

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

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Case No. 2011-CP-23-03200

100 Court Street Property Owners  
Association, Inc.,

Appellant,

v.

Court Street, LLC and Grace  
Community Church of South Carolina,

Respondents.

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FINAL REPLY BRIEF OF APPELLANT

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Pursuant to Rule 208(a)(3), SCACR, Appellant files the following Reply Brief to the Respondents.

### ARGUMENT

**I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTIONS TO DISMISS BECAUSE THE FACTS PLED IN APPELLANTS' AMENDED COMPLAINT ENTITLE APPELLANTS TO RELIEF UNDER VARIOUS THEORIES OF THE LAW.**

The trial court bases its dismissal on one portion of Paragraph 15 of the Appellant's Amended Complaint. However, the trial court is required to consider the entirety of Appellant's properly pled allegations in considering Respondents' Motions to Dismiss. *See Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). In considering Appellant's allegations all facts must be viewed in the light most favorable to Appellant and only the allegations within the four corners of the Amended Complaint may be considered by the circuit court. *Gentry v. Yonce*, 337 S.C. at 5, 522 S.E.2d at 139; *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007).

Paragraph 15 of the Amended Complaint alleges that the Master Deed purports to exclude the Phase II property from the horizontal property regime. (R. p. 14 ¶ 15) In paragraphs 15 through 33 Appellant alleges facts that, when taken as true, would invalidate the exclusion of Phase II from the Regime and would entitle to Appellant to relief under the theories pled in the Amended Complaint. (R. pp. 14-16, ¶¶ 15-33) The circuit court erred in failing to consider these allegations in the light most favorable to Appellant.

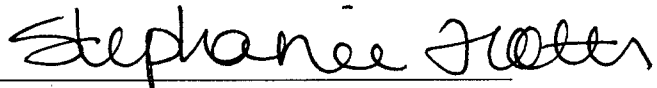
The circuit court further erred in dismissing portions of Appellant's Amended Complaint based on the statute of limitations. The court ruled that the "Association admits that the cause of action arose in 2000." (R. p. 6, l. 1.) The court does not cite a reference to Appellant's

Amended Complaint for this assertion. The Amended Complaint contains no reference to when the cause of action arose. Thus, the court had to look further than the four corners of the pleadings to dismiss Appellant's claims based on the statute of limitations. The South Carolina Supreme Court has recognized that "an affirmative defense ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense." *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). The Court went on to explain this is because "consideration of an affirmative defense usually requires reference to factual allegations and matters which are beyond the scope of allegations set forth in the complaint. Therefore, because the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an answer and either resolved in later motions such as summary judgment or directed verdict or at trial." *Id.* That is exactly the case here. A statute of limitations inquiry is based on when the parties knew or should have known a cause of action arose in their favor. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). The pleadings of the Amended Complaint are not detailed enough to allow the court to determine when the Appellant knew or should have known it was able to bring this action. The Appellant is not required to plead with that specificity. Instead the Respondents' had the burden of asserting the statute of limitations as an affirmative defense and the parties should have been given the opportunity to conduct discovery and present the court with factual evidence regarding the statute of limitations issue. In considering facts and arguments not contained on the face of the Amended Complaint the trial court erred and should be reversed.

**CONCLUSION**

For the reasons stated, this Court should reverse the order of the Circuit Court Judge and reinstate Appellant's causes of action.

Respectfully submitted,



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**ATTORNEYS FOR APPELLANT**

April 3, 2013

Certificate of Counsel

The undersigned hereby certifies that Appellant's Final Reply Brief complies with Rule 211(b).



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100 Court Street Property Owners Association, Inc.,

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Court Street LLC and Grace Community Church of South Carolina,

Respondents.

**PROOF OF SERVICE**

I, Stephanie C. Trotter, an attorney with the Law Firm of McCabe, Trotter & Beverly, P.C., attorneys for the Appellant, hereby certify that I have served a copy of the foregoing document(s) upon the below named individuals and/or counsel this the 12 day of April, 2013 via U.S. Mail, postage prepaid and addressed as follows:

**DOCUMENT(S) SERVED:**

*Appellant's Final Brief*  
*Appellant's Final Reply Brief*

**PARTIES SERVED**

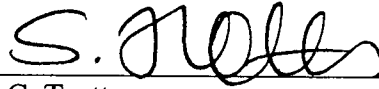
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SC Court of Appeals

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