

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Privilege Underwriters Reciprocal Exchange,)
)
Plaintiff,)
)
vs.)
)
Calvin C. "Skip" Hoagland and Lisa Sulka,)
)
Defendants.)

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-07-02310

**PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

RECEIVED

Apr 19 2023

S.C. SUPREME COURT

**TO: DEFENDANTS AND THEIR ATTORNEYS, JOHN E. PARKER, ESQ., DANIEL E
HENDERSON, ESQ., AND SEAN K. TRUNDY**

YOU WILL PLEASE TAKE NOTICE that Plaintiff Privilege Underwriters Reciprocal Exchange ("PURE"), by and through its undersigned counsel, will move at a time and place to be arranged by the Court for an Order granting it partial summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. S.C. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). Plaintiff requests for a declaration as a matter of law that Defendant-insured Calvin C. "Skip" Hoagland has materially violated, and continues to violate, his contractual duty to cooperate in his defense which has caused PURE substantial prejudice. Therefore, PURE has no duty to defend or indemnify him in the lawsuit filed against him by Defendant Lisa Sulk and partial summary judgment is appropriate at this time.

This matter is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and the Uniformed Declaratory Judgment Act, South Carolina Code Ann. §§ 15-53-10 through 15-53-140, and surrounds insurance coverage afforded to Defendants in an underlying defamation case pending in the Beaufort County Court of Common Pleas between Defendant Lisa Sulka and Defendant Calvin C. "Skip" Hoagland, styled as: Lisa Sulka v. C.C. "Skip" Hoagland, Civil Action

No. 2017-CP-07-01547 (“The Underlying Lawsuit”). The Sulka Underlying Lawsuit alleges that Defendant Hoagland published false and defamatory statements about Sulka in 2015 and 2017 in emails that were published to various individuals. The Underlying Lawsuit alleges the statements were in reckless disregard for the truth and damaged Sulka’s reputation by falsely accusing her of crimes, being unfit for office, being mentally ill, and being unfit for her profession.

Generally the duty to indemnify is not considered “ripe” for consideration until the insurer is “called upon to pay for” and “findings of fact” have been made. *Darwin Nat. Assur. Co. v. Matthews & Megna, LLC*, 36 F. Supp. 3d 636 (D.S.C. 2014). However, narrow exceptions to seek relief exist including the consideration of an insured’s failure to cooperate. *Union Ins. Co. v. Soleil Group, Inc.*, 465 F. Supp. 2d 567, Fn. 2. (D.S.C. 2006). A liability insurer may successfully defend upon the ground that the insured has violated the cooperation clause of the policy when the breach has been material and has resulted in substantial prejudice to the insurer. *Evans v. Am. Home Assur. Co.*, 252 S.C. 417, 420, 166 S.E.2d 811, 813 (1969). *See also Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co. of S.C.*, 433 F.3d 365, 375 (4th Cir. 2005); *Flexi-Van Leasing, Inc. v. Travelers Indem. Co.*, 406 F. Supp. 3d 517, 526 (D.S.C. 2019) (finding insured not entitled to indemnification from the insurer when the insured settled a claim after ousting the insurer from defending the suit and retaining its own counsel).

As will be detailed further in a supporting memorandum of law, from 2017 until mid-2020, Mr. Brewer represented and defended Mr. Hoagland in the Sulka defamation lawsuit. However, Mr. Hoagland abruptly fired attorney Brewer and expressly refused, and continues to refuse, alternative counsel paid for by PURE. Additionally, on repeated occasions, Mr. Hoagland has expressed that he will not appear at any future proceedings, whether depositions, hearings, or a trial, in the Underlying Sulka Lawsuit, and that he will “throw any paper or court ordered subpoenas related to the matter in the trash.” PURE believes these threats to be credible as Mr.

Hoagland failed to appear at the jury trial for the similar Kim Likins defamation lawsuit in March of 2020.

PURE requests this Court grant its Motion for Partial Summary Judgment and issue a declaration as a matter of law that no coverage is afforded under its policies of insurance to Skip Hoagland due to his violation of his contractual duty to cooperate. Defendant Hoagland's refusal to cooperate in any way is in direct disregard to his contractual duty to assist PURE in defending the Underlying Sulka Lawsuit. Defendant Hoagland's deliberate, intentional failure to cooperate with PURE's attempts to defend the Sulka case resulted in, and will continue to result in, material and substantial prejudice to PURE. Therefore, PURE requests a declaration that the PURE Policies do not provide coverage for the claims alleged in the Sulka Underlying Complaint because Defendant Hoagland's willful failure to cooperate breached his duties owed under the insurance contracts with PURE.

This Motion will be supported by a memorandum of law, depositions, discovery exchanged between the parties, arguments presented by counsel, and any other documents which may be presented to the Court.

This 5th day of October, 2021.

Respectfully submitted,

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