

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
PRIVILEGE UNDERWRITERS)
RECIPROCAL EXCHANGE,)
Plaintiff,)
)
v.)
)
CALVIN C. "SKIP" HOAGLAND AND)
LISA SULKA,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2017-CP-07-02310

MOTION FOR RECONSIDERATION

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S.C. SUPREME COURT

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YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for Defendant Lisa Sulka move the Court pursuant to Rule 59(e), SCRPC, to reconsider its Order granting Plaintiff Privilege Underwriters Reciprocal Exchange’s Motion for Partial Summary Judgment. First, Plaintiff believes that the Court’s Order does not consider evidence submitted by Plaintiff demonstrating, in the light most favorable to Sulka, that PURE did not actually act in good faith in attempting to secure the cooperation of its insured, Defendant Calvin C. “Skip” Hoagland, in defense of the underlying defamation action entitled *Sulka v. Hoagland*, Civil Action No. 2017-CP-07-01547.¹ Second, Plaintiff requests clarification of the Court’s January 20, 2022 Order, which states that the PURE’s motion is granted “for the coverage as to Skip Hoagland” without further addressing any of PURE’s additional declarations or obligations under the subject policies.

In South Carolina, to survive summary judgment the nonmoving party is only required to point to a “mere scintilla” of evidence creating a genuine dispute of material fact. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment is a drastic, extreme remedy and must be “cautiously invoked so that no person will be improperly deprived of a trial

¹ Sulka adequately addressed this ground for reconsideration in her memorandum in opposition to PURE’s Motion for Summary Judgment by arguing that Hoagland and PURE conspired and intended to keep Sulka and Kim Likins from recovering for their defamation actions against Hoagland. (Def. Sulka’s Mem. in Opp. to Mot. for Summ. J. at 5).

of the disputed factual issues.” *Baughman v. American Telephone and Telegraph Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). In determining whether a triable issue of fact exists, all evidence and inferences must be viewed in the light most favorable to the nonmoving party. *B & B Liquors, Inc. v. O’Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

“Forfeitures of insurance contracts are not favored in South Carolina.” *Puckett v. State Farm Gen. Ins. Co.*, 314 S.C. 371, 374, 444 S.E.2d 523, 524 (1994). To disclaim coverage on the basis of a violation of a cooperation clause, an insurer must show (1) that the insurer’s demands for cooperation were reasonable, **in good faith**, and carried out with diligence, (2) that the insured materially breached the cooperation clause, **and** (3) the breach substantially prejudiced the insurer’s defense. *See MAG Mut. Ins. Co. v. Brown*, C/A No. 6:14-cv-353, 2015 WL 13648556, at *3 (D.S.C. July 24, 2015); *Evans v. Am. Home Assur. Co.*, 252 S.C. 417, 420, 166 S.E.2d 811, 813 (1969). Proving a violation of a cooperation clause typically raises a genuine dispute of material fact that should not be resolved on a motion for summary judgment. *Evans*, 252 S.C. at 420, 166 S.E.2d at 813.

In her Second Amended Answer to PURE’s Second Amended Complaint, Sulka asserted a counterclaim and cross-claim against PURE and Hoagland, essentially alleging a cause of action of civil conspiracy for depriving Sulka of the benefits of coverage that would have otherwise been afforded by PURE’s liability and excess liability coverage of Hoagland. In her memorandum in opposition to PURE’s Motion for Partial Summary Judgment, Sulka argued that (1) Hoagland and PURE previously reached an agreement under similar circumstances in connection to allegations of defamation in *Likins v. Hoagland*, Case No. 2015-CP-07-02937, whereby PURE paid Hoagland \$200,000.00 in exchange for his promise not to seek coverage under the policies, (2) Hoagland sought to use the same tactic in this litigation to release PURE from its coverage obligations, (3) Hoagland represents that he is judgment

proof and that by nullifying PURE's policies, either through noncooperation or settling with PURE, he will effectively eradicate any relief available to Sulka should she obtain a favorable judgment.

In order to prevail on its Motion for Partial Summary Judgment, South Carolina law requires that PURE point to an absence of evidence in the record showing that PURE may not have acted with diligence and in good faith to obtain Hoagland's cooperation. In opposing PURE's motion, Sulka has submitted more than a mere scintilla of evidence to the Court, when viewed in the light most favorable to Sulka, creating a jury issue as to whether PURE's efforts were actually made diligently and in good faith. Sulka has produced documentary evidence demonstrating that PURE and Hoagland previously agreed to void his coverage in the analogous *Likins* litigation in exchange for \$200,000.00, and that he sought to do the same in this lawsuit. Additionally, evidence submitted by Sulka demonstrates that Hoagland was motivated by a desire to deprive Sulka of any recovery in her underlying defamation action, and that he communicated with agents of PURE inquiring if PURE would continue to have duties under the policy if he failed to cooperate. (Exhibit 1). Documentary evidence also shows that on several occasions Hoagland has demanded that PURE "make it right."

While there does not appear to be any South Carolina authorities directly on point with the facts of this case, the United States District Court for the District of South Carolina has met the issue head-on. In *Brown*, an insurer filed a declaratory judgment action seeking declarations that its insured, a surgeon who was a defendant in several medical malpractice actions, had violated the cooperation clause of the insurance policy. *Brown*, 2015 WL 13648556 at *2. The innocent parties who were harmed by the doctor's negligence counterclaimed that the insurer civilly conspired with the surgeon to deprive the innocent parties of their recovery under the insurance policy. *Id.* at *4. In resolving the insurer's motion for summary judgment, the court found that evidence in the record supporting the innocent parties'

conspiracy claim was sufficient to create a triable issue as to whether the insurer acted in good faith in obtaining the surgeon's cooperation:

If MAG Mutual conspired with Brown to have him stop cooperating in this case, then the correspondence from MAG Mutual to Brown asking him to "cooperate" were smoke and mirrors to satisfy the good faith requirement. Indeed, if the allegations contained in the civil conspiracy claim are true, then the only diligence MAG Mutual exercised was ensuring that Brown stopped participating in his cases-the anathema of good faith.

Id. at *4.

Here, there is evidence in the record of a pre-existing conspiracy to deny Sulka, an innocent party, of coverage. There is evidence that Hoagland and PURE previously acted in concert to void PURE's coverage under a similar set of circumstances, and that Hoagland intended to reenact the same plan with regards to Sulka. There is also evidence that Hoagland informed PURE that he would not be cooperating in his defense after seeking assurances from PURE that if he did not cooperate, PURE would not be bound by its obligations under the policy. The evidence shows that Hoagland boasted that his actions saved PURE "400k or maybe even been [sic] 10 million." This evidence not only creates a triable issue as to whether PURE acted with diligence and in good faith to obtain Hoagland's cooperation, as required by the first element of the *Evans* test, but it also is probative of whether Hoagland materially cooperated with PURE. *See Brown*, 2015 WL 13648556 at *5 ("If MAG Mutual and Brown civilly conspired to deprive the innocent parties of their recovery, then Brown, in fact, provided all the cooperation *actually* requested by MAG Mutual."). These factual issues should have been resolved in Sulka's favor and precluded granting PURE's motion.

For the foregoing reasons, Defendant Sulka respectfully requests that the Court reconsider its Order and deny Plaintiff's Motion for Summary Judgment. A hearing is requested on this Motion.

[SIGNATURE PAGE TO FOLLOW]

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/John E. Parker

John E. Parker, SC Bar No. 4442
John E. Parker, Jr., SC Bar No. 104225
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
jparker@pmped.com
jayparker@pmped.com

-And-

Daniel E. Henderson, SC Bar No. 2912
690 North Green Street
P.O. Box 2500
Ridgeland, SC 29936
(843) 726-6131
dhenderson@pmped.com
Attorneys for Defendant, Lisa Sulka

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Hampton, South Carolina