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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2022-001460

Terri L. Johnson,..... Petitioner,

v.

State Farm Mutual Automobile Insurance Company,..... Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

This case concerns whether an automobile insurance policy issued by State Farm to insure a Scion owned and driven by Mr. Johnson, Petitioner's husband, was in force on February 19, 2014 (the "Date of Loss") and whether State Farm had a reasonable ground to contest underinsured motorist ("UIM") coverage under the policy, referred to herein as the "Scion Policy," for injuries Petitioner suffered on the Date of Loss.

On the Date of Loss, Petitioner was driving her Buick, which she insured with State Farm under a separate automobile insurance policy (the "Buick Policy"), when an underinsured driver collided into her, causing her injuries. (R. 23.) Petitioner made a UIM claim with State Farm. (R. 141.) State Farm paid Petitioner UIM benefits on both the Buick Policy and a second household policy insuring Mr. Johnson's Tundra (the "Tundra Policy"). (R. 8.)

Approximately three years after the Date of Loss, Petitioner demanded State Farm also pay her UIM benefits under the Scion Policy for the injuries she suffered on the Date of Loss. (R. 17-18.) Mr. Johnson, however, cancelled the Scion Policy prior to the Date of Loss. He did so by calling his State Farm agent and requesting cancellation of the Scion Policy. (R. 151-52; R. 121-24, 130-31.) Accordingly, State Farm responded to the demand for additional UIM coverage by informing Petitioner's counsel there were only two active policies on the Date of Loss and the UIM policy limits on both had already been paid. (R. 19.)

Not only had the Scion Policy been cancelled prior to the Date of Loss (Resp. Br. 8-14), neither the Petitioner nor her husband had an insurable interest in the Scion on the Date of Loss (Resp. Br. 15-23). The Scion had been wrecked beyond repair and left inoperable long before the Date of Loss, and the Scion was no longer owned nor in the possession of the Petitioner or her husband on the Date of Loss. (R. 21-22, 87, 89, 127.)

Petitioner sued State Farm for, *inter alia*, breach of contract and bad faith based on State Farm's non-payment of UIM benefits under the Scion Policy. Petitioner and State Farm filed cross motions for summary judgment on these claims and the circuit court granted summary judgment to State Farm on both. (R. 1-5.)

The basis for summary judgment on the breach of contract claim was two-fold. First, the circuit court held the Scion Policy had been cancelled by Mr. Johnson prior to the Date of Loss. (R. 2-3.) Second, the Scion Policy was void on the Date of Loss for lack of insurable interest. (R. 3-4.)

The circuit court granted summary judgment to State Farm on Petitioner's bad faith claim because Mr. Johnson's direct request to cancel the Scion Policy before the Date of Loss was a reasonable ground for State Farm to contest UIM coverage, regardless of whether the request resulted in an effective cancellation. (R. 4.)

Petitioner appealed, claiming the circuit court erred in determining the issues of cancellation, lack of insurable interest, and bad faith as a matter of law. The Court of Appeals affirmed the circuit court's grant of summary judgment to State Farm on both the breach of contract and bad faith claims. *Johnson v. State Farm Mut. Auto. Ins. Co.*, Op. No. 2022-UP-305 (Ct. App. July 7, 2022). The Court of Appeals held the circuit court correctly determined Mr. Johnson cancelled the Scion Policy prior to the Date of Loss when he called State Farm's agent and told her to cancel the policy. *Id*. at 2. Because the Court of Appeals found the circuit court did not err in determining the Scion Policy had been validly cancelled prior to the Date of Loss, a dispositive issue, it did not address Petitioner's argument she and her husband had an insurable interest in the Scion on the Date of Loss. *Id*. The Court of Appeals also held the circuit court correctly determined

Mr. Johnson's request to cancel the Scion Policy prior to the Date of Loss made it reasonable for State Farm to contest coverage under the Scion Policy. *Id*.

After the Court of Appeals denied rehearing, Petitioner filed the present Petition for Writ of Certiorari.

ARGUMENT

The Court should deny the Petition for Writ of Certiorari because there is no novel question of law, no dissent in the decision of the Court of Appeals, no conflict between the Court of Appeals' decision and a prior decision of this Court, no constitutional issues, no federal questions, nor any other special reasons justifying certiorari. Furthermore, the circuit court and the Court of Appeals correctly determined the dispositive issues, including the Scion Policy's cancellation prior to the Date of Loss and Mr. Johnson's undisputed request for cancellation of the Scion Policy prior to the Date of Loss being a reasonable ground for State Farm to contest Petitioner's UIM claim. Finally, Petitioner's request for certiorari to overturn "current precedent" on the impact of cross-motions for summary judgment is not a justiciable controversy in this case given the "current precedent" was neither mentioned nor relied upon by the circuit court or the Court of Appeals.

I. There are no special or important reasons to justify a writ of certiorari.

"A writ of certiorari is not a matter of right, but of sound judicial discretion." SCACR 242(b). "This Court has held it will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion." *Haggins v. State*, 377 S.C. 135, 136, 659 S.E.2d 170, 170 (2008); *In re Exhaustion of State Remedies in Criminal Post-Conviction Relief Cases*, 321 S.C. 563, 564, 471 S.E.2d 454, 454 (1990). *S.C. Dep't of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373 (2020). Examples of special reasons provided under Rule 242(b) include the existence of a novel question of law, a dissent in the decision of the Court of Appeals, a conflict

between the Court of Appeals' decision and a prior decision of this Court, substantial constitutional issues, and a federal question where the Court of Appeals' decision conflicts with a decision of the United States Supreme Court.

Petitioner sets forth no special and important reasons this Court should grant certiorari to the Court of Appeals, and there are none. There are no novel questions of law, constitutional issues, or federal questions before the Court. There is no dissent in the decision of the Court of Appeals. And the Court of Appeals' decision does not conflict with a prior decision of this Court. Nor is there any other reason of similar caliber and character as the examples set forth in Rule 242(b). Instead, Petitioner raises mere disagreement with the Court of Appeals as well as a non-controlling, academic issue, the disposition of which has no bearing on her success or failure. Neither warrant certiorari and the Petition should be denied.

II. As a matter of law, the Scion Policy was cancelled before the Date of Loss.

The Court of Appeals correctly determined the circuit court did not err in granting State Farm summary judgment on Petitioner's breach of contract claim because Mr. Johnson had cancelled the Scion Policy prior to the Date of Loss by calling State Farm's agent and telling her to cancel the policy. According to Petitioner, the Court of Appeals "failed to address the contrary evidence and arguments" advanced by Petitioner which "precluded affirmance." (Pet. 11-12.) As Respondent explained in its Brief to the Court of Appeals, Petitioner's arguments were not raised to and ruled upon by the circuit court and, therefore, are not preserved for review. (Resp. Br. 11-12.) In any event, Petitioner is incorrect, and her Petition should be denied.

A. Under the Scion Policy and the law of this State, the only action necessary to effect Mr. Johnson's cancellation of the Scion Policy was his direct request to State Farm's agent.

Cancellation of an insurance policy at the request of the insured is "a very different situation from the insurer desiring to cancel the policy." *Hicklin v. State Farm Mut. Auto. Ins. Co.*, 176 S.C. 504, 180 S.E. 666, 669 (1935). A direct request to cancel by the insured to the insurer or its agent is enough to abrogate the contract of insurance. *Id*. (finding no merit "in the suggestion that the policies themselves were not in fact . . . actually cancelled" because "a direct request to cancel by the insured to the company or its proper agent is held sufficient to abrogate the contract"). There are no statutory requirements on the part of the insured or the insurer and, absent a policy provision to the contrary, no action by or consent of the insurer is necessary to make the insured's cancellation effective. *Hicklin*, 176 S.C. at 504, 180 S.E. at 669; *see also Moore v. Palmetto Bank*, 238 S.C. 341, 344, 120 S.E.2d 231, 233 (1961).

Thus, when an insured requests cancellation of his auto insurance policy, notice of the cancellation by the insurer to the insured is not required for the cancellation to be effective and, if given, has no impact on the effective date of cancellation. *See* S.C. Code Ann. § 38-77-120(b) (stating insurer's statutory notice requirements for effective cancellation do not apply if the "named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be cancelled"); *Wilbanks v. Prudential Prop. & Cas. Ins. Co.*, 277 S.C. 256, 258-59, 286 S.E.2d 127, 128-29 (1982) (finding insured unilaterally cancelled policy prior to date of loss when insured's agent received notice of insured's intent to cancel the policy despite the insurer's cancellation notice stating the cancellation was effective after the date of loss). Likewise, absent a policy provision to the contrary, the insured's cancellation is effective without regard to the return of unearned premium or the timing of the same. *Hicklin*, 176 S.C. at 504, 180 S.E. at

669; *see also Nance v. Blue Ridge Ins. Co.*, 238 S.C. 471, 475, 120 S.E.2d 516, 517 (1961) (holding failure of insurer to return unearned premium to its insured did not destroy effectiveness of the insurer's cancellation of the policy where the policy stated "payment or tender of unearned premium is not a condition of cancellation"); *McElmurray v. Am. Fid. Fire Ins. Co.*, 236 S.C. 195, 204-05, 113 S.E.2d 528, 533 (1960) (finding policy was effectively cancelled despite no refund of unearned premium where the policy expressly negated necessity of return to the insured of the unearned premium to effect cancellation of the policy).

Under the terms of the Scion Policy, Mr. Johnson had the unilateral right to cancel the contract of insurance and inform State Farm of the effective date of such cancellation: "***You*** may cancel this policy by providing to ***us*** advance notice of the date cancellation is effective." (R. 74 (underline added, other emphasis in original).) The Scion Policy required no action or consent from State Farm to make such cancellation effective: "***We*** may confirm the cancellation in writing." (R. 74 (underline added, other emphasis in original).) Further, the Scion Policy expressly provided the return of unearned premium and timing of the same had no impact on the effective date of cancellation: "Any unearned premium may be returned within a reasonable time after cancellation. Delay in the return of any unearned premium does not affect the cancellation date." (R. 75 (emphasis added).)

Thus, the only action necessary to make cancellation of the Scion Policy effective immediately was a direct request to cancel the Scion Policy made by Mr. Johnson to State Farm or its agent. According to Mr. Johnson's sworn deposition testimony and the corroborating testimony of the State Farm agent, Mr. Johnson made his direct request for cancellation to his State Farm agent prior to the Date of Loss. (R. 123-24, 130-31, 151-52.) Mr. Johnson wanted the

cancellation of the Scion Policy to be retroactive to the date of his accident in the Scion, and the Agent confirmed he could do so and he would be refunded the premiums. (R. 151-52.)

B. Mr. Johnson cancelled his Scion Policy prior to the Date of Loss, whether he requested retroactive or immediate cancellation.

Petitioner argues the Court of Appeals failed to consider "contrary evidence," namely that Petitioner, who was not a party to the conversation, denies her husband requested *retroactive* cancellation.[1] (Pet. 11-13.) She also argues the Court of Appeals failed to consider her argument the Scion Policy could not, as a matter of law, be retroactively cancelled because the Scion Policy required "advance notice of the date cancellation is effective." (Pet. 11-13.) These arguments, which were not raised to and ruled on by the circuit court, are uncompelling and do not warrant certiorari.

Neither the circuit court's grant of summary judgment nor the Court of Appeals' affirmance of the same hinged upon the Scion Policy being *retroactively* cancelled, and Petitioner's argument does not create a genuine issue of fact as to whether the Scion Policy was already cancelled or otherwise in force on the Date of Loss. Whether Mr. Johnson cancelled the Scion Policy effective immediately or retroactively is a distinction without a difference. Either way, it is undisputed Mr. Johnson's direct request for cancellation of the Scion Policy was made to State Farm well in advance of the Date of Loss and, as explained above, his request abrogated the contract of insurance prior to the Date of Loss.

Moreover, while Petitioner posits Mr. Johnson, who desired and intended cancellation, could only cancel the Scion Policy through nothing short of precise, exacting compliance with the policy's terms, such standard is not supported by the terms of the Scion Policy or the laws of this

[1] Petitioner does not deny her husband requested cancellation of the Scion Policy prior to the Date of Loss, she merely denies he requested *retroactive* cancellation.

State. For example, the Scion Policy stated, "***You*** <u>may</u> cancel this policy by providing to ***us*** advance notice of the date cancellation is effective." (R. 74 (underline added, other emphasis in original).) The use of the word "may" compels the conclusion advance notice was permissive, not mandatory. *See Waites v. S.C. Windstorm & Hail Underwriting Ass'n*, 279 S.C. 362, 365, 307 S.E.2d 223, 224 (1983) (declining to interpret the word "may" to mean "shall" and agreeing the word "may" in a statute providing an aggrieved person "may . . . appeal to the Commission" meant the appeal was permissive and not mandatory).

Even if advance notice of the effective date of cancellation by the insured to State Farm were mandatory, not permissive, under the Scion Policy, such advance notice requirement was for the benefit of and, therefore, waivable by State Farm. After all, it is well settled a party to a contract may unilaterally waive or abandon a provision or condition in the contract that is for the benefit of that party. *See Sterling Dev. Co. v. Collins*, 309 S.C. 237, 241, 421 S.E.2d 402, 404 (1992) ("A waiver does not require consideration … where a party elects to abandon some provision or condition inserted in a contract for his benefit."); *see also Swygert v. Durham Life Ins. Co.*, 229 S.C. 199, 204, 92 S.E.2d 478, 481 (1956) ("It is equally well settled that where, as here, in order to effect a change of beneficiary the policy must be delivered to the Company for endorsement, such requirement is primarily for the protection of the Company and may be waived by it during the lifetime of the insured.").

In short, Mr. Johnson's direct request for cancellation prior to the Date of Loss—which is not disputed by Petitioner—cancelled the Scion Policy prior to the Date of Loss. Both the circuit court's and the Court of Appeals' decisions are sound, Petitioner sets forth no unusual or special circumstances warranting further review, and this Court should, therefore, deny the Petition.

C. The automatic debit of premium from the Johnsons' bank account did not resurrect the cancelled Scion Policy.

Petitioner claims the Court of Appeals failed to consider the parties' stipulation of facts in the circuit court, which, among other things, describe a payment of insurance premiums automatically drafted from Petitioner's bank account on February 10, 2014, shortly after the request for cancellation, arguing "No premium could have been paid on a policy that was not in existence." (Pet. 12-13.) This argument, which was not raised to and ruled upon by the circuit court and, therefore, is not preserved for review, is a red herring.

By way of background, the Johnsons were enrolled in the State Farm Payment Plan ("SFPP"), under which a single payment of the premiums for their multiple insurance policies, including the Buick Policy and the Tundra Policy, was automatically drafted from their bank account on the 10th of each month (or the first business day thereafter). (R. 20-21.) The amount automatically drafted on the 10th of each month was billed by SFPP on the 20th of the preceding month (or the first business day thereafter). (R. 20-21.) Changes in the amount of premium to be collected occurring *after* the billing on the 20th were not reflected in the following automatic draft on the 10th; they were reflected in the next amount billed on the 20th. (R. 94.)

Thus, the amount of the February 10, 2014 automatic debit of premiums for the Johnsons' insurance policies was billed by SFPP on January 22, 2014, and no changes to the policies occurring between January 22, 2014 and February 10, 2014, including Mr. Johnson's cancellation of the Scion Policy, would have been reflected in the payment drafted on February 10. The next payment of premium was billed on February 20, 2014 and drafted on March 10, 2014 and reflected the change in premiums given the cancellation of the Scion Policy. (R. 23, 83, 85, 94-95.)

Not only does the record demonstrate the premiums withdrawn on February 10, 2014 were withdrawn according to what was billed on January 22, 2014—before cancellation was

requested—and in no way detract from or impact Mr. Johnson's cancellation request, it is well settled an insured may unilaterally cancel his insurance. *See* discussion *supra*, Argument § II.A. Petitioner does not dispute her husband's sworn deposition testimony he requested cancellation of the Scion Policy, she does not dispute her husband's cancellation could be effective immediately (if not retroactively), she does not dispute the facts concerning the automatic debit of premiums and the basis for the same, and she cites no authority to support her apparent contention Mr. Johnson's cancellation of the Scion Policy could thereafter be destroyed by an automated, recurring debit of premium reflecting what was billed before her husband requested cancellation of the Scion Policy. Certiorari is not warranted, and the Petition should be denied.

D. Internal file notes never communicated to Petitioner cannot change the undisputed fact Mr. Johnson unilaterally cancelled the Scion Policy prior to the Date of Loss.

In a final effort to secure this Court's review, Petitioner argues "the Court of Appeals did not acknowledge that State Farm's own post-accident business records admitted that the Scion Policy was in effect on the date of the accident." (Pet. 13.) As an initial matter, "Only those questions raised in the Court of Appeals ***and*** in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." SCACR 242(d)(2). Prior to her Petition for Rehearing, Petitioner never made this argument to the Court of Appeals. While the argument is being improperly raised in a Petition for Writ of Certiorari and should not warrant review by this Court, it also fails on the merits.

The so-called "additional evidence" is an internal note on the number of policies, not an admission the Scion Policy was in effect on the Date of Loss. The cited internal file notes are from a State Farm claim file and reflect, at most, a momentary, incorrect belief regarding the number of insurance policies in existence, which belief was never communicated to Petitioner. The existence

of the internal note on the number of policies does not and could never change the sworn testimony and undisputed fact Mr. Johnson unilaterally cancelled the Scion Policy prior to the Date of Loss. Nor does it change the law of this State allowing Mr. Johnson to unilaterally cancel his insurance without any action or acceptance on the part of State Farm. Petitioner's unpreserved, uncompelling arguments do not warrant certiorari and the Petition should be denied.

III. Neither Petitioner nor her husband had an insurable interest in the Scion on the Date of Loss.

As the circuit court determined, summary judgment to State Farm on the breach of contract claim was also appropriate because the Johnsons lacked any insurable interest in the Scion on the Date of Loss. While the Court of Appeals declined to address this additional sustaining ground given the dispositive nature of Mr. Johnson's undisputed request for cancellation of the Scion Policy prior to the Date of Loss, Petitioner argues the Court of Appeals should have found the insurable interest issue "unavailing for State Farm." (Pet. 13-14.) Even if Mr. Johnson's undisputed, unilateral request for cancellation of the Scion Policy were not dispositive, State Farm nonetheless would have been entitled to summary judgment given the Johnsons' lack of insurable interest. (Resp. Br. 15-22.) Furthermore, Petitioner's arguments she or her husband had an insurable interest in the Scion were not raised to and ruled upon by the circuit court and are not preserved for review. (Resp. Br. 16.) In short, Petitioner's arguments do not warrant certiorari and in any event are misplaced.

A. Petitioner's insurable interest argument fails because Mr. Johnson was not the owner of the Scion on the Date of Loss and he faced no liabilities as such.

The circuit court correctly held Petitioner lacked an insurable interest in the Scion on the Date of Loss. (Order at 3-4, R. 3-4.) Petitioner argues her husband had an insurable interest on the Date of Loss because the Scion's salvage or branded certificate of title had not yet been issued by

the South Carolina Department of Motor Vehicles to identify State Farm as the owner of the Scion. (Pet. 16.) Therefore, according to Petitioner, Mr. Johnson was still the legal owner of the scrap vehicle and could have, hypothetically, been exposed to certain liabilities[2] on the Date of Loss. (Pet. 16.) This is incorrect; Mr. Johnson was not the owner of the Scion on the Date of Loss and he faced no liabilities as such.

The stipulated facts establish as a matter of law Mr. Johnson no longer owned the Scion on the Date of Loss. Before the Date of Loss, Mr. Johnson agreed to transfer ownership to State Farm in exchange for payment of his loan and equity in the Scion; State Farm paid off Mr. Johnson's loan and Mr. Johnson's lienholder "in turn released the lien and title to State Farm"; Mr. Johnson accepted State Farm's payment for his equity in the Scion and Mr. Johnson signed a Power of Attorney "authorizing State Farm to secure" and "transfer title to the Scion" to it; and it was Mr. Johnson's "intention to transfer title of the Scion to State Farm" and "transfer ownership to State Farm" in exchange for the payments he received. Petitioner attempts an end run around these stipulated facts by pointing out the SCDMV had not, as of the Date of Loss, issued title to the Scion in State Farm's name.

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[2] Petitioner points to three sections of the S.C. Code for these hypothetical liabilities: § 56-5-4230, § 29-15-10(D), § 56-5-5635. (Pet. 15-16.) Petitioner cites to these statutes because they refer to an "owner." None give rise to or otherwise create a genuine issue as to whether the Johnsons had an insurable interest in the Scion on the Date of Loss.

Section 56-5-4230 pertains to damage to a highway or highway structure caused by the illegal operation, driving or moving of the owner's vehicle upon the highway or highway structure. There is nothing in the record to suggest the Scion—which was a totaled vehicle sitting at a salvage yard—was at risk of being illegally driven or moved while awaiting issuance of the salvaged title.

Neither section 56-5-5635 nor section 29-15-10(D) appear to impose any liability on an owner. The former provides for notice to vehicle owners and lienholders when a vehicle has been taken into custody at the direction of law enforcement. The latter provides the magistrate may sell an abandoned vehicle and apply the proceeds to the storage costs accrued at the repair or other facility where it was abandoned, given certain requirements are met. There is nothing in the record to suggest the Scion was at risk of being taken into custody by law enforcement or was abandoned.

In support, Petitioner cites S.C. Code Ann. § 56-19-10, which defined owner as "a person … having the property in or title to a vehicle," in support of Mr. Johnson's status as "owner" on the Date of Loss. (Pet. at 19 (citing to S.C. Code Ann. § 56-19-10(21), which was deleted by 2017 Act No. 89 (H.3247), Section 31, eff. Nov. 19, 2018).) However, Mr. Johnson did not "have title to" the Scion. To the contrary, under the stipulated facts he had transferred ownership and title to State Farm before the loss. Further, this Court has deemed the purchaser the true owner of a vehicle after the sale of the vehicle, even though the seller's name is still on the vehicle's certificate of title and the formal transfer of certificate of title had not yet been accomplished. *See, e.g.*, *Travelers Ins. Co. v. Lawson*, 276 S.C. 587, 589-90, 281 S.E.2d 116, 117-18 (1981); *Grain Dealers Mut. Ins. Co. v. Julian*, 247 S.C. 89, 99, 145 S.E.2d 685, 690 (1965). Thus, the status of the certificate of title on the Date of Loss does not create a genuine issue of material fact as to insurable interest. *See Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004) (finding no question of fact existed as to whether the insured had an insurable interest and holding "We may not draw an inference that [the insured] had an insurable interest without sufficient evidence to support such a conclusion."). Nor does it warrant certiorari.

B. Petitioner's claimed insurable interest in herself cannot and did not create an insurable interest in the Scion on the Date of Loss.

Petitioner also seeks to eliminate the insurable interest requirement from claims involving UIM coverage due to the portability of UIM coverage, however this argument has already been rejected by this Court in the context of uninsured motorist ("UM") coverage and it is inapplicable to the facts of this case. In *Nationwide Mutual Insurance Company v. Smith*, the Court of Appeals held the named insured of an automobile insurance policy with UM coverage must have an insurable interest in the vehicle insured under the policy for there to be any UM coverage available under the policy. 376 S.C. 60, 66-67, 654 S.E.2d 837, 840-41 (2007). An "automobile insurance

policy, like other forms of insurance, **must be supported by an insurable interest** in the named insured," and "Where a named insured does not have any insurable interest in the vehicle, the insurance policy is illegal." *Id*. at 67, 654 S.E.2d at 840-41 (emphasis added). While acknowledging UM coverage is personal and portable, the Court held "UM coverage does not exist in and of itself, but rather is a requirement of and **dependent on** a valid automobile insurance policy . . . UM coverage, consequently, is **indirectly dependent on the existence of an insurable interest**." *Id*. at 66-67, 654 S.E.2d at 840-41 (emphasis added). Thus, whether the named insured had an insurable interest in the vehicle insured under the policy containing UM coverage is "pivotal" in determining whether UM benefits are recoverable under the policy. *Id*. at 71, 654 S.E.2d at 843. Here, the Petitioner's lack of an insurable interest in the Scion is similarly pivotal and the circuit court correctly ruled the lack of an insurable interest in the Scion barred her recovery of benefits under the Scion Policy.

Petitioner attempts to distinguish *Smith* because it involved UM rather than UIM coverage. (Pet. 17-18.) However, this distinction does not make a difference, at least in this context. Petitioner's argument hinges on the portability of UIM coverage, just like the insured's argument in *Smith* hinged on the portability of UM coverage. The portability of UM and UIM is identical, and the analysis of portability under *Smith* is equally applicable here.[3] Whether or not UIM is

[3] "[P]ortability refers to a person's ability to use ***his coverage on a vehicle not involved in an accident*** as a basis for recovery of damages sustained in the accident." *Nakatsu v. Encompass Indem. Co*., 390 S.C. 172, 181, 700 S.E.2d 283, 288 (Ct. App. 2010) (emphasis added). Likewise, stacking (for both UM and UIM coverage) relies upon the existence and number of at-home *vehicles* insured under automobile policies. *See, e.g.*, *S.C. Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 446, 405 S.E.2d 396, 398 (1991) (explaining "the amount of [UIM] coverage which may be stacked ***from policies on vehicles not involved in an accident*** is limited to an amount no greater than the coverage on the vehicle involved in the accident") (emphasis added); *Nationwide Mut. Ins. Co. v. Howard*, 288 S.C. 5, 9, 339 S.E.2d 501, 503 (1985) (holding the same stacking rules apply to UIM and UM coverages). In this regard, the argument of the *Smith*

mandatory is irrelevant to the *Smith* analysis. Regardless, while "UIM is not mandatory coverage in the sense that an insured chooses to purchase excess UIM coverage on a vehicle and a specific amount is not required by statute," this Court has held "it is statutorily required coverage in the sense it is required to be offered" up to the limits of the insured's liability coverage. *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 621-22, 753 S.E.2d 515, 521-22 (2013); *see also Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 404–05, 496 S.E.2d 631, 632 (1998) ("Statutorily required coverage is that which is required to be offered or provided."). UIM cannot be separated from liability coverage and the insurable interest requirement given it is coverage purchased "on a vehicle" and which the insurer must offer in an amount up to the limits of the liability coverage. *See Carter*, 406 S.C. at 621-22, 753 S.E.2d at 521-22. Thus, Petitioner's UIM coverage under the Scion Policy was dependent on the Scion Policy being a valid automobile insurance policy and, therefore, dependent on the existence of an insurable interest in the Scion, not just at the policy's inception, but also on the Date of Loss.

Petitioner further attempts to distinguish *Smith* because the policy in *Smith* may have been void from inception. Petitioner's position the insurable interest requirement is or should be gauged only at the time the contract for insurance is made ignores the law that "In order to recover on a policy of insurance, the insured must prove an insurable interest . . . **at the time of the loss**." *Powell v. Ins. Co. of N. America,* 285 S.C. 588, 590, 330 S.E.2d 550, 552 (Ct. App. 1985) (emphasis added). Instead, Petitioner quotes a ninety-year-old holding of a circuit court judge, "When the reason for [a] rule ceases, the rule ceases," in a case that did not involve insurance, much less the insurable interest rule. (Pet. 17) (quoting *Penning v. Reid*, 167 S.C. 263, 166 S.E.

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plaintiffs and Petitioner, that portability allows one to have UIM coverage without an insured vehicle, runs counter to the concept of portability and the law of stacking.

139, 147 (1932)). The rule is "Where a named insured does not have any insurable interest in the vehicle, the insurance policy is illegal," *Smith*, 376 S.C. at 67, 654 S.E.2d at 840–41, and the rule has not ceased.

Finally, Petitioner's argument of an insurable interest in herself on the Date of Loss, because "nothing in South Carolina prohibits a party from agreeing to indemnify an auto-less person who is injured by an underinsured driver," (Pet. 16), would seem more apt—though it would fail for the reasons discussed *supra*—if she was suing over some "auto-less" UIM policy. Petitioner, however, did not have a standalone "UIM policy." The Scion Policy provided UIM coverage among other coverages. (R. 25-77.) Petitioner's ability to recover or stack UIM benefits under the Scion Policy was, therefore, dependent on the Scion Policy being a valid and enforceable contract of insurance on the Date of Loss and, therefore, dependent on her or her husband having an insurable interest in the Scion on the Date of Loss. *Smith*, 376 S.C. at 66-67, 654 S.E.2d at 841; *Powell*, 285 S.C. at 590, 330 S.E.2d at 552.

IV. Whether Mr. Johnson's request for cancellation of the Scion Policy was effective or not, his requested cancellation of the Scion Policy prior to the Date of Loss made it reasonable for State Farm to contest the UIM claim.

The Court of Appeals correctly affirmed the circuit court's grant of summary judgment to State Farm on Petitioner's bad faith claim. Petitioner mischaracterizes the Court of Appeals' decision, claiming it "ruled that State Farm was entitled to summary judgment … because the valid cancellation of the insurance policy gave State Farm reasonable grounds … for denying coverage." (Pet. 18-19.) In fact, the Court of Appeals decided, "The circuit court correctly determined [Mr. Johnson]'s request to cancel the Scion policy prior to [the Date of Loss] made it reasonable for State Farm to contest coverage." *Johnson v. State Farm Mut. Auto. Ins. Co.*, Op. No. 2022-UP-305 (Ct. App. July 7, 2022). The reasonable ground for contesting Petitioner's UIM claim is the

undisputed fact Mr. Johnson requested cancellation of the Scion Policy prior to the Date of Loss. His request for cancellation of the Scion Policy is a reasonable ground for contesting the UIM claim regardless of whether the request effected a "valid" cancellation or when the "valid" cancellation occurred. In sum, Petitioner's argument does not create a genuine issue of material fact as to whether State Farm had a reasonable ground for contesting the claim and there are no special or important reasons warranting certiorari. The Petition should be denied.

V. Whether cross-motions for summary judgment should be decided as a matter of law is a purely academic question, not a justiciable controversy.

In addition to the arguments discussed above, Petitioner requests the Court grant certiorari to overturn "current precedent" and conform South Carolina law to that of the Fourth Circuit by "explicitly hold[ing] that cross-motions for summary judgment do not require either motion to be granted because they must be viewed individually." (Pet. 9-11.) While the present appeal involves a case in which the circuit court was presented with cross-motions for summary judgment, neither the circuit court's Order nor the Court of Appeals' opinion held summary judgment had to be granted because there were cross-motions present. Thus, this Court should deny Petitioner's request to overturn "current precedent" because neither the impact of nor the standard for ruling on cross-motions for summary judgment are justiciable controversies before it.

"A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) (citing *Byrd v. Irmo High School*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996)). "If there is no actual controversy, this Court will not decide moot or academic questions." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) (citing *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)).

The basis for Petitioner's request is the following footnote in State Farm's Brief, in which State Farm quoted *Neumayer v. Philadelphia Indemnity Insurance Company*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019), which in turn cited *Wiegand v. United States Automobile Association*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011), and in which State Farm pointed out Petitioner's cross motion for summary judgment on the breach of contract cause of action was a concession the breach of contract action could be decided as a matter of law despite her contrary argument to the Court of Appeals:

> Appellant argues the circuit court was wrong on both counts and the breach of contract claim "should have been set for trial." (Appellant Br. 9.) However, Appellant filed a cross motion for summary judgment on breach of contract, thereby conceding that the issue should be decided as a matter of law. "When cross motions for summary judgment are filed, the issue is decided as a matter of law." *Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citing *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

(Pet. 9.)

State Farm's footnote, including its quoting of *Neumayer*, does not give rise to a justiciable controversy over which this Court may rule. In her Reply to the Court of Appeals, Petitioner did not address the subject footnote, she did not challenge the validity of *Neumayer* or *Wiegand*, and she did not challenge State Farm's argument, which was that she had already conceded the breach of contract claim could be decided as a matter of law. Furthermore, neither the circuit court's Order granting summary judgment on the breach of contract claim nor the Court of Appeals' Opinion affirming the circuit court's grant of summary judgment mentioned, much less relied upon, *Neumayer*, *Weigand*, or the existence of cross-motions for summary judgment. Accordingly, Petitioner is requesting this Court weigh in on an academic, non-dispositive, apparently inapplicable question simply because she disapproves of the holding in *Neumayer* and *Weigand*, which holding was not the basis for the grant of summary judgment to State Farm.

Even if the validity *Neumayer*'s holding and the points made in State Farm's footnote give rise to a justiciable controversy, Petitioner's request should nonetheless be denied because it is without any support. Petitioner contends "the Federal Rules of Civil Procedure … require cross-motions to be viewed individually" and this Court should overrule "the current precedent" to "conform its precedent to federal precedent" because "the Federal Rules of Civil Procedure . . . provided a model for our state rules" and "the current precedent has no basis in the plain text of the South Carolina Rules of Civil Procedure." (Pet. 10-11.) This Court, however, is not required to overturn its own case law to blindly conform to the law federal courts have chosen to apply to the Federal Rules of Civil Procedure.

This Court "look[s] to the construction placed on the Federal Rules of Civil Procedure" "***where there is no South Carolina law***." *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (emphasis added). Looking to federal court decisions for guidance when there is no South Carolina law is a far cry from overturning decisions of this Court because they differ from federal law. Moreover, this Court has expressly declined to overturn its own case law to conform with federal law, specifically with respect to the standards applied to motions for summary judgment. For example, in *Hancock v. Mid-South Management Company*, this Court acknowledged but declined to adopt the rule followed in the federal court system, that a mere scintilla of evidence is not sufficient to withstand a motion for summary judgment, holding instead "that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

In sum, certiorari should be denied. Neither the circuit court nor the Court of Appeals granted or affirmed summary judgment in favor of State Farm simply because cross-motions for

summary judgment were filed. In any event, this Court should not overturn South Carolina law simply because Petitioner believes it conflicts with federal law applying to cross-motions for summary judgment filed under the Federal Rules of Civil Procedure, particularly given the differing summary judgment standards between state and federal court which have been expressly affirmed by this Court.

CONCLUSION

Based on the above, this Court should deny the Petition for Writ of Certiorari.

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