

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

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Gregory Muxlow and Charlotte  
Muxlow.....Appellants,

v.

Scottsdale Insurance Company; South Wind Ranch Holdings, LLC;  
Ronald Hakala; and Ashley Black,.....Respondents.

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Appellate Case No. 2022-000576

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**MOTION TO CONSOLIDATE APPEAL NO. 2023-000081  
WITH APPEAL NO. 2022-000576**

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Pursuant to Rule 214 SCACR, the appellants respectfully request that Appeal No. 2023-000081 be consolidated with this appeal. The Rule provides that “...where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.” The appellants respectfully submit that the questions involved in these appeals are integrally related and that economy will be served if the Appellate Court, in its discretion, consolidates the appeals.

**Background**

These appeals arise from a dispute between a groom, bride, and a bride’s father and a wedding venue. In 2020, Charlie Wienands, her father Christian Wienands, and her fiancé, Gregory Muxlow, visited South Wind Ranch. South Wind is a wedding venue owned by Rob

Hakala. Charlie, Christian and Gregory paid a deposit of several thousand dollars to the wedding venue.

For reasons spelled out in detail in these appeals, it became impossible for the wedding to be held as planned at South Wind Ranch. The Corona Virus pandemic prevented Charlie and Christian's family from coming from Germany and starkly limited the number of people who could attend. Charlie and the others agreed to defer the wedding until the following year, at which point South Wind owner Hakala unilaterally increased the price he had charged by several thousand dollars. At that point, Charlie, Christian, and Gregory requested a refund since South Wind had sought to profiteer from the pandemic, could not provide the service contracted for, and sought to change the price after accepting and keeping a deposit based on a lower number.

South Wind kept all of the money paid by Charlie and the others, even though it provided no service. Charlie and the others filed suit against South Wind for violation of the Unfair Trade Practices Act, breach of contract accompanied by fraudulent act, and other causes of action. During the course of discovery, Charlie and the others discovered an insurance policy which provided coverage for a defense and indemnification. Charlie and the others then filed a declaratory judgment action. These appeals are related to the dismissals of the suits – the first suit for the tortious conduct of the appellees and the second suit seeking a declaration of coverage related to Scottsdale Insurance.

### **The First Appeal**

The first appeal (2022-000576) arises from the second action. When the appellants discovered an insurance company with coverage for the underlying case, they sought to have the Trial Court determine coverage, since an insurance company's involvement significantly impacts resolution. It is the undersigned's understanding that the owner of South Wind, Ron Hakala, simply

did not want to return the unearned money paid to him out of principle. Since insurance companies tend to make more business-oriented and practical decisions, the appellants sought to establish coverage. Scottsdale Insurance moved to dismiss, and the Trial Court granted the motion. As set forth in the appellants' brief, the decision was an error of law because there was arguable coverage on the face of the underlying complaint, Scottsdale is judicially estopped since it files declaratory judgment actions against third parties all the time, and other reasons.

The determination of whether the appellants established a mere scintilla of evidence in the underlying action pursuant to *Hancock v Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009) is fundamentally related to questions and issues in the declaratory judgment case. If the Court of Appeals determines that the Trial Court erred in dismissing the underlying action since the appellants adduced and set forth much more than a scintilla of evidence to support their case, then coverage exists since an insurer must defend if there is arguable coverage on the face of the complaint.

### **The Second Appeal**

The second appeal (2023-000081) arises from a grant of summary judgment in the underlying case. South Wind Ranch filed a motion for summary judgment based on the argument that the appellants could only proceed under a breach of contract theory. Notwithstanding the fact that the appellants submitted for more than a scintilla of evidence to rebut the summary judgment motion, including multiple deposition transcripts and a verified complaint, the Trial Court granted the summary judgment motion. (See *Dawkins and Chisholm v. Fields et al.*, “for summary judgment purposes, a verified pleading is equivalent to an affidavit, provided it meets the requirements of Rule 56(e).” 354 S.C. 58, 580 S.E.2d 433 (2003) (citing *Dawkins and Chisholm v. Fields et al.*, 345 S.C. 23, 30, 545 S.E.2d 515, 519 (Ct. App. 2001).) The evidence adduced and

submitted, show that fraudulent acts accompanied the breach of contract by South Wind and Hakala. The evidence also shows that South Wind violated the Unfair Trade Practices Act because the unfair practices complained of are capable of repetition and harmful to the public.

If the Court of Appeals determines that the Trial Court erred in granting summary judgment in spite of multiple entire deposition transcripts and a verified complaint, all of which support the appellants' claims, then Scottsdale owes its insureds a defense and must defend the action.

### **Conclusion**

Since the questions in these appeals are fundamentally related, and since economy will be served by consolidation, the appellants respectfully request that Appeal No. 2023-000081 be consolidated with this appeal, Appeal No. 2022-000576.

Respectfully submitted,

**s/ Joshua T. Hawkins**

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March 15, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge  
Case No. 2021-CP-23-04140

Gregory Muxlow and Charlotte  
Muxlow .....Appellants,

v.

Scottsdale Insurance Company, South Wind Ranch Holdings, LLC, Ronald  
Hakala and Ashley Black, .....Respondents.

Appellate Case No. 2022-000576

**PROOF OF SERVICE**

I certify that on this date, March 15, 2023, I filed the foregoing Appellants’ Motion to Consolidate, **electronically** with the Court of Appeals (**via ctappfilings@sccourts.org**) and served a copy upon the following attorneys of record for Respondents Scottsdale Insurance, Co. and Respondents South Wind Ranch Holdings, LLC, Ronald Hakala, and Ashley Black, **via electronic service only**. A printed copy of the Appellants’ Motion to Consolidate, along with filing fee, is being sent via U.S. Mail to the Court of Appeals at the following address.

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March 15, 2023

**--via electronic mail: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)--**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: *Gregory Muxlow and Charlotte Muxlow v. Scottsdale Insurance Company, et al.*  
Appellate Case No.: 2022-000576

Dear Ms. Kitchings:

Please find enclosed for filing and service, Appellants' Motion to Consolidate, in the above-mentioned Appellate Case, along with Proof of Service upon Respondents. A printed copy of the Motion, along with a check for the filing fee is also being sent to the Court via U.S. Mail.

Should the Court need anything further, or require a physical copy, please do not hesitate to contact our office.

Sincerely,

Monica Brody  
Certified Paralegal

Enclosures

CC: via electronic mail only:  
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