

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Shelley Pauw,)
)
)
 Plaintiff,)
)
 v.) C.A. No. 2:98-2318-23
)
 Thomas Lee Agee and Forrest Jack)
 Agee, individually, and as Personal)
 Representative of the Estate of Billie)
 Jean Agee,)
)
 Defendants.)
 _____)

ORDER

This matter is before the court upon cross motions for summary judgment. Pursuant to Local Rule 7.08, this court issues the following Order without a hearing, but upon consideration of the materials submitted by all parties. D.S.C. Local Rule 7.08 (1999).

This action was originally initiated in the United States District of Central California on June 1, 1998. On July 31, 1998, the action was transferred to the District of South Carolina. Plaintiff, a judgment creditor, alleges that a disclaimer executed by Defendant Tom Agee on February 9, 1997 constituted a conveyance intended to defraud her as a creditor in violation of the statutory prohibition against any such conveyance. *See* S.C. Code Ann. § 27-23-10 (West Supp. 1998). Defendants assert in their motion for summary judgment that the disclaimer was lawfully executed under the provisions of the South Carolina Probate Code, S.C. Code Ann. § 62-2-801, and therefore, cannot, as a matter of law, constitute a fraudulent conveyance.

I. FACTUAL BACKGROUND

Defendants Forrest Jack and Tom Agee are sons of the late Billie Jean Agee who died January 13, 1997. The Last Will and Testament of the late Billie Jean Agee left all her property to her two sons, saving and excepting certain specific bequests to other third parties. On January 22, 1997, Forrest Jack Agee was appointed Personal Representative of his late mother's estate by Order of the Probate Court of Charleston County, South Carolina. On February 9, 1997, Tom Agee executed a Disclaimer whereby he disclaimed any interest in any property of this late mother's estate. The Disclaimer was duly delivered to Jack Agee in his capacity as Personal Representative on February 26, 1997, and thereafter filed with the Charleston County Probate Court on September 26, 1997 along with the other documents necessary to administer the estate.

On February 27, 1997,¹ plaintiff filed a civil action in California Superior Court against Tom Agee, the Orange County Probation Department and others alleging various causes of action including sexual harassment, negligence, and intentional infliction of emotional distress. When questioned during the California trial about the reason he gave up his inheritance, Tom Agee responded that since he did not have any children he wanted his brother's children to be able to have the property upon the death of their father. (Transcript at 1022, 1033-34). Tom

¹ Plaintiff maintains that the underlying California action against Tom Agee was filed "in January, 1997." (Pl.'s Opp. Mem. at 1). However, plaintiff has failed to furnish any evidence to rebut defendants' position that the California action was not filed until February 27, 1997. In support of that position, defendants have submitted a copy of the transcript from the California trial held on April 14, 1998. (Plaintiff also submitted a copy of the identical transcript.) During the trial, it appears that the court took judicial notice, without objection from either party, that the complaint was filed on February 27, 1997. Even at the summary judgment stage, the plaintiff must present some evidence to raise an issue of material fact. Plaintiff has failed to do so regarding the date of the California action. Therefore, this court will join in taking judicial notice that the action was filed on February 27, 1997.

Agee also denied that he had any knowledge, at the time he executed his disclaimer, of a possible civil suit being filed against him in California. (Tr. at 1034, 1039). On April 14, 1998, a jury returned a verdict against Tom Agee in the amount of \$4,400 compensatory damages and \$120,000 punitive damages. On April 29, 1998, plaintiff's counsel mailed a letter to Forrest Jack Agee's residence in New Mexico advising that a verdict had been rendered against his brother and asserting that the Disclaimer had been fraudulently executed.

II. SUMMARY JUDGMENT STANDARD

To grant a motion for summary judgment, this court must find that "there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). The judge is not to weigh the evidence, but rather to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If no material factual disputes remain, then summary judgment should be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party bears the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). All evidence should be viewed in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123-24 (4th Cir. 1990). "[W]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." *Teamsters Joint Council No. 83 v. Centra, Inc.*, 947 F.2d 115, 119 (4th Cir. 1991). "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. The "obligation of the nonmoving party is 'particularly strong

when the nonmoving party bears the burden of proof." *Hughes v. Bedsole*, 48 F.3d 1376, 1381 (4th Cir. 1995) (quoting *Pachaly v. City of Lynchburg*, 897 F.2d 723, 725 (4th Cir. 1990)). Summary judgment is not "a disfavored procedural shortcut," but an important mechanism for weeding out "claims and defenses [that] have no factual basis." *Celotex*, 477 U.S. at 327.

III. ANALYSIS

Diversity jurisdiction is proper under 28 U.S.C. § 1332. Plaintiff is a resident of California. Tom Agee is a citizen of South Carolina, and Forrest Jack Agee is a citizen of New Mexico.² The amount in controversy exceeds \$75,000. While it is true that a federal court has no diversity jurisdiction to probate a will or administer an estate, it is also well established that federal courts have jurisdiction to entertain suits "in favor of creditors, legatees and heirs' against a decedent's estate "to establish their claims." *See Markum v. Allen*, 326 U.S. 490, 494 (1946) (citations omitted).

The issue in this case is whether the beneficiary of a will can effectively disclaim his inheritance although disclaiming would defeat the rights of a judgment creditor. Plaintiff contends that the Disclaimer executed by Tom Agee was invalid, and thus constituted a conveyance for the purpose of defrauding his creditors.³ Specifically, plaintiff asserts that the

² The Amended Complaint names Jack Agee, individually and as Personal Representative of the Estate of Billie Jean Agee. Pursuant to 28 U.S.C. § 1332 (c)(2), the personal representative of an estate is deemed a citizen only of the same state as the decedent. Therefore, in his capacity as personal representative, Forrest Jack Agee is deemed a citizen of South Carolina. He also continues to be a citizen of New Mexico in his individual capacity. Nonetheless, jurisdiction is proper in that in either case complete diversity of citizenship exists.

³ Section 23-27-10 provides in pertinent part:

(A) Every gift, grant, alienation, bargain, transfer, and conveyance of lands,

language of the disclaimer statute limits its use only to tax purposes. The relevant portions of the disclaimer statute provide:

(a) In addition to methods available under existing law, statutory or otherwise, if a person, . . . as a disclaimant, makes a disclaimer as defined in §12-16-1901 of the 1976 Code, with respect to any transferor's transfer (including transfers by any means whatsoever, lifetime and testamentary, voluntary and by operation of law, initial and successive, by grant, gift, trust, contract, intestacy, wrongful death, elective share, forced share, homestead allowance, exempt property allowance, devise, bequest, beneficiary designation, survivorship provision, exercise and nonexercise of a power, and otherwise) to him of any interest in, including any power with respect to, property, or any undivided portion thereof, the interest, or such portion, is considered never to have been transferred to the disclaimant. . . .

(d) Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred, as the case may be) as if the disclaimant had predeceased the date of the effectiveness of the transfer of the interest; the disclaimer shall relate back to that date of effectiveness for all purposes;

(f) It is the intent of the legislature of the State of South Carolina by this provision to clarify the laws of this State with respect to the subject matter hereof in order to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes. This provision is to be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 62-2-801 (Law. Co-op. 1987 & Supp. 1998).

The court's primary function in interpreting a statute is to ascertain the intent of the legislature. *Wright v. Colleton Cty. School Dist.*, 301 S.E.2d 564, 567 (S.C. 1990). The legislative intent must prevail if it can be reasonably discovered in the statutory language. *See*

tenements, or hereditaments, goods and chattels . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors . . . must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10 (West Supp. 1998).

Lester v. South Carolina Workers' Compensation Comm'n, 514 S.E.2d 751, 752 (S.C. 1999). In accordance with this directive, if the statute's language is plain and unambiguous and conveys a clear and definite meaning, the court need not resort to rules of construction which limit or expand the statute's operation. *Paschal v. State Election Comm'n*, 454 S.E.2d 890, 891 (S.C. 1995); *Gilstrap v. South Carolina Budget and Control Bd.*, 423 S.E.2d 101, 103 (S.C. 1990). Neither the plain language of section 62-2-801, nor the cases construing it support the plaintiff's proposed interpretation that a disclaimer can only be used for tax purposes, and therefore any disclaimer executed for any other purpose must fail. First and foremost, the disclaimer statute expressly provides that it is to operate "[i]n addition to any methods available under existing law, statutory, or otherwise" S.C. Code Ann. 62-2-801 (a). This language anticipates the preservation of any existing right, common-law or statutory, to disclaim an interest.

It is without question that the common law of South Carolina provided for the disclaimer or renunciation of both testamentary bequests and non-testamentary gifts. *See Bahan v. Citizens and Nat'l Bank of S.C.*, 227 S.E.2d 671, 672 (S.C. 1976) (concluding that the disclaimer was an effective renunciation of an interest under a will); *see also* Craig N. Killen, Note, Renunciation of Life Estate Closes Class of Remaindermen and Accelerates Possession of Remainder Interest, 42 S.C. L. Rev. 267, 269 (1990) ("South Carolina historically has recognized disclaimers of testamentary gifts, when made properly and in a timely fashion."). In *Lynch v. Lynch*, 21 S.E.2d 569 (S.C. 1942), a case which has been touted as an early authority on the common law of gifts, the South Carolina Supreme Court made it clear that, even in recognition of the moral obligation to make no transfer which will defraud a creditor, a debtor is under no legal obligation, however strong the moral obligation may be, to acquire property as a gift that would benefit his creditors,

id. at 565. See *Dyer v. Eckols*, 808 S.W.2d 531, 535 (Tex. Ct. App. 1991) (quoting *Lynch*, 21 S.E.2d at 565); see also Jenkins, Rights of Unsecured Creditors Under the Uniform Fraudulent Transfer Act in Property Transferred Prior to Death, 45 Ok. L. Rev. 275, 294 (1992) (quoting *Lynch*, 21 S.E.2d at 565). Although the gift in *Lynch* was non-testamentary, an inter vivos gift of 200 shares of stock, the court’s language embraced testamentary gifts as well. “A gift, however created, whether by will or inter vivos, is wholly inoperative unless accepted by the donee. A creditor of the donee has no such interest, legal or equitable, as to enable him to control the right of the donee to refuse acceptance or renounce the gift.” *Id.* (citations omitted). The plain language of 62-2-801(a) appears to preserve these common law principles.

Furthermore, subsection (d) of the disclaimer statute provides that the disclaimer shall relate back to the date of effectiveness for all purposes.⁴ The “relation back” doctrine is based upon the principle that a bequest or gift is nothing more than an offer which can be accepted or rejected. See *Dyer*, 808 S.W.2d at 533 & n.1 (noting that 44 states, including South Carolina, recognize some form of this doctrine in the context of disclaimers). As described by one commentator:

When an interest in property is disclaimed, it is as if the interest had never been offered to the disclaimant: as if the disclaimant never possessed, even momentarily, any right respecting the property. The property interest passes from the original transferor directly to the substituted taker. This is the so-called “relation-back” theory. The act of refusal, whenever performed, related back to the instant when the transfer was initiated. Thus, under the common law the disclaimant does not participate in the transfer. Therefore, creditors of the disclaimant have no access to the disclaimed property and the disclaimant cannot direct the disposition of the interest in property that he had refused.

⁴ The date of effectiveness of the transfer of the disclaimed interest is, as to transfers by devise or bequest, the date of death of the decedent transferor. See S.C. Code Ann. § 62-2-801 (e).

Joan B. Ellsworth, On Disclaimers: Let's Renounce I.R.C. Section 2518, 38 Vill. L. Rev. 693, 698 (1993) (footnotes omitted). The South Carolina disclaimer statute provides that the disclaimer will relate back for "all purposes." This recognition that there may be various purposes for the use of the disclaimer is also consistent with the qualifier previously discussed that section 62-2-801 operate in addition to existing methods for disclaimer. *Cf. Jenkins*, 45 Ok. L. Rev. at 294 (motive underlying the renunciation is not relevant to the disclaimant's right to renounce); *see generally* Ellsworth, 38 Vill. L. Rev. at 703 (stating that the purpose for which a disclaimer is made has no bearing on its validity).

While plaintiff points to section 62-2-801(f) for the assertion that the legislature intended for tax savings to be the sole permitted use of a disclaimer, a careful reading of that subsection does not warrant such an interpretation. Subsection (f) states in part: "[i]t is the intent of the legislature of the State of South Carolina to clarify . . . the laws . . . to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes." This expression of legislative intent does not necessarily limit the use of the disclaimer to tax purposes, but only indicates the desire that the use as a tax savings device be guaranteed.

In interpreting a statute, the terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Southern Mutual Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 412 S.E.2d 377, 379 (S.C. 1991). Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away. *Hartford Accident & Indemnity Co. v. Lindsay*, 254 S.E.2d 301, 304 (S.C. 1979) (citing *Home Building & Loan Ass'n v. City of*

Spartanburg, 194 S.E.139, 142 (S.C. 1937)). The interpretation that subsection (f) acts as a limitation on the use of the disclaimer would create an ambiguity where none had existed, rendering the first phrase of subsection (a), as described *infra.*, meaningless. Furthermore, such a construction would render the “all purposes” language in subsection (d) unnecessary.

While no South Carolina court has directly considered section 62-2-801(f)’s effect on disclaimers for purposes other than tax savings, the South Carolina Court of Appeals implicitly approved such an interpretation in *In re Holden’s Estate*, 520 S.E.2d 332 (S.C. Ct. App. 1999). In *Holden*, two Sons, who were to inherit intestate from their father, disclaimed their interest in the estate. A letter accompanying the disclaimers expressed the Sons’ intent to renounce their interest in favor of their mother so that she could become the sole heir of the estate. Prior to closing the estate, the probate court informed the Sons that as a result of the disclaimers their minor children would inherit half of the estate in accordance with South Carolina’s intestacy laws. In an effort to avoid the inheritance by their children, the Sons attempted to revoke or withdraw their disclaimers on the ground that the disclaimers were invalid due to their noncompliance with the requirements referenced in section 62-2-801.

Section 62-2-801 requires that the disclaimer meet the requirements of South Carolina Code Annotated section 12-16-1910 before it can be treated as if it had never been transferred to the disclaimant. Section 12-16-1910 provides that “if a person as defined in Section 62-2-801 makes a disclaimer as provided in Internal Revenue Code Section 2518 with respect to any interest in property, this chapter applies as if the interest had never been transferred to the person. S.C. Code Ann. § 12-16-1910 (West Supp. 1998). Internal Revenue Code section 2518 (b) defines a qualified disclaimer as “an irrevocable and unqualified refusal” to accept an interest

in property but only if:

- (1) such refusal is in writing,
- (2) such writing is received [by the proper person within the specified time limit],
- (3) such person has not accepted the interest or any of its benefits, and
- (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either–
 - (A) to the spouse of the decedent, or
 - (B) to a person other than the person making the disclaimer.

26 U.S.C.A § 2518 (b) (West 1989). In *Holden*, the Sons argued that the disclaimers did not qualify as valid disclaimers because they were intended to direct the disclaimed interest to their mother. The court rejected this argument and upheld the validity of the disclaimers due to the fact that, while the letter accompanying the disclaimers indicated the intent to direct the interest to their mother, the actual disclaimers contained no condition; they stated: “Thereby disclaim and renounce any interest in the estate and relinquish any claim I may have to it.” *Holden*, 520 S.E.2d at 324-25. The court found that the interest did pass in accordance with the intestacy laws without any direction on the Sons’ part.

The *Holden* court relied upon *Webb v. Webb*, 301 S.E.2d 570 (W.Va. 1983), a case which upheld the validity of a disclaimer on the ground that a mistake of law regarding the effect of the disclaimer will not afford relief from the consequences thereof, in the absence of fraud or undue influence. While the *Webb* case and the corresponding portion of the *Holden* decision address the effect of a mistake of law on the validity of a disclaimer, an issue not present in the case at bar, the *Holden* court’s reference to and description of *Webb* is relevant to the issue of the proposed limited use of a disclaimer for tax savings. In *Holden*, the court described the background of *Webb* as follows: “[w]hile noting that Webb had discussed the tax advantages of a disclaimer with the attorney, the supreme court of appeals found that it was apparent from the

record that Webb's motivation was to pass full title to the real estate to his mother, in accordance with his perception of his father's wishes." *Id.* at 325. This makes it clear that neither of the disclaimants in *Holden* or *Webb* exercised their disclaimers for tax purposes. It seems that if the *Holden* court had deemed the disclaimer process set forth in section 62-2-801 as only a tax savings device, the validity of those disclaimers would have been questionable on that basis as well.

This view corresponds with the majority view that a creditor cannot prevent a debtor from disclaiming an inheritance. *See Dyer*, 808 S.W.2d at 535 (recognizing and adopting the majority rule); *see also Abbott v. Willey*, 479 S.E.2d 528, 529-30 (Va.1997) (holding that a disclaimer of an interest under an insurance policy could not be attacked as a fraudulent conveyance because the statute provided that a disclaimer related back for all purposes); *Frances Slocum Bank and Trust Co. v. Estate of Martin*, 666 N.E.2d 411, 415 (Ind. Ct. App. 1996) (applying Indiana law); *Baltrusaitis v. Cook*, 435 N.W.2d 417, 420 (Mich. Ct. App. 1988) (disclaimer of life insurance proceeds not fraudulent conveyance under Michigan law); and *In re Oot's Estate*, 408 N.Y.S.2d 303, 305 (N.Y. Sur. 1978) (recognizing right to disclaim in face of creditors claims). The few states which appear to follow the minority view that a disclaimer can constitute a fraudulent conveyance base their holdings on the California case of *In re Kalt's Estate*, 108 P.2d 401, 402-03 (Cal. 1940). *See Stein v. Brown*, 480 N.E.2d 1121, 1123 (Oh. 1985). The holding of *In re Kalt's Estate*, however, was overruled by the California legislature when it enacted a statute providing specifically that a disclaimer is not a fraudulent transfer. *See Cal.Prob.Code* § 283 (West 1991). South Carolina has yet to enact any statute addressing this issue.

Therefore, the only real question remaining is whether the disclaimer executed by Tom

Agee meets the requirements of a valid disclaimer under section 62-2-801. The facts of this case raise only two issues questioning the validity of the disclaimer – (1) that it may have been directed to pass the interest to Forrest Jack Agee or (2) that Tom Agee may have accepted the bequest. Any argument that the disclaimer attempted to direct the interest, and is therefore invalid under 26 U.S.C. § 2518 (b) (4) is effectively discredited by the court’s holding in *Holden, infra.* The written disclaimer executed by Tom Agee makes no reference to the direction of the interest, but only states that “I do hereby make a disclaimer . . . with respect to any interests I may have in any property. . . in accordance with the Last Will and Testament of my late mother, Billie Jean Agee, . . .” (Forrest Jack Agee Aff. Ex. A). Tom Agee’s desire that the interest pass to his brother and eventually to his brother’s children, (*See* Tr. at 1022, 1033-34), does not render the disclaimer ineffective. Instead, the Will directed passage of the disclaimed interest to the only other son able to take – Forrest Paul Agee. Therefore, the disclaimer is not invalid on that basis.

Whether or not Tom Agee accepted the disclaimed interest, thereby preventing an effective disclaimer, is also easily resolved as a matter of law. In South Carolina, it is established that property cannot be disclaimed *after* the donee has exercised dominion and control over it. In re *Hall’s Will*, 456 S.E.2d 439, 440 (S.C. Ct. App. 1995) (emphasis added). Under section 62-2-801, the court must look to section 12-16-1980 which refers to Internal Revenue Code section 2518 for the definition and requirements of a disclaimer. *See infra.* 26 U.S.C. § 2518 (b) (b) provides that a qualified disclaimer must be an “irrevocable and unqualified refusal” to accept an interest in property which is only valid if the person seeking to disclaim “has not accepted the

interest or any of its benefits.”⁵ Federal regulations define acceptance as follows:

A qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which is consistent with ownership of the interest in property. Acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in property.

26 C.F.R. § 25.2518-2 (1998). In *Hall*, the court held that the disclaimant’s actions taken prior to the execution of the disclaimer constituted an acceptance of the interest. Those pre-disclaimer actions were: acting as co-representative of the estate; joining the other representatives in executing a deed of distribution; executing a receipt and release acknowledging that she received items from the estate; and most notably listing the property for sale in her own name as the seller. *Id.* at 441.

In this case, plaintiff claims that Tom Agee accepted benefits of the interest by living in the residence that would have been part of his inheritance had he not disclaimed it. Tom Agee received his interest on January 13, 1997, the day his mother died. On February 9, 1997, Tom Agee executed the disclaimer which was delivered to his brother acting as personal representative on February 26, 1997. Not until April 1, 1997, however, did Tom Agee move into the house which had been left to him and his brother by their late mother. Defendants have produced lease agreements, to which the plaintiff has offered no objection, indicating that such occupancy has been at all times pursuant to a written lease agreement with the lawful owner of the property, Forrest Jack Agee, and for a monthly amount consistent with the fair rental value.

⁵ This irrevocable nature of a qualified disclaimer discounts plaintiff’s argument that Tom Agee would be able to take back the interest at a later date.

See Lease Agreements dated April 1, 1997 and April 1, 1998. The initiation of the rental agreements took place months after the execution and delivery of the disclaimer. Therefore, any action by Tom Agee after the execution of the disclaimer cannot constitute acceptance of an interest which he already relinquished. The plaintiff has not presented any evidence that Tom Agee committed any affirmative acts of acceptance prior to the date of the execution of the disclaimer. Moreover, the act of leasing the residence in question is not consistent with ownership of the property. Tom Agee acts only as a tenant, not a landlord. He does not receive rents from the property, but instead pays rents to the sole owner of the property, his brother Forrest Paul Agee. These actions cannot constitute acceptance. Therefore, the disclaimer executed was valid.

It must be noted that the statutory prohibition against fraudulent conveyances fails to refer to a disclaimer in its list of transfers affected. *See* S.C. Code Ann. § 27-23-10. And, while the plaintiff's rendition of the law of the fraudulent transfer is correct, application of such is unwarranted. The effect of a valid disclaimer prevents a transfer from taking place due to the provision which deems the disclaimed property as passing as if the disclaimant had predeceased the transferor.

Upon initial attention to the motions pending in this case, this court considered certifying to the South Carolina Supreme Court the question of the interplay between the disclaimer provision of the South Carolina Probate Code, S.C. Code Ann. § 62-2-801, and the fraudulent conveyances statute, S.C. Code Ann. § 27-23-10. However, due to the plain language of section 62-2-801 indicating an intent to preserve both the common law uses for disclaimer and the present-day tax benefit, this court deems it unnecessary to do so. Furthermore, in light of the

foundational common law principles discussed in *Lynch v. Lynch, infra.*, this court has no doubt that South Carolina would continue to follow those principles in this context.

IV. CONCLUSION

It is, therefore,

ORDERED, for the foregoing reasons that the defendants' motion for summary judgment is **GRANTED**, and the plaintiff's motion for summary judgment is **DENIED**.

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
January __, 2000