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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Sep 18 2:25 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2100483

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2023-CP-21-00483

National General Insurance Company,

Appellant,

v.

State Farm Automobile Ins. Co.,

Respondent.

NOTICE OF APPEAL

CLEMENT RIVERS, LLP

Robert P. Gruber (SC Bar No. 15581)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

P.O. Box 993 (29402)

Charleston, South Carolina 29401

(843) 720-5488

Attorneys for Appellant

National General Insurance Company

Other Counsel of Record:

AIKEN BRIDGES ELLIOTT TYLER & SALEEBY, P.A.

James M. Saleeby, Jr. (SC Bar No. 9258)

P.O. Drawer 1931

Florence, South Carolina 29503

(843) 669-8787

Attorneys for Respondent

State Farm Automobile Ins. Co.

Plaintiff/Appellant, National General Insurance Company (“Appellant”), hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- **Order Denying Plaintiff’s Motion for Confirmation of Arbitration Award and Entry of Judgement**, filed June 26, 2023; and
- **Order Denying Motion for Reconsideration**, filed August 18, 2023.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on August 18, 2023.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Robert P. Gruber
Robert P. Gruber (SC Bar No. 15581)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402)
Charleston, South Carolina 29401
(843) 720-5488
Attorneys for Appellant

Charleston, South Carolina

September 18, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	C/A NO.: 2023-CP-21-00483
)	
NATIONAL GENERAL INSURANCE COMPANY,)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S MOTION
)	FOR CONFIRMATION OF ARBITRATION
)	AWARD AND ENTRY OF JUDGEMENT
vs.)	
)	
STATE FARM AUTOMOBILE INS. CO.,)	
)	
Defendant.)	
_____)	

PRESIDING JUDGE:	MICHAEL G. NETTLES
DATE OF HEARING:	MAY 19, 2023
PLAINTIFF'S ATTORNEY:	ROBERT P. GRUBER
DEFENDANT'S ATTORNEY:	JAMES M. SALEEBY, JR

This matter comes before the Court by way of Plaintiff's Motion to Confirm an Arbitration Award pursuant to S.C. Code Ann. §15-48-120. The Motion was argued before me on May 19, 2023, with Robert P. Gruber appearing on behalf of Plaintiff and James M. Saleeby, Jr. appearing on behalf of State Farm Automobile Insurance Company. For the reasons stated herein, the Court denies the Motion.

Plaintiff National General Insurance Company brought this claim after a fire that occurred in a warehouse in Florence, South Carolina. The fire, which occurred on May 9, 2020, caused damage to Plaintiff's insured's motor home stored at the warehouse. Allegedly, the fire originated from the motor home of State Farm's insured also stored at the warehouse. After the Plaintiff paid their insured for the loss of the motor home, it initiated a subrogation claim against Defendant to recover damages. The matter was then submitted to Arbitration Forums, Inc. on or about April 26,

2021 as the Plaintiff and Defendant are each signatories to an Automobile Subrogation Arbitration Agreement.

On or about July 19, 2021, Arbitration Forums. initially issued an award to the Plaintiff in the amount of \$70,120.06. Consistent with applicable arbitration rules (Rule 3-9), State Farm raised the defense of having limited policy limits and having additional exposures within the appropriate time frame.

As a result, on August 24, 2021, Arbitration Forums issued its amended decision and also found that the matter was out of its jurisdiction (*see* Exhibits A and B filed by Defendant on May 18, 2023). The final arbitration decision of Arbitration Forums issued on August 24, 2021 shows a damages award in the amount of \$0.00. That same decision contains a finding that the matter was out of jurisdiction. Jurisdiction is the power of a court or body to decide a matter in controversy. It is the power and authority of a court or body to hear and determine a matter and the power to render a particular judgment. *See Black's Law Dictionary*, 6th Ed. In reviewing the final decision of Arbitration Forums, it is evident that body acknowledged it ultimately did not have jurisdiction to render an award in this situation. This is evidenced on the face of the document stating the matter was placed out of jurisdiction and the ultimate award owed being \$0.00.

I find that because the final decision of Arbitration Forums was that it did not have jurisdiction to hear this matter, and also because the final award owed was \$0.00, the Plaintiff's Motion to Confirm the Arbitration Award and Enter Judgment is denied.

IT IS SO ORDERED.

THE HONORABLE MICHAEL G. NETTLES
CHIEF ADMINISTRATIVE JUDGE FOR THE
TWELFTH JUDICIAL CIRCUIT

June _____, 2023



Florence Common Pleas

Case Caption: National General Insurance Company VS State Farm Automobile Ins
Co
Case Number: 2023CP2100483
Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FLORENCE) C/A NO.: 2023-CP-21-00483
)
NATIONAL GENERAL INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
STATE FARM AUTOMOBILE INS.)
CO.,)
Defendant.)
_____)

ORDER DENYING MOTION FOR RECONSIDERATION

This matter came before me on July 27, 2023. The Court previously issued an Order Denying the Plaintiff’s Motion for Confirmation of Arbitration Award and Entry of Judgment. The Plaintiff subsequently filed a Motion for Reconsideration asserting that the Court failed to apply the requirements of the South Carolina Uniform Arbitration Act and the Federal Arbitration Act to the facts of this case and further asserting that the Court’s findings were not supported by sufficient facts to establish a record for appellate review. During the hearing, counsel for the Plaintiff conceded that the Federal Arbitration Act does not apply to this dispute.

This action arises out of a fire which occurred on May 9, 2020 at a warehouse in Florence, South Carolina. It is alleged that the fire originated from a motorhome of a State Farm insured stored at the warehouse and the fire damaged a motorhome of the insured of Plaintiff National General Insurance Company. The Plaintiff paid its insured for the loss of the motorhome and initiated seeking subrogation from Defendant State Farm. Both the Plaintiff and Defendant are signatories to an automobile subrogation arbitration agreement thus this matter was submitted to Arbitration Forums, Inc., on or about April 26, 2021. On July 19, 2021, Arbitration Forums issued an award to the Plaintiff in the amount of \$70,120.06. At that point, State Farm, consistent with

the applicable arbitration rules (Rule 3-9), timely raised the defense of having limited policy limits and having additional exposures. Arbitration Forums considered the defense and, consistent with the applicable rules, amended its decision.

On August 24, 2021, Arbitration Forums, Inc. issued its final arbitration decision and found that the matter was out of its jurisdiction (*See* Exhibits A and B filed by the Defendant on May 18, 2023). The final arbitration decision also shows no award being owed to the Plaintiff. This Court previously held that a finding of no award (\$0.00) and a finding that the matter was placed out of jurisdiction is evident that there is no arbitration award to be confirmed pursuant to §15-48-120 of the *South Carolina Code of Laws*. First, there is simply no award to be confirmed. Secondly, jurisdiction is the power of a court or body to decide a matter in controversy. It is the power and authority of a court or body to hear and determine a matter and the power to render a particular judgment. *See Black's Law Dictionary*, 6th Ed. In reviewing the final decision of Arbitration Forums, Inc., it is evident that body acknowledged it ultimately did not have jurisdiction to render an award in this matter which is evidenced in its arbitration decision stating that the matter was placed out of jurisdiction and that the ultimate award being nothing. No party has challenged the final arbitration decision of Arbitration Forums, Inc. of August 24, 2021.

In its Motion for Reconsideration, Plaintiff asserts that the court failed to apply the requirements of the South Carolina Uniform Arbitration Act. §15-48-120 of the *South Carolina Code of Laws* governs the court confirming an arbitration award after a timely application of a party. §15-48-130 S.C. Code Ann. governs when a court should vacate an award. Lastly, §15-48-140 S.C. Code Ann. addresses when an award can be modified or corrected. In the present circumstance, these statutes are not beneficial to the Plaintiff as there is no award to be confirmed,

vacated, or modified. The final arbitration decision of Arbitration Forums, Inc. showed an award of \$0.00 and that its ultimate finding was the matter was placed out of jurisdiction.

The Court further finds that there are sufficient facts that establish a record for appellate review. In addition to the Court's orders, each party has filed exhibits/documents in support of their position and the Plaintiff has submitted a memorandum in support of its Motion for Confirmation of Arbitration Award and Entry of Judgment with supporting documents asserting its legal theory.

In essence, the Plaintiff seeks confirmation of intermediate decision of Arbitration Forums, Inc. That decision was ultimately amended, consistent with the arbitration rules, which lead to a final arbitration decision adverse to the Plaintiff. The Court simply cannot ignore the final decision of Arbitration Forums, Inc. and confirm a previous decision that was later overturned according to the applicable rules. Accordingly, the Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.

THE HONORABLE MICHAEL G. NETTLES
CHIEF ADMINISTRATIVE JUDGE FOR THE
TWELFTH JUDICIAL CIRCUIT

August _____, 2023



Florence Common Pleas

Case Caption: National General Insurance Company VS State Farm Automobile Ins
Co
Case Number: 2023CP2100483
Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

CASE INFORMATION

Date Filed: 5/19/2021 Location of Loss: FLORENCE, SC
 Date of Loss: 5/9/2020 Negligence Law: 50% Comparative
 Coverage Group: Collision, Comprehensive/OTC



Parties:

01004-0010 NATIONAL GENERAL INS CO (GEORGE STOKES)
 Claim Number: 200172291
 Representative:
 PRISCILLA MARTINEZ
 254-228-5442

1610 S 31st St
 102 - 140
 Temple, TX 76504-6788

00750-0002 STATE FARM FIRE & CASUALTY CO (JOSEPH CARTER)

Claim Number: 4006S904T
 Representative:
 BARRY STUART
 1-844-292-8615

12222 State Farm Blvd
 Tulsa, OK 74146-5400

ARBITRATOR INFORMATION

JEREMY MCCOY

Above Arbitrators have acknowledged the AF Neutrality, Privacy and Confidentiality Statement.

AWARD SUMMARY

Award for NATIONAL GENERAL INS CO's (GEORGE STOKES) damages

Comprehensive/Other than Collision (OTC) - 2008 TIFFIN						Claim Number: 200172291
Owing Party	Damages	Deductible	Legal Fees	Recoverable Amt	Payments	Award Owed
STATE FARM FIRE & CASUALTY CO JOSEPH CARTER, 100% liable	\$70,120.06	\$1,000.00	---	\$0.00	---	\$0.00
Totals	\$70,120.06	\$1,000.00	---		---	\$0.00

Remit Payment To:
 Recovering Company: NATIONAL GENERAL INS CO
 ATTN: Reliance Arbitration
 1610 S 31st St
 102 - 140
 Temple, TX 76504-6788

FINDINGS

STATE FARM FIRE & CASUALTY CO (JOSEPH CARTER) raised: Liability Policy Limits: Combined Single Limits - Comprehensive/Other than Collision (OTC)

Finding: Out of Jurisdiction (OOJ) Finding \$100,000.00

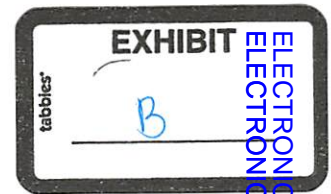
Justification: A jurisdictional exclusion that falls within the authority of Rule 3-9 was raised by this party.

LIABILITY DECISION

Liability for NATIONAL GENERAL INS CO's (GEORGE STOKES) damages

Party	Admitted	Proven	Duties Breached
STATE FARM FIRE & CASUALTY CO (JOSEPH CARTER)	0%	100%	Failure to properly act upon a known mechanical issue.

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 ELECTRONICALLY FILED - 2021 Sep 18 2:08 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2100483



From:"HOME CLMS-AFSUBSERVICES" <home.clms-afsubservices.787k00@statefarm.com>
Sent:Tue, 24 Aug 2021 13:17:15 +0000
To:"DF - AUTO - Drop File Document" <DF-AUTO-CL@internal.statefarm.com>
Subject:FW: [EXTERNAL] Your File Number: 4006S904T; Post Decision Inquiry - Closed; Your Insured: JOSEPH CARTER; AF Case Number: A2100DB63E2-C1. id[51e3aea0-54f9-460a-a29d-219e646c0898]

Auto-Forwarded by Rule

From: dinotify@arbfile.org
Sent: Tuesday, August 24, 2021 8:16:50 AM (UTC-06:00) Central Time (US & Canada)
To: HOME CLMS-AFSUBSERVICES
Subject: [EXTERNAL] Your File Number: 4006S904T; Post Decision Inquiry - Closed; Your Insured: JOSEPH CARTER; AF Case Number: A2100DB63E2-C1. id[51e3aea0-54f9-460a-a29d-219e646c0898]

To: home.clms-afsubservices.787k00@statefarm.com

From: dinotify@arbfile.org

Send Date: 08/24/2021 09:16:50 AM
Subject: Your File Number: 4006S904T; Post Decision Inquiry - Closed; Your Insured: JOSEPH CARTER; AF Case Number: A2100DB63E2-C1

The decision has been amended.

Under rule 3-9 State Farm is raising that they have policy limits of \$100,000. State Farms RV caught on fire in a storage building. The fire did spread throughout the building. Nationals damages are \$71,120.06. News articles confirmed that the fire caused extensive damage to the building and other RVs stored in the building. The additional exposures puts State Farms limits at risk. The decision is amended to add the limits exclusion and place out of jurisdiction.

Case Information:

AF Case Number: A2100DB63E2-C1
Your File Number: 4006S904T
Your Insured: JOSEPH CARTER
Date of Loss: 05/09/2020
Loss State: SC

You can view additional case details using the following link:
<https://trs.arbfile.org/trs/web/overview/14371654>

You can also access the case details via your company intranet using the following link:
<http://sfeuc.opr.statefarm.org/EUCNET00451/?Command=trsCaseOverview&caselId=14371654>

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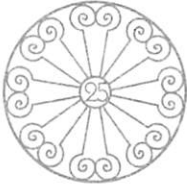
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Sincerely,
Arbitration Forums, Inc.
Industry Created. Membership Driven.

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CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

Russell G. Hines
Partner

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@yrlaw.com

September 29, 2023

VIA E-MAIL ONLY

South Carolina Court of Appeals
c/o Catherine S. Harrison, Chief Deputy Clerk
P.O. Box 11629
Columbia, SC 29211
charrison@sccourts.org

RECEIVED

Sep 29 2023

SC Court of Appeals

Re: National General Insurance Company v. State Farm Automobile Ins. Co.
Appellate Case No.: 2023-001473
Case No.: 2023-CP-2100483
YCR File: 17667-20230075

Dear Ms. Harrison:

Regarding your letter of September 19, 2023, requesting proof of filing the notice of appeal in the above-referenced matter with the Florence County Clerk, please see the attached file-stamped copy of the notice of appeal. Of course, if the Court has any questions or needs anything further from Appellant in this regard please just let me know.

With best wishes and kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

Russell G. Hines
Partner

RGH/pbb

Enclosure(s)

cc: James M. Saleeby, Jr., Esquire, Aiken Bridges