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**Aug 18 2022**

**S.C. SUPREME COURT**

**IN THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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APPEAL FROM GREENVILLE COUNTY  
The Honorable Letitia H. Verdin, Circuit Court Judge

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Appellate Case No. 2022-000881  
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Raymond A. Wedlake, as a Member of Woodington Homeowners Association, Inc. and on behalf of other similarly-situated Members of Woodington Homeowners Association, Inc.,.....Petitioner,

v.

Board of Directors of Woodington Homeowners Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix and McCabe, Trotter & Beverly, P.C., and State Farm Fire and Casualty Company,.....Respondents.

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**RESPONDENT STATE FARM FIRE AND CASUALTY COMPANY'S  
RETURN TO PETITION FOR WRIT OF CERTIORARI**  
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*s/Jennifer E. Johnsen*

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## PETITIONER'S QUESTIONS PRESENTED

Petitioner states the following questions presented for review:

- I. Whether the dismissal was premature pending discovery.
- II. Whether the premature dismissal denied the petitioner his constitutional rights.
- III. Whether the petitioner was denied his constitutional right to a jury trial as a result of the dismissal from the bench.
- IV. Whether the petitioner was discriminated against as a *Pro-Se* party by the “Legal Brethren Buddy Buddy Club.”

## STATEMENT OF THE CASE

State Farm Fire and Casualty Company (“State Farm”) is the liability insurer for the Woodington Homeowners’ Association (“WHOA”). (R. p. 354). Between 2017 and 2019, Petitioner Raymond Wedlake (“Petitioner” or “Wedlake”) filed at least three (3) lawsuits against members of the WHOA Board of Directors (“WHOA Board”). These lawsuits stem from a 2016 dispute regarding a sailboat painting on Wedlake’s garage door.

In 2017, Wedlake filed a complaint in the Greenville County Court of Common Pleas against members of the WHOA Board of Directors (“WHOA Board”) entitled: Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners’ Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners’ Association, Inc., and Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301 (“the 2017 Action”). (R. pp. 46-62). In the 2017 Action, Wedlake sought a declaratory judgment regarding interpretation of the WHOA bylaws, nominal damages, and attorney’s fees. (R. pp. 46-62). Following Wedlake’s presentation of his evidence at trial, the Greenville County Court of Common Pleas granted the WHOA Board’s motion to dismiss. Wedlake appealed the Court’s decision and it was affirmed by the Court of Appeals. (R. pp. 37-42). The WHOA Board retained

the services of the law firm of McCabe, Trotter & Beverly, P.C. (“MTB”) to represent them in the 2017 Action.

On March 23, 2019, Petitioner Raymond Wedlake (“Petitioner” or “Wedlake”) filed a complaint in the Greenville County Court of Common Pleas against the WHOA Board entitled: Raymond Wedlake, as a Member of the Woodington Homeowners’ Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners’ Association, Inc., CA No.: 2019-CP-23-01501 (“the 2019 Action”). (R. pp. 63-72). In the 2019 Action, Wedlake claimed that the defendants breached their fiduciary duty to the WHOA by authorizing payment of an invoice for legal services rendered by MTB in their defense of several board members and the WHOA in a prior lawsuit filed against them by Wedlake. (R. pp. 63-72). Wedlake also alleged the defendants violated their fiduciary duty by counting ballots that had been sent to the community in October of 2018 (the ballots pertained to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy “Yes” votes in favor of the proposed plan. (R. pp. 63-72). Following a hearing on the WHOA Board’s motion for summary judgment, the Greenville County Court of Common Pleas granted summary judgment in the WHOA Board’s favor. (R. pp. 16-26).

Thereafter, on June 10, 2020, Wedlake filed a complaint in the Greenville County Magistrate Court against several members of the WHOA Board of Directors (“WHOA Board”) and MTB entitled: Raymond A. Wedlake, as a Member of Woodington Homeowners’ Association, Inc. and on behalf of all other similarly situated members of Woodington Homeowners’ Association, Inc., v. Board of Directors of Woodington Homeowners’ Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, McCabe

Trotter & Beverly P.C., C.A. No. 2020-CV-23-10201384 (“the 2020 Action”). (R. pp. 136-186). In the 2020 Action, Wedlake sought damages from the WHOA Board and MTB for allegedly breaching the WHOA bylaws, conspiring to extort corporate funds, and casting him in a false light. (R. pp. 136-196). Upon receipt of the complaint, State Farm agreed to provide the members of the WHOA Board with a defense in the 2020 Action under liability policy issued to WHOA pursuant to a reservation of rights. (R. pp. 354-355).

Wedlake then filed an amended complaint in the 2020 Action in an attempt, based on his interpretation of the State Farm policy, to remove any potential insurance coverage afforded to members of the WHOA Board. (R. pp. 189-202). In the amended complaint, Wedlake also asserted a breach of contract claim against State Farm for providing a defense to the members of the WHOA Board on the grounds that the amended complaint allegedly no longer triggered coverage under the State Farm policy. (R. pp. 189-202). On October 20, 2020, State Farm moved to dismiss the claims against it in the 2020 Action on the grounds that Wedlake lacked standing to assert a breach of contract claim against State Farm. (R. pp. 27-36 and 671-682). That motion was granted by the Greenville County Magistrate Court by order dated December 28, 2020. (R. pp. 27-36 and 671-682). The Greenville County Court of Common Pleas affirmed the dismissal by order dated May 8, 2021. (R. pp. 43-45).

On May 18, 2021, Wedlake appealed the dismissal of the 2020 Action to the South Carolina Court of Appeals. On April 27, 2022, the Court of Appeals denied Wedlake’s appeal and affirmed the dismissal. Wedlake v. Board of Directors of Woodington Homeowners Association, Inc., Op. No. 2022-UP-184 (S.C.Ct.App. filed April 17, 2022). The Court of Appeals held as follows with respect to the issue of State Farm’s dismissal for lack of standing:

3. As to issue C: Trancik v. USAA Ins. Co., 354 S.C. 549, 553-54, 581 S.E.2d 858, 861 (Ct. App. 2003) (holding a third party who is not a party to a contract

cannot bring suit for breach of contract); Park v. Safeco Ins. Co. of America, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (providing an injured person who is not a party to the insurance contract has “no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against [the insured]”).

Id. On May 11, 2022, Wedlake filed a Petition for Rehearing. The Court of Appeals denied Wedlake’s petition on June 23, 2022 because there was no material fact or principle of law that had been either overlooked or disregarded.

On June 25, 2022, Wedlake filed a notice of appeal, which the South Carolina Supreme Court interpreted as a Petition for Writ of Certiorari as noted in its letter dated June 28, 2022. After receiving this Court’s June 28 letter, Wedlake filed a Writ of Mandamus. The Supreme Court issued an order denying the Writ of Mandamus but provided Wedlake with additional time to file his Writ of Certiorari. Wedlake then filed a Petition for Writ of Certiorari on or about July 21, 2022.

## ARGUMENT

### **I. The Court of Appeals did not err in affirming the dismissal of Petitioner’s claims against State Farm for lack of standing.<sup>1</sup>**

State Farm issued an insurance policy to WHOA (“the State Farm policy”). (R. p. 354-355). WHOA was the only named insured under the State Farm policy. (R. p. 354-355). Although WHOA was the only named insured, the State Farm policy provided that WHOA’s executive officers and directors were also insureds with respect to their duties in those roles. (R. pp. 568-570 and 612-614). As such, State Farm provided members of the WHOA Board with a defense in the 2020 Action subject to a reservation of rights. (R. p. 355). Wedlake asserted a

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<sup>1</sup> Although this issue was not specifically raised by Wedlake in his Petition for Writ of Certiorari, State Farm addresses it out of an abundance of caution.

breach of contract claim against State Farm in the 2020 Action arguing that State Farm should not have provided a defense to members of the WHOA Board. (R. pp. 189-202).

Wedlake, however, is not a named insured under the State Farm policy. (R. p. 355). In addition, Wedlake is not otherwise an insured under the State Farm policy because he is not an executive officer or director of WHOA. (R. p. 355). Thus, Wedlake is not a party to the State Farm policy. (R. p. 355).

This Court and the Court of Appeals have held that “one not in privity of contract with another cannot maintain an action against him in breach of contract.” Fabian v. Lindsay, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014); Bob Hammond Const. Co. v. Banks Const. Co., 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994). Wedlake is not a party to the State Farm policy. Therefore, he cannot maintain a breach of contract claim against State Farm and the Court of Appeals properly affirmed the dismissal of Wedlake’s breach of contract claim against State Farm for lack of standing.

## **II. Petitioner is not entitled to discovery prior to dismissal under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.**

Wedlake is not entitled to discovery prior to dismissal of the case under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(6), a defendant may move to dismiss claims against it for failure to state facts sufficient to constitute a cause of action. See Rule 12(b)(6), SCRCP. “In deciding a motion to dismiss pursuant to 12(b)(6), the trial court should only consider the allegations set forth on the face of the plaintiff’s complaint, and a 12(b)(6) motion should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” Higgins v. Med. Univ. of S.C., 326 S.C. 592, 603, 486 S.E.2d 269, 274–75 (Ct. App. 1997) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995)). The very nature of dismissal under

Rule 12(b)(6) is that it is decided solely on the pleadings. Thus, any information obtained through discovery would not be considered by the court in ruling on a motion to dismiss under Rule 12(b)(6).

Even if Wedlake is entitled to discovery prior to dismissal under Rule 12(b)(6), which he is not, the discovery Wedlake raises is of no consequence to the Court of Appeals' decision. Wedlake asserts he "would have shown that he is stated as the 'Claimant' in his claim" against State Farm, but discovery was "thwarted by premature dismissal." "Claimants," however, do not have standing to bring claims against insurers because they are not parties to the insurance contract. See e.g. Fabian, 410 S.C. at 488, 765 S.E.2d at 139 ("Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract..." (internal quotations omitted)); Trancik v. USAA Ins. Co., 354 S.C. 549, 555, 581 S.E.2d 858, 861 (Ct. App. 2003) (holding that the third party or incidental beneficiary did not have a contractual relationship with the insurer and could not maintain an action against the insurer for breach of contract); Park v. Safeco Ins. Co. of America, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (providing an injured person who is not a party to the insurance contract has "no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against [the insured]"); Kleckley v. Northwestern Nat. Cas. Co., 338 S.C. 131, 135, 526 S.E.2d 218, 220 (2000) (holding that a slip and fall victim, as a third party to the insurance contract between the premises owner and insurer, did not have standing to sue insurer for bad faith refusal to pay benefits).

As discussed above, Wedlake is not an insured or a party to the State Farm policy. Wedlake's alleged status as a "claimant" does not change his relationship to the State Farm policy. Because he is neither an insured nor a party to the State Farm policy, he does not have

standing to assert claims under it. Discovery was not necessary or warranted on this issue. Thus, the Court of Appeals properly affirmed the dismissal of Wedlake's claims against State Farm in the 2020 Action for lack of standing and Wedlake's Petition for Writ of Certiorari should be denied.

**III. Petitioner was denied the right to a jury trial because he lacked standing to bring a claim against State Farm, not due to an error of law.**

Wedlake was not denied his constitutional right to a jury trial due to any error of law. Instead, the case was dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because, as discussed above, he lacks standing to assert a claim for breach of contract against State Farm. "The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. The question is whether, viewing the allegations in the light most favorable to the plaintiff, the complaint states any valid claim for relief, even if the court doubts that the plaintiff will prevail." Clearwater Tr. v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006) (citing Carolina Care Plan, Inc. v. United Healthcare Services, Inc., 361 S.C. 544, 606 S.E.2d 752 (2004)). Thus, dismissal is appropriate under Rule 12(b)(6) if the plaintiff fails to state a valid claim for relief even if his allegations are proven to be true.

Standing is a threshold requirement that must be satisfied for Wedlake's breach of contract claim against State Farm. The Court of Appeals properly affirmed the dismissal of Wedlake's claim against State Farm in the 2020 Action because he did not (and cannot) satisfy this requirement. Even if Wedlake theoretically could prove his allegations in the amended complaint against State Farm as true, he is not entitled to relief because he is a stranger to the policy. Thus, the Court of Appeals properly affirmed the dismissal and Wedlake's Petition for Writ of Certiorari should be denied.

**IV. Petitioner did not properly preserve his claim for discrimination as a *Pro-Se* party for appeal.**

For the first time in his Petition for Writ of Certiorari, Wedlake contends he was discriminated against as a *Pro-Se* party by the “legal brethren buddy buddy club.” Wedlake did not raise this issue on appeal to the Greenville County Court of Common Pleas or the Court of Appeals. Because he did not previously raise this issue, it is not properly preserved for appeal or consideration by this Court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Thus, the Court should not address this issue and Wedlake’s Petition for Writ of Certiorari should be denied.

**CONCLUSION**

For the foregoing reasons, the Wedlake’s Petition for Writ of Certiorari should be denied.

*s/Jennifer E. Johnsen*

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