4). The Court finds the causes of action asserted in the Complaint are undoubtedly ‘claims’ as defined by the Probate Code. As a result, Plaintiffs were required to file their claims on or before November 24, 2020, but they failed to do so.

Notably, the time limitation set forth in the Probate Code applies not only to claims against the Estate of Bradley Douglas Marks but also to the claims asserted against Defendant Catherine Marx, individually (as an alleged “nonprobate transferee” of Bradley Douglas Marks) and as Personal Representative of the Estate of Bradley Douglas Marks. S.C. Code Ann. § 62-3-803. As such, because the Complaint was filed in this action more than one year after the death of Bradley Douglas Marx, the Complaint is untimely, and the Court finds dismissal is appropriate as a matter of law.

**B. PLAINTIFFS’ CLAIMS WERE NOT FILED WITHIN THIRTY DAYS OF THE MAILING OF THE NOTICE OF DISALLOWANCE OF CLAIM.**

The South Carolina Probate Code provides a specific mechanism for presenting claims against a decedent’s estate. See, S.C. Code Ann. § 62-3-804. Under this provision, claimants,

such as Plaintiffs, “may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the probate court in which the decedent's estate is under administration.” S.C. Code Ann. § 62-3-804(1)(a). Thereafter, the Personal Representative “must serve upon the claimant a notice stating the claim has been allowed or disallowed in whole or in part.” S.C. Code Ann. § 62-3-806(a). Service of the notice may be made by “United States mail, personal service, or otherwise as permitted by rule and a copy of the notice shall be filed with the probate court along with proof of delivery setting forth the date of mailing or other service on the claimant.” Id.

In the case of a disallowance of claim, the notice “must contain a warning that the claim will be barred to the extent disallowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) within thirty days of the mailing or other service of the notice of disallowance or partial disallowance.” Id. The statute further provides in the event a claimant fails to initiate a proceeding for allowance of the claim within thirty days after the notice of disallowance is mailed, the claim is barred. Id.

In this case, Plaintiffs presented and filed a Notice of Claim on September 1, 2020, to the Estate of Bradley Douglas Marx and with the Georgetown County Probate Court. Thereafter, counsel for the Estate of Bradley Douglas Marx filed a Notice of Disallowance of Claim with the Probate Court on October 16, 2020, and mailed the Notice to counsel for Plaintiffs on October 22, 2020, as evidenced by the Proof of Delivery filed with the Probate Court, of which all of said filings the Court takes judicial notice. The Notice of Disallowance contained the necessary warning, as required by statute, Plaintiffs’ claims would be forever barred unless a legal proceeding was commenced within thirty days after the mailing of the Notice of Disallowance.

Plaintiffs did not commence an action in the Probate Court for allowance of their claims. Instead, Plaintiffs filed the present action, which the Court finds would have been appropriate if Plaintiffs had commenced within the thirty-day period provided by statute. See, S.C. Code Ann. § 62-3-804(5). (“[N]o proceeding for enforcement or allowance of a claim or collection of a debt may be commenced more than thirty days after the personal representative has mailed a notice of disallowance or partial disallowance of the claim in accordance with the provisions of Section 62-3-806.”). As such, Plaintiffs were required to file this action on or before November 23, 2020, which they failed to do. As such, the Court finds Plaintiffs’ claims are untimely and must be dismissed.

Additionally, Plaintiffs failed to “provide written notice to the probate court in which the decedent’s estate is under administration that a legal proceeding has commenced for allowance of the claim, setting forth the court in which the legal proceeding is pending.” S.C. Code Ann. § 62-3-804(2).

In summary, the Court finds Plaintiffs failed to comply with the mandatory provisions of the South Carolina Probate Code by failing to file timely their action for allowance of claim and failing to provide written notice to the Probate Court of this proceeding. As such, dismissal is appropriate as a matter of law.

C. THE LIABILITY INSURANCE LIMITS COVERAGE EXCEPTION TO THE NON-CLAIM STATUTE IS NOT SUPPORTED BY THE ALLEGATIONS OF THE COMPLAINT OR ADDITIONAL FACTS OR EVIDENCE PRESENTED BY PLAINTIFFS AFTER A FULL AND FAIR OPPORTUNITY FOR DISCOVERY ON THIS ISSUE.

Our courts have repeatedly held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Pelzer v. State, 378 S.C. 516, 520, 662

S.E.2d 618, 620 (Ct. App. 2008) (citing Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). Recognizing the significance of such statutes, the Court held:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. (holding the statute of limitations barred a *pro se* PCR petition filed two days after the statute of limitations expired even though it was mailed prior to the expiration of the statute).

The statute at issue here (S.C. Code Ann. § 62-3-803) is a nonclaim statute, which differs from a traditional statute of limitations as our Court of Appeals explained:

A nonclaim statute . . . grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. ***Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.***

While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

Phillips v. Quick, 399 S.C. 226, 229-231, 731 S.E.2d 327, 329 (Ct. App. 2012) (quoting Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA, 684 N.E.2d 1137, 1138-39 (Ind. 1997)) (emphasis supplied).

Further, “[w]hile equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.” *Id.* (quoting Estate of Decker, 684 N.E.2d at 1139); see also, 51 Am. Jur. 2d *Limitation of Actions* § 3 (2011) (“The time element is a built-in condition of a nonclaim statute and is of the essence of the right of action, and unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.”). As such, when evaluating the timeliness of Plaintiffs’ Complaint, the Court finds the discovery rule is inapplicable and applying the discovery rule would be reversible error. Phillips, 399 S.C. at 231-232, 731 S.E.2d at 329-330.

Plaintiffs rely on the following provision of the nonclaim statute contained in the Probate Code in support of their contention that the general one-year deadline for commencing an action should not apply to the claims contained in their Complaint:

Nothing in this statute shall be construed as placing a limitation on a time for: ... ***to the limits of the insurance protection only, commencing a proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.***

S.C. Code Ann. § 62-3-803(d)(2) (emphasis supplied) (hereinafter the “liability insurance limits coverage exception”).

South Carolina case law related to the liability insurance limits coverage exception is reserved primarily to cases involving automobile and malpractice insurance. See e.g., Ex Parte Estate of Evans, 299 S.C. 366, 384 S.E.2d 748 (1989) (permitting the plaintiff to reopen the estate of a deceased doctor after one year to assert a medical malpractice claim against the decedent and his malpractice insurance carrier). Plaintiffs provided the Court with no legal authority to support the application of the liability insurance limits coverage exception in cases involving alleged

intentional, *ultra vires* misconduct on the part of a member of a limited liability company. The reported cases demonstrate the liability insurance limits coverage exception to the non-claim statute applies in cases where the Complaint itself reveals the potential for liability insurance coverage. The Court finds the Complaint in this case contains no such allegations, and even after a full and fair opportunity for discovery on the issue of potential liability insurance coverage, there was no amendment of the Complaint.

There is no allegation in Plaintiffs' Complaint to support a finding: (1) there is a policy of insurance; (2) the Decedent was insured under any policy of insurance; (3) there is any provision in any policy of insurance that would afford liability coverage for the conduct alleged in the Complaint; or (4) the limits of the insurance protection. Plaintiff Mares alleges he and Mr. Marx were the sole members of the Company, and if such a policy existed, the Court finds Plaintiffs would likely be aware of the same at the time of filing. Further, the Court finds the absence of such an allegation leads to the reasonable inference that no such liability policy exists. Regardless of whether the Company or any Defendant carried liability insurance affording coverage, the Court is confined to the allegations on the face of the Complaint, which fails to set forth any facts supporting the application of a statutory deadline other than the one-year time limitation contained in the non-claim statute, S.C. Code Ann. § 62-3-803(a)(1).

Even assuming a liability policy exists, nothing in Plaintiffs' Complaint sets forth conduct or actions which would lead the Court to infer such claims would be covered by liability insurance. Plaintiffs allege the actions and conduct of Mr. Marx were taken in his individual capacity and not as an officer or director of the Company. It is the nature of Mr. Marx's alleged *ultra vires* actions and conduct that forms the basis of Plaintiffs' Complaint. Repeatedly, Plaintiffs allege Mr. Marx acted intentionally and deliberately in converting company funds and assets for his personal use.

Plaintiffs have provided the Court with no case law in which intentional torts were held to be covered by a liability insurance policy when the allegations related to purported *ultra vires* actions of a defendant in his or her individual capacity. To the contrary, the overwhelming case law supports the proposition that intentional torts are not typically covered by insurance. See Prior v. S.C. Medical Malpractice Liab. Ins. Joint Underwriting Ass'n, 305 S.C. 247, 407 S.E. 2d 655 (Ct. App. 1991); Snakenberg v. Hartford Casualty Ins. Co., 299 S.C. 164, 383 S.E.2d 2 (Ct. App. 1989).

Furthermore, there are no allegations in the Complaint Defendant Catherine Marx was an officer or director of Emergency Power, LLC or that she had any access whatsoever to Company funds, records or accounts. As such, the Court cannot reasonably infer any liability insurance policy for the Company or otherwise would provide coverage for Defendant Catherine Marx based upon the conduct alleged in the Complaint. Even more, the existence of a liability policy providing coverage for Defendant Catherine Marx was not pled and is not contained in the allegations of the Complaint. Plaintiffs have alleged causes of action for Conversion, Unjust Enrichment and Constructive Trust, and Plaintiffs have provided the Court with no legal authority to support a finding these types of intentional and equitable claims would be subject to liability insurance coverage. Finally, the liability insurance limits coverage exception applies to “the limits of the insurance protection only.” S.C. Code Ann. § 62-3-803(d)(2). There is no allegation contained in the Complaint as to what the limits of any liability insurance policy are, and Plaintiffs’ demand for relief is not confined to the limits of any available coverage. Therefore, the Court finds there is no basis for the application of the liability insurance limits coverage exception to the general one-year time limitation contained in S.C. Code Ann. § 62-3-803(a)(1).

During the initial hearing on the Motion to Dismiss, counsel for Plaintiffs conceded the present action was not commenced in compliance with the procedures set forth in the Probate Code or within one year after the Decedent's date of death. Since the applicable statute is a nonclaim statute, there is no equitable or other relief available to Plaintiffs in this matter based upon the failure to file timely and to follow the procedures outlined in the Probate Code. See Beach First Nat'l Bank v. Gurnham (In Re Estate of Gurnham), 407 S.C. 194, 754 S.E.2d 875 (2014) (holding that unless S.C. Code Ann. § 62-3-803 is complied with, the claim is barred); Anderson Area Med. Ctr. v. Tollison (In Re Estate of Tollison), 320 S.C. 132, 135, 463 S.E. 2d 611, 613 (Ct. App. 1995) (same); A. McCoy's, Inc. v. Garner, 281 S.C. 378, 380, 315 S.E.2d 812, 813 (Ct. App. 1984) (holding that [S.C. Code Ann. § 62-3-803] was a nonclaim statute which bars all claims which are not timely filed); Moultis v. Degen, 279 S.C. 1, 301 S.E.2d 554 (1983) (holding that [S.C. Code Ann. § 62-3-803] bars all untimely claims including actions against assets distributed to the beneficiaries of the estate).

The Court finds Plaintiffs have failed to meet the statutory filing requirements to survive the present Motion to Dismiss. Plaintiffs' reliance on S.C. Code Ann. § 62-3-803(d)(2) is misplaced as there are no allegations contained in the Complaint to support a finding that there is a policy of insurance providing liability protection to the Decedent, the Estate, or Catherine Marx individually, and Plaintiffs have failed to allege the limits of any such policy or limited their demand for relief to such limits.

Therefore, the Court finds the general one-year statute applies to Plaintiffs' claims, and as alleged, the claims are time-barred as a matter of law. As a result, the Court finds dismissal of the Complaint is appropriate as a matter of law.

D. THE TIME LIMITATIONS OF THE NON-CLAIM STATUTE ARE UNAFFECTED BY THE SOUTH CAROLINA SUPREME COURT ORDERS RELATED TO THE RELAXATION AND FORGIVENESS OF PROCEDURAL DEADLINES BECAUSE OF THE COVID-19 PANDEMIC.

In considering the timeliness of Plaintiffs' filing suit, the Court considered the Orders of the South Carolina Supreme Court related to extensions of time and forgiveness of procedural defaults during the COVID-19 pandemic. Specifically, the Court reviewed IN RE: Operation of the Trial Courts During the Coronavirus Emergency, dated April 3, 2020, as Amended December 16, 2020, Appellate Case No. 2020-000447. While our Supreme Court expressed judicial concern for litigants affected by the pandemic, the Orders expressly reserve the issues *sub judice* to the legislative branch for consideration. In relevant part, the Order provides the following:

Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

Id. at 9, Section (c)(12).

At this time, the legislature has not acted on the concerns expressed by the South Carolina Supreme Court, and therefore, the non-claim statute at issue here is unaffected. Therefore, the Court finds dismissal is appropriate as a matter of law.

IV. CONCLUSION AND ORDER

Based upon the foregoing,

It is hereby ADJUDGED, ORDERED AND DECREED, the Motion to Dismiss filed by Defendants shall be GRANTED WITHOUT PREJUDICE; and

It is hereby further ADJUDGED, ORDERED AND DECREED, in the event liability insurance is found or more specific facts are established showing Defendant Catherine Marx, individually, is personally liable, Plaintiff may commence a new action for the same if commenced within the applicable statute of limitations.

AND IT IS SO ORDERED.

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THE HONORABLE H. STEVEN DEBERRY, IV  
Presiding Circuit Court Judge  
For the Fifteenth Judicial Circuit

Dated: \_\_\_\_\_, 2021



Georgetown Common Pleas

**Case Caption:** Michael Mares , plaintiff, et al VS Bradley Douglas Marx , defendant,  
et al  
**Case Number:** 2020CP2200991  
**Type:** Order/Dismissal

H. Steven DeBerry, IV

Circuit Court Judge 2771

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