

Benigna Vargas  
PLAINTIFF(S)

MGA Insurance Company Inc et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

See Page 2 for Order of Court

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/23/2023 .

**RECEIVED**  
**Nov 21 2023**  
**SC Court of Appeals**

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---

This matter comes before the Court upon Defendants' Motion for Summary Judgment as to the Fraud claim asserted in the 3rd Cause of Action of the Amended Complaint. The matter was heard on October 23, 2023 as part of pre-trial motions.

First, the Court would address the timing of the motion. The case is over 4 1/2 years old and the Defendants' current Motion was not filed until October 11, 2023, 12 days before the term of Court. Further, the Defendants' Motion failed to state the grounds of the Motion which were included in the Memorandum filed on October 20, 2023. Nonetheless, the issues raised were ones which the parties had been addressing since the Plaintiff's Motion to Amend her Complaint and discovery was sufficient to address the issues. Also, Plaintiff's counsel failed to articulate any prejudice from the Motion being heard at this time and in fact, submitted a very thorough Memorandum in opposition. Therefore, the Court finds it is appropriate to consider Defendants' Motion at this time.

The fraud claim is combined with a cause of action for a Declaratory Judgment to determine if there was a valid offer of UIM coverage relating to a vehicle driven by Plaintiff and involved in an accident. The Plaintiff asserts that the Defendants committed fraud for not producing all of the pages from the offer of UIM coverage as required by statute (S.C. Code Section 38-77-350) and alleges that the Defendants have concealed the fact that the offer was not validly made. The Plaintiff claims that the Defendants concealed the missing pages and then created a document after the fact which included the missing pages. Even if this were true, the Plaintiff has failed to establish most if not all of the elements required to proceed on a fraud cause of action, including a representation to this Plaintiff and the failure to establish any of the 9 elements is fatal to the Plaintiff's cause of action. See Schnellmann v. Roettger, 373 S.C. 379 (2007). Additionally, a complaint is fatally defective if it fails to allege all 9 elements of fraud. See Inman v. Ken Hyatt Chrysler Plymouth, Inc. 294 S.C. 240 (1988). The Court would note that the Plaintiff has failed to clearly identify all of the 9 elements of a cause of action for fraud in the Amended Complaint. As an additional ground, the Court finds that the Plaintiff has not established standing by this Plaintiff to pursue a fraud claim against the Defendants who dealt with the named insured only. Therefore, the Court finds that there is no genuine issue of material fact as to the fraud cause of action and Defendants' are entitled to Summary Judgment and the Defendants' Motion is granted.

Since the motion was heard and this Order was issued on the eve of trial, the Defendants may submit a supplemental Order with more specific findings along the lines of their Memorandum if deemed necessary. The Court is not making a ruling on whether a valid offer of UIM was made and rejected by the Plaintiff at this time.

It is so Ordered.



Greenville Common Pleas

**Case Caption:** Benigna Vargas vs. MGA Insurance Company Inc

**Case Number:** 2019CP2301438

**Type:** Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755