STATE OF SOUTH CAROLINA COUNTY OF HAMPTON DANIEL A. SPEIGHTS, Plaintiff, vs. CHUBB LIMITED d/b/a CHUBB NATIONAL INSURANCE COMPANY; AUTO-OWNERS INSURANCE COMPANY and BANKERS STANDARD INSURANCE COMPANY, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. No.: 2022-CP-25-00269 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

THIS MATTER is before the Court upon Plaintiff's motion to reconsider the Court's Order of October 5, 2023, granting Defendant, Auto-Owners Insurance Company's ("Owners") Motion for Summary Judgment as to all claims asserted by Plaintiff, Daniel A. Speights. Plaintiff filed a motion to reconsider on October 12, 2023, and Owners filed a memorandum opposing the motion on October 20, 2023. In the Court's discretion, I find that an oral argument is unnecessary on this motion pursuant to Rule 59(e). After due deliberation and consideration of the evidence, the briefs, and the materials that were properly before the Court, the motion to reconsider is respectfully denied in accordance with the findings of fact and conclusions of law set forth below.

I. New Arguments raised in a Motion to Reconsider are improper.

The South Carolina Rules of Civil Procedure contemplate two situations in which a party should consider filing a Rule 59(e) motion. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). A party may wish to file such a motion when the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. Id. A party must file such a motion when an

issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Id. A party cannot use Rule 59(e), SCRCP, to present to the lower court an issue the party could have raised prior to judgment but did not. Gartside v. Gartside 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). Here, neither situation is present.

Rule 59(e) motions are not vehicles for bringing new theories or arguments, nor can a party use a Rule 59(e) motion to present to the court an issue the party could have raised prior to the judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (citing Natural Resources Defense Council v. U.S. E.P.A., 705 F. Supp. 698, 701 (D.D.C. 1989)). Here, Plaintiff did not provide a memorandum or other filings in opposition prior to the hearing on Auto-Owners' Motion, nor did Plaintiff file any affidavits with the court prior to the hearing.

Plaintiff cites S.C. Code § 33-44-301 *et seq.*, which allows any member of an LLC to act and have standing to sue on behalf of the LLC, as a new argument. Even if considered, it does not alter the Court's decision because Owners has not argued a lack of standing. Instead, Owners has argued, and the Court agrees, that Plaintiff is not insured for the loss of *his own personal property*. Plaintiff does not provide any authority holding that a LLC's member(s) under an LLC's insurance policy are covered for their personal losses. Plaintiff's Affidavit filed with the Motion to Reconsider further confirms that the money transferred was from Plaintiff's *personal account*.

Plaintiff's additional argument that he has commingled his assets with those of his law firm does not alter the outcome of this case either. Plaintiff's assertion that that he "has historically and frequently provided funds to the firm for the continuation of the firm's business" (Exhibit C to Plaintiff's Motion to Reconsider) does not convert his personal accounts to the property of the law firm. Plaintiff offers no authority that supports this position. It is undisputed that the Complaint,

the Affidavit of Daniel A. Speights, the testimony of L. Herdon (the bookkeeper), and the entirety of the Record before this Court that the funds transferred to China were Plaintiff's personal funds from his personal account. Plaintiff is not insured under the Owners policy for purposes of his personal property.

Next, Plaintiff seeks to add a new argument related to the definition of "voluntary" to be considered when construing the insurance policy advancing the theory the word is ambiguous. This tactic is new, but even if considered, the approach violates South Carolina's long-standing rules of construction pertaining to insurance policies. "An insurance contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" Schulmeyer v. State Farm Fire & Cas. Co., 579 S.E.2d 132, 134 (2003) (citations omitted). "The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." Id. "[P]arties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties." Torrington Co. v. Aetna Cas. & Sur. Co., 216 S.E.2d 547, 550 (1975). Plaintiff's attempt to "torture" the language to create an ambiguity is improper. Regardless, it does not change the fact that Ms. Herdon, while tricked, voluntarily executed the wire transfer.

Plaintiff did not raise these arguments prior to the Court's ruling and cannot now raise them in a Rule 59(e) motion. The Court should deny the Plaintiff's Moton to Reconsider. Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 844 (2005); Hickman, 392 S.E.2d at 482. However, even if considered, the same does not alter the Court's opinion in this matter and summary judgment remains appropriate.

II. Plaintiff argues that further discovery prevents Summary Judgment.

First, a motion for summary judgment can be filed "at any time" by a defending party pursuant to Rule 56(b). There is no requirement that discovery be completed. At no time did Plaintiff argue an inability to oppose the Motion for Summary Judgment pursuant to Rule 56(f) and cite a need for discovery on a particular topic. Even if Plaintiff had done so, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Dawkins v. Fields 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Where the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56 to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 329, 204 S.E.2d 432, 433 (1974). Humana Hosp.-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins, at 69, 580 S.E.2d at 438 (citing George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Indeed, the Supreme Court of South Carolina has recently clarified the "mere scintilla of evidence" standard is inapplicable overruling Hancock v. Mid-South Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009). Kitchen Planners, LLC v. Friedman, 2023 WL 5420401 (S.C. August 23, 2023). To withstand summary judgment, there must be a "genuine issue of material fact." Id.

It is undisputed, and in fact the Complaint alleges, that the funds transferred to China were from Plaintiff's own personal account. This was confirmed by Ms. Herdon's testimony and is further confirmed by Plaintiff's Affidavit filed in support of reconsideration. No amount of discovery will change this undisputed fact. Summary Judgment was properly granted.

III. Novel Issues have no bearing on Summary Judgment.

Plaintiff argues that this case contains both novel issues of fact and law and should therefore not be decided on Summary Judgment. Plaintiff cites Schmidt v. Courtney, a case involving a novel issue of law in South Carolina at the time, as "no South Carolina cases discuss the issue of personal injury from the impact of errant golf shots." 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2003). Particularly, the injury was not novel but the application of law to the facts was in dispute and thus novel. The Court thought Summary Judgment was premature because there was a genuine issue of material fact that could only be determined by further discovery. Specifically, the Court looked to the Affidavit of the Plaintiff's attorney submitted during the hearing on the Motion for Summary Judgment, which clearly demonstrated that expert testimony was necessary to ascertain a genuine issue of material fact and requested that discovery continue so that the Plaintiff could hire an expert. Here, no such request was made. Even still had it been made, it does not supplant the fact that it is up to the Court to decide whether a contract of insurance is ambiguous. "The construction of a clear and unambiguous contract is a question of law for the court." BLG Enterprises, Inc. v. First Financial Ins. Co., 491 S.E.2d. 695, 697 (S.C. Ct. App. 1997). "Insurance policies are subject to the general rules of contract construction." M and M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33, 35 (S.C. 2010) (citations omitted). Courts will interpret policy language in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. Id. "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Although this case addresses a novel issue of South Carolina law, that does not mean that the Court is precluded from deciding the case on summary judgment. The mere fact that a case involves a novel issue does not render summary judgment inappropriate. Houck v. State Farm Fire Cas. Ins. Co., 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005) (citing The Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E2d 747 (2004). As discussed, the Court ruled appropriately on a matter of law as there was no genuine issue of material fact, regardless of whether there was established case law on the issue in South Carolina. The Court was provided and considered numerous cases from other jurisdictions on the issue. Further, at this point, Plaintiff has yet to cite a single case standing for the proposition that Plaintiff qualifies as an insured under the Law Firm's insurance policy for the *loss of his personal property*. Again, the Court ruled, as a matter of law, that the Plaintiff was not insured, individually, under the contract for the loss of property. "To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach." Fung Lin Wah Enter. Ltd. v. East Bay Import Co., 465 F. Supp.2d 536, 542 (D.S.C. 2006). The Court's ruling was proper as the Plaintiff was not covered by the Policy. While Plaintiff may have standing to bring the suit, standing does not determine that he qualifies as an insured under the insurance policy.

IV. The Court correctly decided the Voluntary Parting issue.

Plaintiff's focus on the "loss of money or securities" language in the optional coverages provision (Plaintiff's Memo at p. 8) ignores the key language "used in your business". Here, the funds transferred were from the Plaintiff's personal account. To accept Plaintiff's argument would mean that an insurance policy that insures a business is converted to insure all that business's

employee's personal property (money) as well. If the funds had been transferred from his personal account to a firm account and then to China from that firm account, the argument *might* have some validity. Here, the argument cannot displace the undisputed fact that the funds were transferred from a personal account – not a firm account. Furthermore, the "loss of money and securities used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises or in transit between any of these places, resulting directly from: theft, meaning any act of stealing . . ." is not applicable, because the money was not stolen at the bank or stolen while in transit to the bank. Instead, it was voluntarily wired to China. Plaintiff wants the Court to ignore the Supreme Court of South Carolina's mandate that "[e]ach exclusion in the policy must be read and applied independently of every other exclusion." Auto-Owners Ins. Co. v. Newman, 684 S.E.2d 541 (S.C. 2009). The voluntary parting exclusion applies and operates to exclude this loss.

V. Conclusion

Based upon the above, Plaintiff's motion for reconsideration is denied.

IT IS SO ORDERED.

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The Honorable George M. McFaddin, Jr.
Presiding Judge, Fourteenth Judicial Circuit.

Dated this ___ day of November 2023.
Sumter, South Carolina

Hampton Common Pleas

Case Caption: Daniel A. Speights VS Chubb Limited , defendant, et al

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So Ordered

S/George M. McFaddin, Jr., #2759