

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**RECEIVED**

**Apr 19 2023**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Bentley D. Price, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No.: 2023-000354

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Calvin C. "Skip" Hoagland and Lisa Sulka, ..... Respondents,

v.

Privilege Underwriters Reciprocal Exchange, ..... Petitioner.

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**MOTION TO DISMISS APPEAL**

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ATTORNEYS FOR RESPONDENT LISA SULKA

## INTRODUCTION

The Petition for Writ of Certiorari in this matter should be dismissed, as the Court does not have appellate jurisdiction over this matter. An order vacating an order granting partial summary judgment is in effect an order denying partial summary judgment, which is without exception not appealable.<sup>1</sup> And even if such an order was not construed as an order denying partial summary judgment, but as an order vacating a final order, it would still be an interlocutory order outside of this Court's appellate jurisdiction as granted by S.C. Code Ann. § 14-3-330. Further, none of the factors in Rule 242(b), SCACR exist to justify the issuance of the writ. There is no Court of Appeals dissent, no substantial constitutional issue, no federal question, no novel question of law, and no other special and important reason warranting certiorari. The Order of the Court of Appeals regarding the appealability of an order denying partial summary judgment is consistent with this Court's precedent. For these and the following reasons, Respondent Lisa Sulka's Motion to Dismiss should be granted.

## FACTUAL BACKGROUND

This Appeal arises from a declaratory judgment action that was commenced on October 31, 2017, when Petitioner Privileged Underwriters Reciprocal Exchange ("PURE") filed a Summons and Complaint in the Beaufort County Court of Common Pleas seeking declarations that it did not have an obligation to defend or indemnify its insured, Respondent Calvin C. "Skip" Hoagland, for numerous defamatory

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<sup>1</sup> The Order specifically states that it is denying summary judgment.

statements he had made to government officials and members of the public concerning Respondent Lisa Sulka and Kim Likins, who are public officials in Beaufort County.<sup>2</sup> (Ex. 1, Sulka DJ Compl.). Hoagland and his wife Catherine Hoagland were insured by two policies issued by PURE, a homeowners policy and an excess liability policy.<sup>3</sup> (Ex. 2, PURE Policies). PURE sought to avoid coverage for two underlying defamation actions filed by Sulka and Likins, also filed in the Beaufort County Court of Common Pleas. Strangely, PURE never served Likins with the Summons and Complaint in this declaratory judgment action even though she was originally named as a party. On March 19, 2018, before Sulka had been served, PURE filed an Amended Complaint removing Likins as a party to the *Sulka* declaratory judgment action. (Ex. 3, Sulka DJ Am. Compl.).

The first and most relevant underlying action, *Lisa Sulka v. C.C. "Skip" Hoagland*, Civil Action No. 2017-CP-07-01547 was filed by Sulka on July 26, 2017, and alleged that Hoagland defamed her by sending countless emails to numerous state and local officials, as well as citizens of Bluffton and Hilton Head, accusing her of corruption and criminal acts. (Ex. 4, Sulka Defam. Compl.). Hoagland was no stranger to defamation litigation. Previously, on December 10, 2015, Kim Likins had

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<sup>2</sup> Sulka is the mayor of Bluffton, South Carolina. Hoagland is a self-styled government watchdog who resides on Hilton Head Island. *Skip Hoagland In His Own Words*, SC Watchdog (Feb. 2, 2021), <http://scwatchdog.com/articles/in-the-press/c2-exclusive-interview-skip-hoagland-in-his-own-words>. On June 5, 2017, just one month before Sulka's defamation action was filed, an article published on the website *Domain Name Wire* reported that Hoagland was seeking to sell his portfolio of geographic domain names, estimated as one of the most valuable in the world, for approximately \$20,000,000. Andrew Allemann, *Skip Hoagland puts domain portfolio up for sale including Cuba.com and Atlanta.com*, *Domain Name Wire* (June 5, 2017), <https://domainnamewire.com/2017/06/05/skip-hoagland-cuba/>.

<sup>3</sup> The policies provide a total of \$7,000,000 in coverage between Likins and Sulka.

also filed a lawsuit against Hoagland, *Likins v. C.C. "Skip" Hoagland*, Civil Action No. 2015-CP-07-02937, alleging that he made similar comments accusing her of committing a crime and being unfit for her employment in emails as well as in an open session of the Hilton Head Island Town Council. (Ex. 5, *Likins Defam. Compl.*). Throughout the course of the *Sulka* and *Likins* defamation actions, as well as this declaratory judgment action, Hoagland continued to make venomous and abusive statements concerning Likins and Sulka in tortuous, rambling emails that were sent to dozens of public officials and private individuals, including Attorney General Alan Wilson, numerous media sources, and reporters.

An answer was filed on Hoagland's behalf in the *Sulka* defamation action on December 1, 2017 by an attorney hired by PURE, Barrett Ray Brewer. (Ex. 6, *Sulka Defam. Answer*). Brewer was also representing Hoagland in the *Likins* defamation action, which was ongoing at the time Sulka commenced her defamation action against Hoagland. Despite this, PURE, Catherine Hoagland, and Skip Hoagland executed a partial policy buy-out and release sometime in early 2018, which purported in part to release PURE from its indemnity obligations in the *Likins* defamation action for a payment by PURE to Catherine Hoagland of \$200,000. (Ex. 7, *Undated Partial Policy Buy-out and Release*). The agreement states that "Calvin Hoagland alone (not PURE) will be responsible for any verdict obtained by Kim Likins." Hoagland has consistently boasted throughout the *Sulka* declaratory judgment action and defamation action that he is judgment-proof, that all cash and titled property have been conveyed to his wife and friends, and that he could even

write a book about how to keep attorneys away from one's money, with the working title of "No cheese. No rats." (Ex. 8, March 24, 2021, May 24, 2020 Hoagland Emails). PURE and the Hoaglands agreed the buy-out and release would be kept confidential and not disclosed, and did not seek Likins' or the Circuit Court's approval of the agreement. (Ex. 9, Likins DJ Compl. ¶ 22).

On August 1, 2018, Likins filed a declaratory judgment action naming PURE and the Hoaglands as Defendants, contending that the confidential agreement between PURE and the Hoaglands did not extinguish the coverage afforded by the two policies. (*Id.*). Likins settled her declaratory judgment action with PURE for \$400,000 on March 18, 2020. (Ex. 10, Likins Proof of ADR). Months later, in June of 2020, Hoagland supposedly fired Brewer as his attorney in the underlying *Sulka* defamation action and Brewer withdrew as counsel of record. (Ex. 11, Sulka Def. Mot. to Withdraw). Later, Hoagland would write to Kody Krueger, a PURE representative, the following: "Barrett Brewers release relates to the Likins and Sulka defamation lawsuits, both towns, but not the Alford lawsuit challenging the legality of the Pure release agreement . . . . Tell you what Kody, we need another release with you and Barrett, the same settlement of 400k you paid crooked lawyer Alford . . . . We need Brewer, since this 400k payoff to Alford was not covered in his release . . . ." <sup>4</sup> Hoagland has also written "I don't want you [meaning the undersigned] or Lisa Sulka profiting

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<sup>4</sup> In the same email, Hoagland asserts that Sean Trundy, his personal attorney who was defending him in this declaratory judgment action, was "secretly hired by Brewer" and has never "sent a legal bill." As the Court is aware, Trundy passed away on January 15, 2023.

from the frivolous lawsuit. I did the same already with Mrs. Sulka's friend Kim Likins.”<sup>5</sup> (Ex. 12, June 2021 Hoagland Emails; Ex. 13 Hoagland Handwritten Notes).

On July 1, 2020, PURE notified Hoagland that it would no longer defend him or indemnify him as to the *Sulka* defamation action. (Ex. 14, July 1, 2020 Letter). The letter does not document any serious effort by PURE to persuade Hoagland that cooperating in his defense was in his best interest. According to PURE, it could not manage to persuade Hoagland to participate in his defense in the *Sulka* defamation action from this point on, and it subsequently filed a Second Amended Complaint in this declaratory judgment action on February 23, 2021, requesting an additional declaration that it no longer had an obligation to defend or indemnify Hoagland because he was not “cooperating” in his defense. (Ex. 15, Sulka DJ 2nd Am. Compl.). Hoagland did not answer the Second Amended Complaint, either himself or through his attorney, Sean Trundy.<sup>6</sup>

Sulka filed a Second Amended Answer on March 23, 2021, alleging by way of affirmative defenses that PURE was “engaging in bad faith” in seeking Hoagland's cooperation, and that his noncooperation was tacitly agreed upon by PURE and Hoagland, and was a deliberate attempt to prevent Sulka from receiving insurance proceeds from PURE. (Ex. 17, Sulka DJ 2nd Am. Answer). Sulka's theory, in part, is

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<sup>5</sup> In his deposition, Hoagland informed the undersigned “You can have me in Florida. I don't want my insurance company to pay to profit you or Ms. Sulka's pockets for this frivolous lawsuit . . . And so I might settle with my insurance company just so you can put a judgment against me in Florida and get nothing. That's what I'm really thinking about.” (Ex. 30, Hoagland Dep. 103:15-22).

<sup>6</sup> Emails from Hoagland document that he made subsequent attempts to participate in his defense but apparently PURE was unwilling to cooperate at the time. (Ex. 16, April 19, 2021 Hoagland Email).

that by encouraging and participating in the Likins partial policy buy-out and release and further actions, PURE deliberately emboldened Hoagland to not participate in his defense in the *Sulka* defamation action, knowing that he was aware of the policies' cooperation clause, and purposefully made minimal, bad faith, token efforts to secure his cooperation, knowing that they would fail. These efforts were made in a manner which PURE knew would only further embolden and drive Hoagland to refuse to cooperate in his defense in the defamation action, since his primary objective was not to prevail at trial, but to ensure that Sulka would never be able to collect any judgment she obtained. The resulting noncooperation of Hoagland would be mutually beneficial to both PURE and Hoagland.

On October 5, 2021 PURE filed a Motion for Partial Summary Judgment, asking the Court to issue a declaration that there was no coverage due to Hoagland's supposed refusal to cooperate. (Ex. 18, Mot. P. Summ. J.). Sulka filed a memorandum in opposition to the Motion for Partial Summary Judgment, arguing that "PURE is attempting to take advantage of Hoagland's desire to see that the plaintiff not be compensated", and that PURE and Hoagland were seeking "to deny compensation to Ms. Sulka by tacitly colluding to prevent Ms. Sulka from being able to collect a judgment against Mr. Hoagland", citing *Evans v. Am. Home Assur. Co.*, 252 S.C. 417, 420, 166 S.E.2d 811, 813 (1969). (Ex. 19, Mem. Opp. Mot. P. Summ. J.). Sulka further argued that PURE could only avoid coverage for noncooperation if Hoagland's breach of the cooperation provision was material and had resulted in substantial prejudice to PURE.

The Motion for Partial Summary Judgment was heard by the Circuit Court on January 5, 2022. On January 20, 2022, the Circuit Court filed a Form 4 Order stating that the motion was “granted for the coverage as to Skip Hoagland.” (Ex. 20, Jan. 20, 2022 Form 4 Order). On January 21, 2022, Sulka filed a Motion for Reconsideration. Sulka asked for clarification of the Form 4 Order to the extent that it granted the motion “for the coverage as to Skip Hoagland.” Sulka also argued that under *Evans*, PURE must have acted in good faith in seeking Hoagland’s cooperation, and that there was ample evidence in the record that PURE and Hoagland were colluding to deprive Sulka of coverage for her defamation lawsuit. (Ex. 21, Sulka Mot. for Reconsideration).

The *Sulka* defamation action was tried before a jury in Beaufort County beginning February 2, 2022, and a verdict was entered on February 3, 2022 in favor of Sulka for \$40,000,000 in actual damages and \$10,000,000 in punitive damages. Unsurprisingly, a writ of execution of the judgment was returned by the Sheriff of Beaufort County *nulla bona*. The defamation action was not defended by PURE and has not been appealed.

On May 18, 2022, the Circuit Court heard arguments on Sulka’s Motion for Reconsideration. At the hearing, the Circuit Court clarified its Form 4 Order by stating that it was not the intention of the Circuit Court to grant summary judgment, and that the grant of summary judgment against Sulka was a mistake. On May 24, 2022, the Circuit Court filed a Form 4 Order stating that the Circuit Court’s January 20, 2022 was vacated and that a formal order would be forthcoming. (Ex. 22, May 24,

2022 Form 4 Order). On June 7, 2022 the Circuit Court filed a formal Order, stating that the language in the January Form 4 Order was inartfully worded, did not reflect the Circuit Court's intent, and that it "should have stated that the Plaintiff's motion for partial summary judgment was denied . . . . NOW THEREFORE IT IS ORDERED that the Plaintiff's Motion for Partial Summary Judgment be and hereby is denied." (Ex. 23, June 7, 2022 Order). PURE filed a Motion for Reconsideration on June 17, 2022, which was denied by the Circuit Court on August 4, 2022.

On July 15, 2022, Sulka filed a separate tort action naming both Skip and Catherine Hoagland alongside PURE as defendants. (Ex. 24, Sulka Conspiracy Compl.). This lawsuit contains causes of action for civil conspiracy as to all defendants, and a Statute of Elizabeth claim against the Hoaglands. The basis of the claims are the documented efforts of PURE and the Hoaglands to deny Likins coverage or the ability to collect a judgment in her defamation action, the actions of Skip Hoagland in attempting to arrange the same buy-out and release in the *Sulka* defamation action, and the subsequent failure of and inadequate attempts by PURE to secure Hoagland's cooperation in the defense of the *Sulka* defamation action, leading to its request for a declaration that it no longer had a duty to indemnify or defend Hoagland. The Statute of Elizabeth claim derives from Hoagland's testimony and emails regarding his allegedly fraudulent transfer of assets to his wife and friends for the sole purpose of avoiding judgments, including judgments in the *Likins* and *Sulka* defamation actions. PURE was served with the Summons and Complaint

for the conspiracy action on July 26, 2022, and Hoagland was served on August 22, 2022. (Ex. 25, Affs. of Service).

That same day, on August 22, 2022 PURE filed a Motion for Entry of Default as to Hoagland in the original declaratory judgment action. (Ex. 26, Mot. Entry Default). Sulka has submitted an opposition memorandum to the Circuit Court with regards to the motion, which has yet to be heard. Hoagland subsequently filed an Answer and Counterclaim in response to PURE's Second Amended Complaint in which he asserted that PURE was obligated to defend and indemnify him. (Ex. 27, DJ Action Hoagland Answer). PURE has moved to strike Hoagland's Answer and to dismiss his Counterclaim. These motions have not been heard by the Circuit Court and default has not been entered as to Hoagland.

On August 16, 2022, PURE filed a Notice of Appeal of the June 2022 partial summary judgment Order and the August 2022 Order denying reconsideration. The Court of Appeals characterized the Circuit Court's August 2022 Order as an order denying summary judgment, and concluded that "[I]t is well-settled that an order denying summary judgment is never reviewable on appeal . . . .", citing *Bank of N.Y. v. Sumter Cnty.*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010). (Ex. 28, Court of Appeals Aug. 19, 2022 Order). The Court of Appeals dismissed PURE's appeal on August 19, 2022. PURE filed a Petition for Rehearing on September 6, 2022, requesting a hearing *en banc* and arguing that its appeal involved important issues involving the appealability of interlocutory orders and trial court power limitations. The Court of Appeals denied PURE's Petition for Rehearing on February 10, 2023,

stating that there was no basis for granting a rehearing because it could not discover any material fact or principle of law that had been overlooked or disregarded. (Ex. 29, Court of Appeals Feb. 10, 2023 Order). On March 3, 2023, PURE filed its Petition for a Writ of Certiorari.

## ARGUMENT

### I. An order denying partial summary judgment is not appealable.

PURE makes numerous illogical arguments for why the Circuit Court's Order denying partial summary judgment is appealable, and why the Circuit Court's Order is in error. In doing so, PURE fails to explain how the June 2022 Order is anything but an order denying partial summary judgment, which is unquestionably not appealable under South Carolina law. As PURE has noted, the Court has found that appealability depends on the effect, and not the label of an order. *See Morrow v. Fundamental Long-Term Care*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015).

A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. In short, the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable.

*Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 379 (1994) (citations omitted).

The denial of summary judgment is not reviewable even in an appeal from final judgment. *Raino v. Goodyear Tire*, 309 S.C. 255, 422 S.E.2d 98 (1992).

The effect of the Circuit Court’s June 2022 Order is clearly to deny partial summary judgment. The Order explicitly states “NOW THEREFORE IT IS ORDERED that the Plaintiff’s Motion for Partial Summary Judgment be and hereby is denied.” PURE in its Petition does not argue that the Order had any other realistic effect on the outcome of the case, regardless of any dicta within the Order. The Order does not finally determine anything about the case and PURE is free to raise its arguments again anytime before trial or by a motion for a directed verdict. The Order is therefore not appealable, and this Appeal should be summarily dismissed, just as the Court of Appeals did.

II. **Even if the primary effect of the June Order is framed as a vacation of a final order, such an order would be interlocutory and not final, and would not be immediately appealable.**

Arguably, the effect of the June Order was twofold in that it vacated the January Order and in doing so effectively denied PURE’s Motion for Partial Summary Judgment. To the extent it could be framed as an order vacating a purportedly final order, such an order would be interlocutory and would not be immediately appealable.

“The right of appeal arises from and is controlled by statutory law.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). “An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Id.* (citing S.C. Code Ann. § 14-3-330(1) (1977); Rule 72, SCRCP; Rule 201(a), SCACR). “The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code (1977 & Supp. 2013)].” *Id.*

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action . . . .

S.C. Code Ann. § 14-3-330.

“Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable.” *Id.* “An order ‘involves the merits,’ as that term is used in [s]ection 14-3-330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Id.* at 7, 630 S.E.2d at 467 (footnote omitted). “The phrase ‘involving the merits’ is narrowly construed . . . . An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Id.* at 7, 630 S.E.2d at 467-68.

“The provisions of [s]ection 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). “The basic policy behind denying immediate

review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000).

“An order affects a substantial right and is immediately appealable when it ‘(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial[,] or (c) strikes out an answer or any part thereof or any pleading in any action.’” *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709 (brackets omitted) (quoting § 14-3-330(2)). An order is not immediately appealable when appellants “have not ‘arrived at the end of the road’ and [would] be able to appeal the decision after the trial [wa]s finished.” *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

While the issue of whether an order vacating a previous entry of summary judgment is appealable does not appear to be addressed by any binding authority in South Carolina, numerous other jurisdictions have addressed the issue and found that such orders are interlocutory and thus not immediately appealable. *See State ex rel. Peterson v. Creative Comm. Promotions, LLC*, 302 Neb. 606, 668, 924 N.W.2d 664, 668 (Neb. 2019); *Kirk v. Kirk*, 280 P.3d 461 (Utah Ct. App. 2012); *Grasson v. Board of Educ., Town of Orange*, 502 Fed. App’x 97, 98-99 (2nd Cir. 2012); *In re LWD, Inc.*, 335 Fed. App’x 523, 527 (6th Cir. 2009); *see also State v. Summersett*, Appellate Case No. 2014-001419, 2016 WL 3350778, \*1-2 (Ct. App. 2016); *Cain v. Sukkar*, 167 Ill. App. 3d 941, 947-51, 521 N.E.2d 1292, 1295-98 (Ill. Ct. App. 1988) (McCullough, J. concurring).

The June 2022 Order vacating the January 2022 Order's grant of summary judgment was entered pursuant to Rule 60(a), SCRCP, which provides for the correction of clerical mistakes in orders by a court at any time and can be made by the court's own initiative or on the motion of any party. The June 2022 Order did not involve the merits of the *Sulka* declaratory action, as it merely corrected a mistake in recording the intent of the Circuit Court. It did not determine the matter with finality, as PURE was not precluded from raising the issues encompassed by the January 2022 Order again before and at trial. And even if the June 2022 Order somehow impacted a substantial due process right of PURE (which is doubtful, as it is hard to articulate a rationale as to why a party would have a due process right to frustrate a court's attempt to correct its own recording mistake), it would not render the June 2022 Order immediately appealable because the Order does not prevent a judgment from which an appeal might be taken or discontinue the declaratory judgment action. The June 2022 Order is by definition an interlocutory order for which a right to immediate appeal does not exist, and PURE's Appeal should be dismissed.

**III. The June 2022 Order is not immediately appealable because the Circuit Court had jurisdiction and power to vacate the January 2022 Order under Rule 60(a), SCRCP.**

The crux of PURE's Petition is that the Circuit Court did not have authority to vacate its January 2022 Order granting partial summary judgment because the relief provided by the June 2022 Order was not specifically asked for by Sulka in her Motion for Reconsideration, and because the Circuit Court did not have authority to *sua*

*sponte* grant such relief under Rule 60, SCRCP. PURE misunderstands the scope of Rule 60(a) and the type of errors that the Rule allows a court to correct. It is true that some jurisdictions have found that an order vacating a prior order under Rule 60 is immediately appealable if the trial court did not have authority to vacate its prior order under the Rule, but if the trial court did have such authority, the order is not immediately appealable. *See Grasson*, 502 Fed. App'x at 98-99.

PURE's position is that Rule 60(a) only permits a court to *sua sponte* correct a judgment more than ten days after its filing when the correction does not change the scope of the judgment. Under PURE's reasoning, since the June 2022 vacates the January 2022 Order's grant of summary judgment, it reverses the scope of judgment and is prohibited by *Dion v. Ravenel*, 316 S.C. 226, 230, 449 S.E.2d 253 (Ct. App. 1994). PURE fails to recognize that the June 2022 Order does nothing to alter the scope of the Circuit Court's original judgment, as it was the Circuit Court's intent in January 2022 to deny partial summary judgment; instead, the June 2022 Order only corrects the January 2022 Order to preserve and accurately record the contents and scope of the Circuit Court's original judgment and intent.

"Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." Rule 60(a), SCRCP. "The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes." *Id.* This Court has stated that "for Rule 60(a) to apply, the 'mistake' must

be one where ‘there is an inconsistency between the text of an order or judgment and the . . . court’s intent when it entered the order or judgment . . . .’” *Landry v. Landry*, 430 S.C. 153, 161, 843 S.E.2d 491, 495 (2020).

To the contrary of PURE’s arguments, Rule 60(a) does not only exist to correct typos, misspellings, or other insignificant errors in an order or judgment. The Court’s finding in *Landry* is consistent with the law of other jurisdictions regarding Rule 60(a). Rule 60(a) allows the correction of errors that occur when the recorded order is not what the court intended to write or record, as the Rule’s “touchstone is fidelity to the intent behind the original judgment.” *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Prod. Liab. Litig.*, MDL No. 2672 CRB (JSC); 2017 WL 2438645, at \*2 (N.D. Cal. June 6, 2017). “Courts have the inherent power to correct their records to reflect accurately the judgment of the court, whether the correction is necessitated by clerical errors or inadvertence.” *Wolff v. Weber*, 563 N.W.2d 136, 138 (S.D. 1997). “The correction contemplated by Rule 60(a) must be undertaken for the purpose of reflecting the actual intention of the court and parties.” *Lindsay v. Atkin*, 680 P.2d 401, 402 (Utah 1984).

Here, the Circuit Court did not change its mind, did not make a legal or factual mistake in making its original determination, and did not have second thoughts which caused it to exercise its discretion in a manner different from the way it was exercised in the original determination. Instead, a clerical error occurred in that the judgment that was recorded did not reflect the Circuit Court’s true intent:

The Form 4 Order states . . . Plaintiff Privilege Underwriters Reciprocal Exchange’s Motion for Summary Judgment is granted for the coverage

as to Skip Hoagland. The language in the Form 4 order does not reflect my intent in issuing the Order . . . . The Order should have stated that the Plaintiff's motion for partial summary judgment was denied as to their obligation to provide Mr. Hoagland coverage.

Further, the June 2022 Order was entered in response to Sulka's timely Motion for Reconsideration, which asked the Circuit Court to clarify its January 2022 Order to the extent that it stated that PURE's motion was granted "for the coverage as to Skip Hoagland." Since Sulka properly and timely moved the Circuit Court to clarify its January 2022 Order, and the Circuit Court had jurisdiction and authority under Rule 60(a) to correct the January Order to reflect its original intent, the June 2022 Order is interlocutory and not immediately appealable.

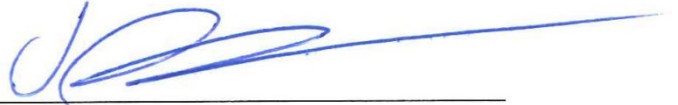
### **CONCLUSION**

For the foregoing reasons, Respondent Lisa Sulka respectfully requests that the Court dismiss the Petition for a Writ of Certiorari for lack of appellate jurisdiction.

[SIGNATURE PAGE TO FOLLOW]

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