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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. . . . . Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, ... Defendants,

Of whom Marion L. Driggers is Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

FINAL BRIEF OF RESPONDENT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY

Mariel D. Norton
S.C. Bar. No.: 100198
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax: (803) 779-3423
File No.: 7746.1749
Attorneys for The Travelers Home and Marine Insurance Company
Columbia, South Carolina
November 30, 2022

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STATEMENT OF THE CASE

This appeal arises out of a declaratory judgment action brought by Plaintiff South Carolina Farm Bureau Insurance Company ("Farm Bureau") involving two insurance policies issued by two different insurers to two different insureds on the same house located in Williamsburg County, South Carolina:

(1) Policy number 984761288 633 1 – Respondent The Travelers Home and Marine Insurance Company ("Travelers") issued this homeowner's policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010. (R. pp. 00471 – 00472).

(2) Policy number FI 0401219 – Farm Bureau issued this dwelling fire policy on the same property to Appellant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010. (R. p. 00505).

On or about April 25, 1997, Defendants Tammy Floyd and Lisa Gamble entered into a Contract for Sale and Purchase for the property that was insured under both policies. (R. p. 00021; R. p. 00055; R. pp. 00060-00071). On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to McKenzie. (R. p. 00055; R. pp. 00072-00073).

On or about November 26, 2009, the insured home was damaged by fire. (R. p. 00020; R. p. 00044). McKenzie made a claim under his Travelers policy for the damage that occurred to the insured property. (R. p. 00181). The adjustment of McKenzie's losses by Travelers was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. (R. p. 00025; R. p. 00045; R. p. 00047). Travelers ultimately settled McKenzie's claims for $232,073.45, of which the sum of $116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of $115,140.40. (R. pp. 00076-00077).

Farm Bureau filed a declaratory judgment action on March 7, 2014. (R. pp. 00018-00027). On July 13, 2016, Farm Bureau amended its Complaint. (R. pp. 00086-00096). Appellant Marion Driggers and Defendants Shiralee Driggers and Tammy Floyd then cross-claimed against Travelers for civil conspiracy, breach of contract, and bad faith. (R. pp. 000154-000159); R. pp. 00034-00035). Ultimately, Travelers refiled a Motion for Summary Judgment as to the cross-claims of Appellant on April 11, 2019, having previously filed a similar motion back in 2015. (R. pp. 00204-00205). An Order Granting Travelers's Motion for Summary Judgment as to Appellant's cross-claims was filed by the Honorable Kristi F. Curtis on March 4, 2021. (R. pp. 00253-00260). Appellant filed a Motion to Reconsider, seeking relief from this judgment on March 17, 2021, and his Motion was denied in a Form 4 Order filed by Judge Curtis on June 25, 2021. (R. p. 00261; R. pp. 00336-00338).

In each of its Answers and subsequent Motions, Travelers sought to pay the remaining balance of its settlement with its insured in to court, pursuant to Rule 22 of the

South Carolina Rules of Civil Procedure. (R. pp. 00043-00046; R. pp. 00180-00182; R. pp. 00076-00077). Its Motion was granted by an Order on January 5, 2021 by Judge Curtis, and Farm Bureau's Motion to Reconsider the Order was denied on April 12, 2021. (R. pp. 00225-00227; R. pp. 00228-00230; R. pp. 00303-00305). Travelers paid the money in to court pursuant to the Order.

As of March 2021, the only remaining claim against Travelers was a pending equitable indemnity claim brought by Farm Bureau, and this last remaining claim was ultimately dismissed pursuant to an order granting Travelers's summary judgment motion, which was finalized on April 12, 2021. (R. pp. 00287-00292; R. pp. 00293-00302; R. pp. 00306-00308). With no further causes of action against Travelers and its funds paid in to court, pursuant to Rule 22(b), SCRCP the lower court dismissed Travelers from the action with prejudice on April 19, 2021. (R. pp. 00309-00310).

Appellant has attempted to appeal the lower court's March 4, 2021 Order Granting Travelers Summary Judgment as to his cross-claims and the Form 4 Order denying his Motion to Reconsider that Order. (R. pp. 00339-00351). Proper proof of service was not filed. Over two and a half months later, through newly hired counsel, Appellant filed an Amended Notice of Appeal, with no attached orders, on October 22, 2021, attempting to add to his August 2021 appeal the Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed in January 2021.[1] (R. pp. 00359-00362). No revised or amended orders have been filed by the lower court since its final disposition of the interpleader portion of the case on April 12, 2021.

STATEMENT OF FACTS

[1] Appellant proceeded pro se in this action from April 26, 2016 until his appellate counsel's notice of appearance on October 22, 2021.

On April 25, 1997, a contract for sale and purchase, which was essentially a rent-to-own arrangement, was drawn up in relation to the subject property at 200 W Turbeville Hwy between Tammy Floyd, the daughter of the Appellant, and Lisa Gamble, the girlfriend of McKenzie at the time. (R. p. 00055; R. pp. 00060-00071; R. p. 00287). Gamble assigned McKenzie her rights under the contract in 2006. (R. p. 00055; R. pp. 00072-00073). McKenzie also jointly signed the sale agreement, agreeing to share all responsibilities and liabilities. (R. pp. 00060-00071). The contract included a sale price of $80,000, with $8,000 down. (R. pp. 00060-00071). The remaining portion of the purchase price was secured by a mortgage held by the Appellant, with payments made to Appellant. Gamble and/or McKenzie were to purchase insurance with a loss payable clause in favor of Floyd per the agreement. (R. pp. 00060-00071).

On November 26, 2009, the subject property was damaged by fire. (R. p. 00056). Travelers issued a homeowners policy on the property to Arthur McKenzie, insuring the dwelling for $287,000 and personal property for $250,900. (R. pp. 00461-00504). Travelers's policy included no loss payees or mortgagees. (R. pp. 00461-00504). Travelers investigated the fire and the losses claimed by its insured. The adjustment of McKenzie's losses by Travelers was complicated by tax liens. (R. p. 00181). Travelers ultimately took McKenzie's examination under oath and settled with him, agreeing to pay portions of the dwelling, personal property, and loss of use coverages under his Travelers's policy. (R. pp. 00076-00077; R. pp. 00225-00227).

Appellant allegedly held a mortgage on the property pursuant to the 1997 contract. (R. pp. 00060-00071). Farm Bureau's policy is a dwelling fire policy issued in the name of Appellant, covering two residential properties, including the subject property. (R. pp.

00505-00542). The limit of liability for the dwelling pursuant to Farm Bureau's policy is $118,000. (R. pp. 00505-00542). Appellant claims that this policy was a means to protect his interest, because McKenzie could not be trusted to meet his obligation to provide insurance on the property per the 1997 contract. (R. p. 00371, l. 18-20).

Farm Bureau, in the underlying declaratory judgment action, alleges that Travelers's policy should cover Appellant, Farm Bureau's insured, and that the two insurance policies should be dealt with on a pro rata basis. (R. pp. 00087-00096).

Farm Bureau and Travelers insure different insureds with separate and distinct interests in the subject property. (R. pp. 00461-00504; R. pp. 00505-00542). Travelers insured McKenzie in relation to his separate interests in the property, and the handling of his claim and losses remain the business of Travelers and its insured. (R. pp. 00461-00504; R. pp. 00369, l. 6 – 00370, l. 2). Travelers had no obligation to Appellant, who was not listed on its policy and is separately insured for his interests in this property with Farm Bureau. (R. pp. 00461-00504; R. pp. 00369, l. 6 – 00370, l. 2; R. pp. 00505-00542).

The circuit court held that Travelers honored its obligation to its insured by investigating, handling, and settling McKenzie's claim under his policy. (R. pp. 00225-00227). Travelers sought permission to pay the remaining portion of its settlement with McKenzie (minus McKenzie's attorneys fees and costs where permissible by law), totaling $115,140.40, in to court, which was granted and the funds were deposited earlier last year. (R. pp. 00076-00077; R. pp. 00225-00227; R. pp. 00303-00305; R. pp. 00309-00310). Travelers owes no further duty to its insured and owed no duty at any point, from 2009 to the present, to Appellant.[2]

[2] Appellant's Initial Brief states in the Statement of Facts section, "For additional treatment of the facts of this case in greater detail, this Appellant also adopts the Statement of Facts as set forth by the Appellant

STANDARD OF REVIEW

"In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRCP . . . ." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438-39 (2003). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *See Worley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *See Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. *See Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). Summary judgment should be granted against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *See Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

ARGUMENT

South Carolina Farm Bureau in their Brief on Appeal." Appellant's Initial Brief, p. 7. Travelers believes this is in reference to a brief by a separate party in an entirely different appeal, Court of Appeals Case No. 2021-000494. Reference to and adoption of a portion of a separate unrelated brief in a different appeal is not appropriate and should be disregarded by the Court. *See* Rule 208(b)(6), SCACR ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another.); *see also* JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 431 (3d ed. 2016) ("Attorneys often have much more information about a case in the record; however, the rules confine appellate review to the record. Rule 210(h), SCACR.").

1. THE TRIAL COURT DID NOT ERR IN GRANTING TRAVELERS'S MOTION FOR SUMMARY JUDGMENT ON ALL OF APPELLANT'S CROSS-CLAIMS.

A. Appellant failed to properly and timely appeal the lower court's March 4, 2021 Order.

Appellant's first Notice of Appeal filed August 4, 2021 focused entirely on the lower court's decision to grant Travelers summary judgment as to Appellant's cross-claims for civil conspiracy, breach of contract, and bad faith. As an initial matter and pursuant to this Court's directive in its Order filed December 20, 2021,[3] the issue of timeliness must be addressed. The records reveal that Appellant failed to properly and timely appeal the lower court's March 4, 2021 Order granting Travelers's Motion for Summary Judgment on all of Appellant's cross-claims against it.

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, "[a] party intending to appeal **must serve and file a notice of appeal**," with service upon all respondents required within thirty (30) days of "receipt of written notice of entry of the order." Rule 203, SCACR. The importance of these mandatory separate steps has been set out as follows:

> The first step in initiating and perfecting the appeal involves serving and filing the notice of appeal. *See* Rule 203(a), SCACR (providing a party intending to appeal must serve and file a notice of appeal and otherwise follow the SCACR). Of course, serving and filing are two separate acts. *See* Rule 203(b), (d), SCACR (providing a party *serves* the notice of appeal on the respondent(s), and *files* the appeal with the clerk of the appellate court and the clerk of the lower court); *see also* Rule 262, SCACR (defining generally the separate acts of serving and filing in the appellate courts). The appellant should strictly adhere to service and filing requirements, as well as form and content requirements contained in the SCACR.

[3] In denying Travelers's Motion to Dismiss the appeal, this Court instructed that "nothing in this order shall prevent the parties from arguing the issue of timeliness in their briefs along with the merits." Order filed December 20, 2021.

JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 289 (3d ed. 2016). The jurisdictional implications of failing to properly and timely serve a Notice of Appeal are significant:

> It is critical that the notice be timely served because, unlike the filing of the notice of appeal, the service of the notice of appeal is jurisdictional and therefore, the appellate court cannot extend the time for serving the notice of appeal. *See* 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended . . . ." (emphasis added)); *Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000) ("This Court has consistently stated that service of the notice of appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of appeal must be served."); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985).

Id. at 292-93; *see also Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002) ("Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.").

Rule 262, SCACR, requires that "[a]ny document filed with the appellate court shall be accompanied by proof of service showing the document has been served on all parties," via either in-person delivery, U.S. Mail delivery, or electronic service as may be allowed by order of the Supreme Court of South Carolina. Rule 262, SCACR. At the height of Covid-19, the Court "authorize[d] **a lawyer admitted to practice law in this state** to serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS)," but no such

permission was provided to non-lawyer, pro se parties. RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), Appellate Case No. 2020-000447, dated March 20, 2020 (emphasis added). Moreover, the Court made clear that "forgiveness [as to procedural defaults during the height of Covid-19] d[id] not apply to the failure of a party to timely serve the notice of appeal under Rules 203, 243, and 247, SCACR." *Id.*

Undersigned counsel on behalf of Travelers was not served with Appellant's August 4, 2021 Notice of Appeal pursuant to the Rules. While this Court found that undersigned received "notice" of the appeal based on an email sent by Appellant to Travelers's retired counsel, which was enough to prevent a dismissal in December 2021, such "notice" of an appeal does not equate to timely and proper service of process which is required for purposes of invoking the jurisdiction of this Court. Email service by a pro se party is not valid, timely service per the rules of this Court. Appellant sent an email to retired counsel for Travelers, which undersigned counsel happened upon and responded to with regards to her involvement in the matter. No email was ever sent to undersigned counsel's AIS email pursuant to this Court's Covid Order (which is not valid service as set forth above), nor was proper mailing apparently undertaken or a proof of service ever provided that showed a proper mode of service per the Rules. Without both timely filing and serving the Notice of Appeal pursuant to this Court's rules, this appeal is untimely and fails to properly invoke the jurisdiction of the Court.[4]

B. The lower court's decision to grant Travelers summary judgment was proper.

[4] By failing to serve a Notice of Appeal within thirty days of the court's final Order on June 25, 2021 granting summary judgment, such Order became the law of the case. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009).

If this Court deems that pro-se Appellant properly perfected a timely appeal of the lower court's March 4, 2021 Order, which granted Travelers's Motion for Summary Judgment on all of Appellant's cross-claims against it, the lower court's decision to grant Travelers summary judgment as to Appellant's cross-claims for civil conspiracy, bad faith, and breach of contract was proper under South Carolina law and should be upheld.[5]

Appellant's sole argument in his Brief as to why summary judgment should not have been granted as to his cross-claims is that more discovery is needed in this case, which has been pending before the circuit court for eight years. In fact, Appellant goes as far as accusing the lower court of deciding summary judgment based on the age of the case and faults his own previous pro se status as a reason for the advanced age of this action.[6] *See* Appellant's Initial Brief, p. 8. Yet, not once in his Brief does Appellant provide a genuine

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[5] Appellant's Motion to Reconsider this March 4, 2021 Order was filed March 17, 2021 and accused Travelers's retired counsel of "distorting the truth," along with other allegations of fraud and forgery. (R. p.00261). Undersigned wishes to point out what this Court is well aware of, which is that Travelers's retired counsel, William P. Davis, was an extremely ethical and upstanding attorney, whose forty years of practice in the state of South Carolina was truly exemplary. The allegations continually made against him during the life of this matter are difficult to fathom. This is even more troubling for undersigned now that Mr. Davis has retired and is unable to defend himself from these continuing accusations by Appellant. Undersigned merely takes this opportunity to state that the allegations that form the basis of Appellant's Motion to Reconsider are entirely unfounded now, as they were when the original Motion was filed.

[6] Appellant cites to *Lanham v. Blue Cross & Blue Shield of S.C. Inc.*, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000) in support of his discovery argument. Unlike the eight year trajectory seen in this matter, *Lanham* was filed in 1992, but was dismissed with leave to restore in 1994. *See id.* at 346-47, 526 S.E.2d at 254. Once restored in 1995, the defendant insurer ultimately filed for summary judgment on January 21, 1997. *See id.* at 346, 526 S.E.2d at 254. The plaintiff requested discovery for information related to his bad faith/breach of contract claims three days after summary judgment was filed, and the defendant carrier filed a motion to quash with a motion to compel quickly following. *See id.* at 346-47, 526 S.E.2d at 254. Even after renewing the motion to compel at the hearing on defendant's motion for summary judgment, the lower court failed to rule on the discovery matter and instead granted summary judgment to the defendant carrier. *See id.* at 347, 526 S.E.2d at 254-55. This Court found a genuine issue of material fact for jury determination on the issue of intent to deceive and also remanded the case for a decision on the motion to compel. *See id.* at 348-49, 526 S.E.2d at 255-56. Unlike *Lanham*, Appellant's discovery related to his causes of action has been ongoing for eight years. Although Appellant may disagree with discovery decisions made during the course of this action by numerous judges, particularly Justice George C. James, Jr. who undertook a majority of the discovery motions prior to his ascension to the Supreme Court, all discovery motions by Appellant against Travelers have been ruled on and resolved. There are no outstanding discovery motions against Travelers that were ignored by the lower court prior to its summary judgment ruling against Appellant, nor could any additional discovery provide a genuine issue of material fact to support any viable claims, as stated in Appellant's pleadings, against Travelers under South Carolina law.

issue of fact to support a reversal of the lower court's summary judgment ruling on his cross-claims. A general statement that more discovery is needed with regards to McKenzie's interest in the property is not sufficient to overcome the summary judgment ruling at issue. *See Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984).

The lower court properly found that Appellant did not have legal standing under South Carolina law. (R. pp. 00255-00257). As found by Judge Curtis, Appellant is "not [a] part[y] to the Travelers insurance contract and ha[s] no standing to complain about how the claim of the named insured, Defendant McKenzie, was resolved." (R. p. 00258). In fact, rather than "enforce the provision in the buy and sell agreement that purportedly required that [Appellant's] interests be protected under the policy . . . [he] chose to purchase a policy of [his] own to protect [his] interests" and cannot claim that any contract exists between himself and Travelers for purposes of a breach of contract claim. (R. p. 00258). Since he is not a party to Travelers's insurance contract, Appellant also cannot assert a bad faith claim against Travelers. *See Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (1996) (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992) ("The elements of an action for bad faith refusal to pay benefits under an insurance contract include: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.").[7]

[7] Appellant attempts to distinguish *Park v. Safeco Insurance Company of America*, 251 S.C. 410, 162 S.E.2d 709 (1968) to argue against the lower court's determination that he is a stranger to Travelers's contract with McKenzie. The South Carolina Supreme Court has made clear that a mortgagor and mortgagee can have separate and distinct interests in property for purposes of insurance. *See Johnson v. Fidelity & Guaranty Ins.*

Appellant's allegation of civil conspiracy likewise fails as a matter of law. Specifically, civil conspiracy is "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage." *Lee v. Chesterfield Gen. Hosp, Inc.*, 289 S.C. 6, 10-11, 344 S.E.2d 379, 381-82 (Ct. App. 1986) *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021) (citing *Charles v. Texas Co. (Charles I)*, 192 S.C. 82, 5 S.E.2d 464 (1939)).[8] The lower court properly found that "Travelers's adjustment and resolution of the claim of its insured . . . pursuant to their contract [did not] injure[Appellant] – let alone that it was done for that purpose." (R. p. 00257). In fact, the Court found that Appellant was a "stranger[] to Travelers contract, a fact of which [he] w[as] very well aware as evidenced by [his] procurement of an insurance contract of [his] own with Plaintiff Farm Bureau." (R. p.

Co., 245 S.C. 205, 140 S.E.2d 153 (1965). As such, Appellant's claim to allegedly the same asset and the existence of causes of action against Travelers's insured, Mr. McKenzie, does not make Appellant something other than a stranger to Travelers's policy. The extent of Appellant's, McKenzie's, or anyone else's "insurable interest" in the property is to be argued in relation to the money paid to court by Travelers subject to interpleader. McKenzie's insurable interest in the property, or lack thereof, does not change the fact that Appellant is not a party to Travelers's insurance contract and has no standing to complain about how the claim of the named insured, Arthur McKenzie, was resolved. Appellant's breach of contract and bad faith allegations fail as a matter of law, and he must instead seek to prove the amount of his alleged interest in the property to obtain a portion of the interplead coverage payment that now sits with the lower court for appropriate distribution.

[8] Appellant attempts to distinguish *Lee* by arguing that his alleged financial harm from Travelers and its insured's disbursement of insurance funds pursuant to their contractual agreement provides standing for his conspiracy action. *See* Appellant's Initial Brief, p. 14-15. Travelers acknowledges that *Lee* has been overruled by the recent case of *Paradis v. Charleston County School District*, 433 S.C. 562, 564, 861 S.E.2d 774, 774 (2021) "to the [limited] extent [such cases] impose or appear to impose a requirement of pleading (and proving) special damages" for civil conspiracy causes of action. Yet, as set forth herein and in the lower court's order, summary judgment was not granted solely because of special damage issues in relation to this cause of action for purposes of standing. (R. pp. 00253-00260). Ultimately, the court found no genuine issue of fact supporting Appellant's civil conspiracy action. Travelers must act according to its contractual relationship with its insured, McKenzie, per South Carolina law. Appellant is a stranger to Travelers's policy, being neither a named insured nor a listed lost payee of any kind. Travelers's actions with its insured were taken pursuant to law and its contract, and there is no factual implications that such acts by Travelers injured Appellant or were done with the intent to harm him. Any alleged financial harm based on Appellant's business relationship with McKenzie does not give Appellant rights under Travelers's insurance policy or create a relationship with Travelers that supports any of Appellant's cross-claims. Merely claiming that financial harm exists does not support all the elements of a civil conspiracy cause of action and fails to provide a scintilla of evidence in support of such a claim.

00257). Even if it could be argued that Travelers breached a contract with Appellant, it would not amount to a civil conspiracy. Appellant only argues that he was financially harmed, and, yet, Appellant still fails to provide any genuine issue of fact to suggest that Travelers's actions in relation to its insured under its insurance agreement was in any way unlawful or done by unlawful means to cause Appellant this alleged financial harm. Appellant is a stranger to Travelers's insurance contract, and Travelers's actions in relation to its policy were lawful in relation to its insured. The lower court correctly concluded there was no genuine issue of fact to support Appellant's civil conspiracy action against Travelers.

Appellant does not point to any issue of fact specifically in support of his causes of action for bad faith or breach of contract against Travelers. As shown above, such causes of action by a stranger to Travelers's insurance contract with McKenzie are not viable claims in South Carolina, and there is no scintilla of factual evidence that could support such claims by Appellant against Travelers. As explained at length below, any issue of fact remaining as to McKenzie's interest in the property affects only the remaining parties' alleged claims to the money paid in to court by Travelers pursuant to its motion to interplead. *See* supra Argument 2, p. 15. McKenzie's alleged interest in the insured property does not create a genuine issue of fact as to the viability of Appellant's claims for breach of contract and bad faith against an insurer (Travelers) who issued no contract to Appellant and therefore handled no insurance claim for Appellant as an insured. Furthermore, alleged financial harm to Appellant is not sufficient to establish the existence of all the elements of Appellant's cause of action for civil conspiracy as set forth above. *See Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993). Appellant

has not provided any genuine issue of material facts to support his cross-claims against Travelers. As such, the lower court's ruling granting Travelers summary judgment as to these cross-claims should be upheld.

C. *Appellant also failed to properly and timely appeal the Order filed March 30, 2021.*

Briefly, Travelers draws the Court's attention to the fact that Appellant's Initial Brief claims that he also appeals the "March 30, 2021 Order granting Summary Judgment to Travelers on Equitable Estoppel, reconsideration denied on April 12, 2021." Appellant's Initial Brief, p. 3. Again, Appellant has not properly or timely appealed this Order. The Order filed March 30, 2021 granted summary judgment to Travelers on the underlying Plaintiff, Farm Bureau's, equitable indemnity claim. (R. pp. 00287-00292; R. pp. 00293-00302; R. pp. 00306-00308). Appellant did not list and failed to provide a copy of this Order in/with his original Notice of Appeal or any of his Amended Notices of Appeal, including the one submitted by his counsel in October 2021. (R. pp. 00339-00351; R. pp. 00352-00354; R. pp. 00355-00358; R. pp. 00359-00362). As such, this Order has not been properly or timely appealed by Appellant. Moreover, this Order and its related motions dealt with a cause of action asserted by Farm Bureau against Travelers. Any objections to this ruling should have been made by Farm Bureau, and any such objections, if made, do not provide Appellant grounds for this appeal.[9] Although listed as an Order being appealed, Appellant fails to address the Order in his Brief or provide any argument as to why this

[9] *See Tupper v. Dorchester Cnty.*, 326 S.C. 318, 324, 487 S.E.2d 187, 190 (1997) ("Although the issue of the statute of frauds was raised by Dorchester County, appellant cannot bootstrap an issue for appeal by way of a codefendant's objection."); *see also* Rule 201(b), SCACR ("**(b) Who May Appeal.** Only a party aggrieved by an order, judgment, sentence or decision may appeal.")

Order in relation to Travelers was improper, further supporting Travelers's argument that this allegedly appealed issue should be disregarded by the Court.[10]

2. THE TRIAL COURT DID NOT ERR IN GRANTING TRAVELERS'S MOTION FOR INTERPLEADER.

A. Appellant failed to properly and timely appeal the lower court's January 5, 2021 Order.

Pursuant to this Court's directive in its Order filed December 20, 2021,[11] this Court must first determine whether Appellant properly and timely appealed the lower court's January 5, 2021 Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP where the first mention of this Order was made in the Amended Notice of Appeal filed six months after entry of the Order.

According to Appellant, his original August 2021 Notice of Appeal of the Order granting Travelers's Motion for Summary Judgment as to his cross-claims and the denial of his Motion to Reconsider this Order "acted to continue to incorporate Travelers as interested persons, until the June 25, 2021 Order . . . [such that the late] appeal of interpleader . . . is necessarily incorporated with [his first] appeal . . . ." Return of Defendant-Appellant, Marion L. Driggers, to Defendant-Respondent, The Travelers Home and Marine [sic] Insurance Company's Motion to Dismiss Appellant's Appeal filed November 15, 2021, p. 4. Along with this alleged interconnectedness, Appellant further alleges that an entirely separate appeal by a separate party to the underlying tort suit means that the issue is preserved for all parties in perpetuity, at such time as they desire to file a

[10] *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

[11] In denying Travelers's Motion to Dismiss the appeal, this Court instructed that "nothing in this order shall prevent the parties from arguing the issue of timeliness in their briefs along with the merits." Order filed December 20, 2021.

Notice of Appeal or Amended Notice of Appeal for the Court to then exercise its alleged "oversight on this issue." *See id.* at p. 5. Ultimately, Appellant argues that he is allowed to "piggyback" any additional orders he wishes to appeal at any time in the future, no matter how much additional time has passed beyond this Court's jurisdictional mandate of thirty (30) days, as long as the orders are allegedly interconnected in some way and some other appeal is pending before the Court by an entirely different and independent party to trigger appellate jurisdiction at some point in time (if such an appeal is even properly done by the other party, which is arguable in this instance as can be seen in the briefing undertaken in that separate appeal by Travelers).

While there does not appear to be any case law from this Court, other appellant courts nationwide have rejected similar arguments made by appellants for untimely amended notices of appeal. *See In re Marriage of Thorn*, 235 Ariz. 216, 218-19, 330 P.3d 973, 975-76 (Ct. App. 2014) ("Stuart concedes his amended notice of appeal was filed more than thirty days after entry of the decree of dissolution, but argues 'that an amended notice of appeal relates back to the filing date of the original notice of appeal' . . . We also find unpersuasive the out-of-state cases cited by Stuart. None of them stands for the proposition that an untimely amended notice of appeal confers jurisdiction upon the reviewing court . . . We conclude that because the amended notice of appeal was untimely filed, we lack jurisdiction to consider Stuart's claims of error pertaining to personal property.") (internal citations omitted); *State v. Grant*, 19 Kan. App. 2d 686, 691-92, 875 P.2d 986, 990-91 (1994) ("Grant also fails to provide this court with any authority to justify the practice of filing amended notices of appeal out of time. Allowing a defendant to amend his timely filed notice of appeal at any time clearly defeats the purpose of K.S.A. 1993

Supp. 60-2103(b), which requires a party to state the grounds upon which his appeal is based at the time the appeal is taken. Failure to properly designate the judgment or part thereof appealed from is very different from inadvertently failing to designate the proper appellate court. We conclude that it is not an irregularity which can simply be disregarded. As the amended notice of appeal was filed outside the time for an appeal to be taken in the present case, it may not be considered, even assuming a lack of prejudice to the opposing party. Under the relevant Kansas statutes, case law, and Supreme Court Rules, an appellant is bound by the issues raised in the notice of appeal and cannot amend this notice after the time for an appeal has run simply because counsel or the appellant conclude that the scope of the original notice is too narrow to reach additional appealable issues . . . The appellate procedures and rules are, and have been, in place to bring some orderly closure to appeals. A literal reading and application of the statutes and rules is not only necessary from a legalistic view, but also from a real world view of appellate practice. To find otherwise is to invite chaos to a system based on the orderly disposition of appeals. It should be strongly discouraged.") (internal citations omitted).

As the above quoted nationwide case law has found and South Carolina court rules suggest, Appellant should not be able to merely decide, now through hired counsel, that his original Notice of Appeal in August 2021 is too narrow.[12] Appellant's October 2021

[12] *See* Rule 203(e)(1), SCACR ("In appeals from lower courts, the notice of appeal shall contain the following information: (A) The name of the court, judge, and county from which the appeal is taken. (B) The docket number of the case in the lower court. (C) The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal. (D) The name of the party taking the appeal. (E) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each."); *see also* Rule 203(d)(1)(B), SCACR ("The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following: (i) Proof of service showing that the notice has been served on all respondents; (ii) A copy of the order(s) and

Amended Notice of Appeal adds an additional seventy-four (74) days beyond this Court's thirty (30) day limit for a properly perfected appeal, tacking on the interpleader order that was not included in or attached to his original Notice of Appeal in August 2021. Further, the final Order related to Travelers's interpleader action was filed April 12, 2021, and no notice of appeal was filed by Appellant anywhere close to thirty (30) days from this date. Instead, Appellant's first notice of an appeal of this Order on interpleader was filed in October 2021, around six (6) months later. The Orders related to Travelers's interpleader action were not timely or properly appealed by the Appellant. There is absolutely no case law in this state to support Appellant's argument that interconnectedness between orders or a separate appeal by an entirely different entity somehow excludes Appellant from following the clear mandate in Rule 203 with regards to separately listing and attaching each order he seeks to invoke this Court's appellate jurisdiction for review. Appellant did not appeal the Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP filed January 5, 2021 and upheld in its entirety in a Form 4 Order filed April 12, 2021.[13] This Court lacks jurisdiction to hear the matter, as the October 2021 Amended Notice of Appeal seeking review of the order is improper and untimely.

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judgment(s) to be challenged on appeal if they have been reduced to writing; (iii) A filing fee as set by order of the Supreme Court . . . .").

[13] Appellant states in his Initial Brief that the final order was filed "April 19, 2021, granting Travelers Interpleader, and otherwise dismissing Travelers from the action." *See* Appellant's Initial Brief, p. 3. This is an incorrect characterization of the Orders entered by the lower court in this matter. As stated above, the lower court's Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP was filed 01/05/2021, with a Notice of Motion and Motion to Alter/Amend/Reconsider and/or to Clarify being filed 01/14/2021 by Plaintiff Farm Bureau and the final Form 4 Judgment in Civil Case concluding Travelers's Motion for Interpleader in its favor being filed 04/12/2021. (R. pp. 00225-00227; R. pp. 00228-00230; R. pp. 00303-00305). On April 19, 2021, the lower court filed an Order of Dismissal with Prejudice as to Travelers. (R. pp. 00309-00310). These are separate Orders with separate dates for purposes of a proper appeal. Nevertheless, Appellant failed to file a motion to reconsider or notice of appeal as to either the order for interpleader or the order dismissing Travelers within the parameters set by South Carolina court rules.

B. The lower court's Order finding in favor of Travelers on the interpleader motion was proper.

Should this Court decide that the addition of this Order to the Amended Notice of Appeal filed in October 2021 constitutes a timely appeal of the matter, properly invoking this Court's appellate jurisdiction, the lower court's Order finding in favor of Travelers on the interpleader motion nevertheless was proper and should be upheld.

Appellant's main argument on the impropriety of the Order granting interpleader is that "the question of McKenzie's equity interest is a fundamental and threshold issue" unanswered in the lower court action. Appellant's Initial Brief, p. 9. According to Appellant, if McKenzie is found to have no interest in the property then "Travelers has paid out to its insured, Arthur McKenzie . . . benefits that were improper, both under South Carolina law and under the terms of Traveler's own policy." *See id.* This argument fails to warrant overruling the lower court's grant of Travelers's Motion to Pay in to Court.

Rule 22, SCRCP allows for "[a] party potentially exposed to double or multiple liability . . . [to] obtain interpleader by way of cross-claim or counterclaim." (R. p. 00233). "Any party seeking interpleader . . . may deposit with the court the amount claimed . . . . The court may thereupon order such party discharged from liability as to such claims, and the action continued as between claimants of such money or property." Rule 22(b), SCRCP. In South Carolina, the primary purpose of interpleader is to allow a neutral stakeholder, usually a bank or an insurance company, to shield itself from liability for paying over the stake to the wrong party by bringing a single action in which all claimants are forced to litigate their claims to the stake. *See First Union Nat. Bank of S.C. v. FCVS Commc'n*, 321 S.C. 496, 499, 469 S.E.2d 613, 616 (Ct. App. 1996). Moreover, Rule 22 provisions are to be liberally construed to best effectuate their purposes. *See id.*

Appellant provides no case law in South Carolina nor any substantive argument as to why the lower court erred in granting interpleader as to Travelers. In this declaratory judgment action, the plaintiff, Farm Bureau, brought an equitable indemnity claim against Travelers, while Appellant and several other defendants brought conspiracy, bad faith, and breach of contract claims specifically against Travelers. The lower court granted Travelers's motion for summary judgment as to the cross-claims brought by Appellant, as well as identical cross-claims brought by his wife and daughter, eliminating the extra-contractual damage claims against Travelers and limiting its potential liability to the terms of its policy. The lower court also granted Travelers's motion for summary judgment as to the equitable indemnity claim brought by Farm Bureau, leaving no other causes of action asserted against Travelers, and Travelers thereby becoming a neutral stakeholder in this action.

Farm Bureau and Travelers's insureds are different, and Travelers, pursuant to its duties to its insured, investigated its insured's claim under his policy for both dwelling and contents and ultimately agreed to pay a compromised amount of $132,006.91 for the dwelling. Travelers and its insured's agreed upon settlement included the dwelling, loss of use, and personal property, plus attorneys' fees and costs where permitted by law. The dwelling portion of the settlement is currently subject to controversy, as the claims between Appellant, other members of the Driggers' family, and McKenzie continue to be disputed at the lower court level, prompting Travelers's interpleader actions/motions throughout this case. Ultimately, in relation to Travelers, Appellant's recovery is limited to the amount the lower court determines he is entitled to from the money deposited by Travelers in to court, based on however the ownership, mortgage payments, and/or taxation issues are

determined between and among Appellant and the remaining parties to the lower court action, as there are no remaining causes of action against Travelers.

Appellant attempts to assert that additional discovery would show that the settlement reached between Travelers and its insured was improper if McKenzie in fact did not have an interest in the property insured. While this could mean that Travelers paid its insured when its policy might have allowed for a denial of coverage, such an eventual revelation appears to only have potential "buyers remorse" in hindsight for Travelers.[14] Moreover, South Carolina statutes cited by Appellant, particularly S.C. Code Ann. § 38-75-20 (1989), do not apply to the facts of this case and do not support Appellant's argument that Travelers's insured's interest in the property or lack thereof affects the Orders at issue on this appeal. *See* supra footnote 8, p. 12; *see also S.C. Insurance Co. v. Fidelity & Guaranty Insurance Underwriters, Inc.*, 327 S.C. 207, 489 S.E.2d 200 (1997). Rather, as discussed above, Appellant does not provide any argument as to why genuine facts exist to suggest that he has some legal cause of action (as listed in his cross-claims) against Travelers in relation to its policy issued to McKenzie. Travelers faced multiple claims, fulfilled its insurance obligations to its insured, and sought a court order to pay the disputed amount of its compromised payment in to court for the remaining parties to lay claim to.

[14] Appellant argues that "[o]n its face, the Travelers contract limits Travelers' insured, Arthur McKenzie, to payments made for his 'insurable interest,' which in this case appears to be his personal property only." Appellant's Initial Brief, p. 12. Appellant continues by arguing that the interpleader payment affects "Travelers' ability to pay other, legitimate claims to the insurance proceeds." Appellant Initial Brief, p. 13. As stated, any over payment on Travelers's policy would seem to be a problem of Travelers in hindsight, if Appellant's argument on McKenzie's interest can ever be proven. Notwithstanding the foregoing, Travelers's investigation led to its decision to take certain steps in fulfillment of its policy terms with its insured, Mr. McKenzie. As set forth above, Appellant has not shown a scintilla of evidence as to how his cross-claim causes of action support any viable claim against Travelers. *See* supra Argument 1, p. 7. Ultimately, there is arguably more than enough money now sitting with the lower court under its Order granting Interpleader for Appellant to make his argument as to why his allege interest in the property warrants a portion or all of the money paid in to Court by Travelers in comparison to the interest of McKenzie. (R. pp. 00223-00224). This is the very situation for which interpleader was created.

With no real argument as to why interpleader was improperly granted under South Carolina law, Appellant's Brief argument on this matter really amounts to the very argument he will have to make against the remaining parties for purposes of asserting a claim to the money deposited by Travelers. In other words, Appellant's argument as to why McKenzie has no interest in the property is an argument to be made to the lower court when arguing for a portion or the entirety of the money Travelers has paid in to court in relation to the interpleader Order. Appellant's argument does not support a finding that the lower court's decision to grant interpleader was improper, in light of Rule 22, and, as such, this Court should uphold the lower court's determination.[15]

3. THE TRIAL COURT DID NOT ERR IN DISMISSING TRAVELERS WITH PREJUDICE UNDER RULE 22.

Appellant claims that "the [lower c]ourt . . . ruled in a manner substantively different from its instructions to the Parties in court, and . . . [that] the record does not support a finding that the Parties 'consented' to the dismissal of [Travelers] from this action with prejudice." *See* Appellant's Initial Brief, p. 11. Appellant has improperly characterized the actions and statements of the lower court, amalgamating hearings, motions, and decisions together improperly and incorrectly. A careful review of the record reveals that Travelers was properly dismissed.

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[15] As stated, if McKenzie, Travelers's insured, had no interest in the property, then the only harm was to Travelers. Appellant would not be entitled to coverage if McKenzie was not entitled to coverage as an unnamed mortgagee becomes a lienholder whose rights derive from the rights of the named insured. *See Nationwide Mut. Fire Ins. Co. v. Dungan*, 634 F. Supp. 674, 684 (S.D. Miss. 1986) ("Thus, the court concludes that FmHA, because it was not named in the policy, occupies the status of a mere equitable lienholder as to the insurance proceeds. The right of a holder of an equitable lien on insurance proceeds to recover such proceeds is solely contingent on and derivative of the insured's right to recover. An unlisted or unnamed mortgagee likewise retains only an equitable lien on insurance proceeds and remains subject to any defenses which the insurer may assert against the mortgagor. Lastly, even if FmHA were named in the policy, the mortgage clause appears to be a 'loss payable' or 'open mortgage' clause, which makes the mortgagee's right to recover contingent on the mortgagor's right to recover.") (internal citations omitted).

At a hearing on September 17, 2020, the Honorable Kristi F. Curtis stated after extensive argument that "[a]s to Travelers motions, the motion basically for interpleader to pay the funds into court is granted basically with the consent of the parties." (R. p. 00416, l. 13-15). The Court then had the following exchange with the Appellant clarifying the granting of the interpleader motion versus any dismissal of Travelers **at that time**:

> MR. DRIGGERS: May I ask a question?
>
> THE COURT: Certainly.
>
> MR. DRIGGERS: You have not released Travelers from this lawsuit, right? You're just going to let them pay that into the court?
>
> THE COURT: They're going to pay that money into court. Yes, sir. I haven't ruled ---
>
> MR. DRIGGERS: Have you released?
>
> THE COURT: I have not ruled yet as to their crossclaim -- their motion for summary judgment. I'm taking that under advisement.

(R. p. 00420, l. 15-25). Following this hearing, the Order allowing the funds to be deposited with the court was filed January 5, 2021. (R. pp. 00225-00227). The "discharged from liability" language in this Order and the Judge's finding that all consented to such was challenged extensively at a hearing held February 18, 2021 regarding Farm Bureau's motion to reconsider the court's January 5, 2021 Order on Travelers's interpleader. (R. p. 00425; R. p . (R. p. 00425, l. 19-22; R. p. 00427, l. 4 – p. 00430, l. 17; R. p. 00432, l. 10-25; R. p. 00433, l. 10-16; R. p. 00433, l. 22-25; R. p. 00446, l. 15-23; R. p. 00449, l. 25 – p. 00450, l. 2; R. p. 00454, l. 22 – p. 00455., l. 15; R. p. 00456, l. 9-23). Ultimately, notwithstanding consent of the parties or lack of consent of the parties as to the interpleader decision, the Court pointed out at this hearing that the only remaining claim against Travelers to potentially prevent its "discharge from liability" was Farm Bureau's equitable

indemnity claim. (R. p. 00430, l. 18-22; R. p. 00433, l. 17-21; R. p. 00434, l. 1-9; R. p. 00447, l. 16-19). The Court then heard argument on Travelers's Motion for Summary Judgment as to this last remaining claim and took the motion under advisement. (R. p. 00434, l. 10 - p. 00435, l. 13; R. p. 00436, l. 17 – p. 00437, l. 2; R. p. 00437, l. 3 – p. 00441, l. 16; R. p. 00444, l. 11 – p. 00445, l. 6; R. p. 00454, l. 1-20; R. pp. 00202-00203).

After this hearing in February 2021, Judge Curtis granted Travelers's Motion for Summary Judgment as to Farm Bureau's equitable indemnity claim on March 30, 2021, which, as the hearing in February 2021 made clear, was the last remaining cause of action against Travelers. (R. pp. 00287-00292). A motion to reconsider followed from Farm Bureau, which was quickly denied, and the Order was finalized on April 12, 2021. (R. pp. 00293-00302; R. pp. 00306-00308). Separately, the Honorable Kristi F. Curtis also denied Farm Bureau's Motion to Reconsider her Order granting Travelers's interpleader in January 2021 in a Form Order filed April 12, 2021. (R. pp. 00303-00305).

According to Judge Curtis's Order granting Travelers summary judgment on Farm Bureau's equitable indemnity claim, "[a]s all allegations against Travelers have now been resolved, upon payment of the sum of One Hundred Fifteen Thousand, One Hundred Forty and 40/100 ($115,140.40) Dollars pursuant to this Court's orders of January 5, 2021 and March 4, 2021, Travelers shall be **DISMISSED** from this action with prejudice." (R. p. 00291). With Travelers's payment in to court pursuant to the lower court's January 5, 2021 Order on interpleader and the fact that no further claims or causes of action existed against Travelers once Farm Bureau's equitable indemnity claim was concluded via summary judgment, Judge Curtis filed an Order dismissing Travelers with prejudice on April 19, 2021. (R. pp. 00309-00310).

As this timeline and the cited lower court records show, Travelers's ultimate dismissal was not wrongfully granted with mistaken consent of all the parties or in violation of instructions given by Judge Curtis at the relevant hearings. *See* Appellant's Initial Brief, p. 11. Rather, the issue of consent was dealt with at two hearings in relation to Travelers's Motion for Interpleader, and Travelers's ultimate dismissal was ordered only after the court heard arguments and decided any and all outstanding causes of action against Travelers. With no further claims against Travelers to be decided by judge or jury and its money, pursuant to the interpleader order, paid to the court, Travelers's dismissal was proper. Appellant's mischaracterization of the dismissal order and the 2020 hearing transcript testimony is an oversimplification of the progression of the two pertinent motions at issue and does not warrant overruling the lower court's dismissal of Travelers. The April 2021 Order of Dismissal of Travelers was not an Order taken with mistaken consent of all parties in violation of discussions had at the hearing in September 2020. Judge Curtis made clear in 2020 that she was not yet dismissing Travelers, because claims were still alleged against it and there were summary judgment motions outstanding or taken under consideration. The progression of each motion, hearings with argument, and subsequent orders all led to the proper and valid dismissal of Travelers with prejudice.

CONCLUSION

For the foregoing reasons and upon the foregoing authorities, Travelers submits that the orders of the trial court should be affirmed.

Respectfully submitted,

Mariel D. Norton
S.C. Bar. No.: 100198
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone:(803) 799-9091; Fax:(803) 779-3423
File No.: 7746.1749
Attorneys for Travelers The Travelers Home and Marine Insurance Company
Columbia, South Carolina
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