EXHIBIT
19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2017-CP-07-02310
	)	
PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE, Plaintiff,	)	
	)	***SULKA'S MEMORANDUM IN OPPOSITION TO PLANTIFF'S MOTION FOR SUMMARY JUDGMENT***
v.	)	
	)	
CALVIN C. "SKIP" HOAGLAND AND LISA SULKA, Defendants.	)	

PURE has previously moved for summary judgment which was denied by an order dated 12/19/19. Privilege Underwriters Reciprocal Exchange (PURE) has again moved for partial summary judgment contending it has no duty to defend nor indemnity, Calvin "Skip" Hoagland in the underlying defamation action brought by Lisa Sulka against Mr. Hoagland.

PURE and Mr. Hoagland are now attempting to prevent Ms. Sulka from being compensated for Mr. Hoagland defaming her. Mr. Hoagland claims to be judgment proof and he desires that PURE not cover his liability to prevent Ms. Sulka from being compensated for her damages.

PURE and Mr. Hoagland should be estopped from contending there is no coverage in the case. Ms. Sulka filed the underlying case against Mr. Hoagland on June 26, 2017. PURE hired Barrett Brewer to defend the action and Mr. Brewer was counsel of record. Mr. Brewer filed an answer on 12/04/2017. The parties exchanged with discovery on February 20,2020 in the underlying action. Hoagland filed his response to plaintiff's request to admit in the underlying action. In addition, depositions have been taken.in the underlying action. Mr. Hoagland was deposed on January 3, 2019. Ms. Sulka was deposed on January 10, 2019, and Mr. Orlando was deposed on September 24, 2019.

Mr. Hoagland moved for summary judgment in the underlying action on January 21, 2019. A hearing was held on the motion for summary judgment on May 16, 2019, and the motion was denied by order dated December 19, 2019.

On July 13, 2019, Hoagland removed the underlying case to U.S. District Court contending the court had diversity judgment. The plaintiff moved to remand the case and on 09/16/19 the court issued an order remanding the case to the state court.

On October 9, 2020, the court granted Barrett Brewer's motion to be relief as Counsel for Hoagland in the underlying case. Since that time Mr. Hoagland has been served with all pleading and motions. Mr. Hoagland has represented himself in responding to the court.

Mr. Hoagland claims to be judgment proof and has expressed a desire that PURE not pay the plaintiff because of his animosity toward plaintiff. Even though he claims to be judgment proof he has frequently offered one million dollars to anyone who can prove various of his claims false. (Ex. 1 Hoagland Depo.). Mr. Hoagland is attempting to not cooperate with PURE and by doing so use this to prevent Ms. Sulka from being compensated for her damages by his liability carrier. (Ex. 2. Email 5/24/20 Hoagland to Weatherly et al.).

Kim Likins a member of Hilton Head Island city council also sued Mr. Hoagland for defamation and Mr. Hoagland and his wife entered an agreement in which Mr. Hoagland released PURE from its obligation under his liability insurance contract and PURE paid Mr. Hoagland $ 200,000.00. (Ex. 3. Buyout agreement, 8/1/19) His intention in this case was to release PURE and have PURE pay him. (Ex 4. Hoagland's notes, p. 2).

Even though PURE had rescinded its liability insurance policy it paid Ms. Likins $400,000.00 to settle the declaratory judgment case which had been filed by her to set aside the Hoagland/PURE agreement to release PURE from its liability insurance coverage of Hoagland.

In the Likins declaratory judgment action PURE took the position that the case was not ripe for determination because its obligation of indemnity was not triggered, and the declaratory judgment

action should be dismissed. (Ex. 5. PURE's Memo in Opposition to Summary Judgment). It is taking an opposite position in this case.

Even though judicial estoppel does not apply to changing legal positions the court should consider that PURE took an opposite position in the related case. See Hayne Federal Credit Union v Bailey, 327 S.C. 242,489 S.E 2nd 472 (S.C. Sup. Ct. 1977). PURE's obligation to pay will occur when Sulka obtains a judgment against Hoagland.

PURE is attempting to take advantage of Hoagland's desire to see that the plaintiff not to be compensated. It is settled law in South Carolina that an insurance company can avoid coverage for a noncooperation only when the breach was material and has resulted in substantial prejudice to the insurance company. Evans v. American Home Assurance, 252 S.C. 417, 166 S.E. 2nd 811(S.C. Sup. Ct. 1969). PURE has produced no evidence any prejudice to itself.

PUBLIC POLICY

The facts of the case establish a violation of South Carolina's public policy if Hoagland and PURE are allowed to void applicable liability coverage after a libel has occurred within the coverage of Mr. Hoagland's liability policy and rescind the policy after the libels in this case occurred. They are in essence attempting to cancel the policy.

South Carolina's public policy concerning the issue of retroactively cancelling a liability policy is set forth in §38-75-730, South Carolina Code of Laws (1976). This section in pertinent part provides that an insurance policy may not be cancelled by the insurer except for specific reasons. These reasons are:

(1) nonpayment of premium.
(2) material misrepresentation of fact which, if known to the company, would have cause the company not to issue the policy.
(3) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the policy.

(4) substantial breach of contractual duties, condition, or warranties.

PURE has not establish any of the specified reasons which would allow it to cancel the policy issued to Mr. Hoagland.

As general rule insurers have a right to limit their liability provided, they are not in contravention of public policy. Public policy considerations include not only what is expressed in state laws but also a determination if the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare. Williams v. Geico, 409 S.C. 586, 762 S.E 2nd 705(S.C. Sup. Ct. 2014).

In Williams the court held that a step-down provision for family members in an automobile liability policy violated South Carolina's public policy. Liability insurance not only affords protection to the insured it serves the important public purpose of affording protection to innocent victims.

The evidence before the court in Likins v PURE shows the intent of PURE and Hoagland. In that case PURE paid Hoagland $200,000.00 dollars to allow it to withdraw its liability coverage from the case. In the agreement the parties agreed that nothing in the agreement should be used by either party in relationship to the Sulka action or those portions of the DJ action which relate to the Sulka action or Lisa Sulka. (Ex. 3 Confidential Partial Policy Buy-Out Agreement and Release, para #4). PURE after this agreement paid Kim Likins $400,00.00 to settle the declaratory judgment action that Ms. Likins brought against PURE. The confidential partial policy buy-out and agreement details Mr. Hoagland and PURE's effort to keep Ms. Likins from recovering from her defamation action against Mr. Hoagland. Mr. Hoagland profited $ 200,000.00 for providing PURE with grounds to deny it had coverage for the Likins defamation by Mr. Hoagland.

Mr. Hoagland in this case intended to follow this course of conduct in the Likens case. In his email of June 10,2021 to Kody Krueger the PURE adjuster Mr. Hoagland states "I have asked you numerous times to settle with Ms. Sulka on the Sulka lawsuit" Mr. Hoagland attempts the same ploy that worked for him in the Likins case. (Ex..6). On June 1, 2021, Mr. Hoagland wrote again to the adjuster Kody Krueger and stated " Tell you what Kody, we need another release with you and Barrett, the same settlement of $400k you paid crooked lawyer Alford and his illegal criminal act that of using public money to sue me" He concluded his email by stating: "You honest fellows better make it right or you will be forced to make it right and will be much more money involved and many might be disbarred as well". (Ex.7). Apparently PURE realized that its course of conduct in Likins was inappropriate and it did not meet Mr. Hoagland's demand for a payment of $ 400,000 to him.

PURE and Hoagland, seek to deny compensation to Ms. Sulka by tacitly colluding to prevent Mrs. Sulka from being able to collect a judgment against Mr. Hoagland. Mr. Hoagland has testified that he is judgment proof, Equitable estoppel may be enforced by a Court of law as well as in equitable matters. Equitable estoppel is the inhibition to assert such right by reason of mischief following one's own fault and may arise even though there was no intention on the part of the party estopped to relinquish or change any existing right. Prejudice to another party is an essential element of equitable estoppel, Janisik v Fairway Oaks Villas Horizon Prop Regime, 307 S.C. 339, 415 S.S 2nd 384 (S.C.1992). The inability to collect judgment against Mr. Hoagland by virtue of his and PURE's conduct certainly constitutes prejudice to Ms. Sulka.

PURE and Mr. Hoagland because of their conduct in mutually agreeing to avoid coverage in the Likins v. Hoagland, 2015-CP-07-2937 for the payment of money to Hoagland by PURE engaged in a course of conduct which violates public policy. Public policy supports the compensation of victims and they have an interest in the proceeds of liability insurance. The modern view of courts is that

accident victims have an interest in the proceeds of liability insurance and that liability insurance is not merely a private matter between insured and insures M.F.A. Mut. Ins. Co. v. Cheek, 34 III. App. 3rd 2096, 340 N.E. 2nd 331 (1975).

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