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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

James Dustin LucasPlaintiff/ Appellant,

v.

Andre KnoxDefendant/Respondent.

Appellate Case No. 2023-001135

RETURN FOR MOTION FOR COSTS

This appeal arises from State Farm’s refusal to produce its insured defendant as required by ADR rules. Lucas was hospitalized after he was injured in an automobile collision involving multiple parties. Lucas sued the other parties, including Knox, who is insured with State Farm. Lucas waited more than three months after State Farm’s insured was served before obtaining and entry of default. Roughly 10 months after service, State Farm finally had an attorney contact the undersigned, asking that State Farm’s insured be let out of default. Lucas informed State Farm’s defense attorney that Lucas would agree on the condition that State Farm agreed to attend mediation and negotiate between its reserve and the policy limit as shown by Exhibit A. State Farm agreed, and mediation was scheduled.

At mediation, State Farm’s adjuster appeared, but State Farm did not bring its insured defendant as required by ADR 6(b)(2). State Farm also, by all evidence and appearances violated its agreement to get its insured out of default by offering far less than its reserve amount. Lucas

filed a motion for a rule to show cause as to why State Farm violated our ADR rules, which was denied, despite the fact that it is uncontested that State Farm violated the ADR 6(b)(2) requirement to have its insured defendant present at mediation. Lucas timely filed a SCRCP 59(e) motion and then timely filed a notice of appeal.

On August 10, 2023, the Court of Appeals sent a letter to the parties requesting that the parties file memoranda addressing appealability, which both parties failed to do. The same day the parties received correspondence from the Court of Appeals, the undersigned emailed opposing counsel to inquire as to whether opposing counsel would agree to a dismissal of the appeal without prejudice, and on August 17, 2023, opposing counsel agreed, as shown by Exhibit B. However, the undersigned failed to submit a motion to dismiss the appeal to opposing counsel for review before the Court of Appeals dismissed the appeal.

Lucas respectfully requests that the Court of Appeals deny State Farm's insured's motion for costs for two reasons. First, State Farm violated the ADR rules, and as a result, the parties have never had a rule-compliant mediation, which is required. Lucas appealed the denial of his motion for a rule to show cause because he did not want to lose the ability to appeal the decision related to State Farm's willful violation of mandatory ADR rules. Lucas recognized he must wait to appeal that issue, and coordinate with opposing counsel, and the undersigned should have worked to file the dismissal without prejudice before the Court of Appeals dismissed the appeal on its own.

Second, this appeal was not briefed by the parties. State Farm's insured has requested costs, but no brief has been written or filed. The only expense State Farm has incurred appears to be a request of the hearing transcript from the hearing on Lucas' motion for a rule to show cause arising from State Farm's misconduct. Lucas respectfully submits that State Farm should not be rewarded for its deception in agreeing to negotiate above its reserve and mediate to get its insured out of

default and then appearing at mediation without its insured defendant in violation of the ADR rules.

Lucas respectfully requests that the motion for costs be denied.

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
(864) 275-8142 (telephone)
(864) 752-0911 (facsimile)
Attorneys for Plaintiffs/Appellants

Jeanmarie Tankersley
Clawson and Staubes, LLC
200 E. Broad Street, Suite 405
Greenville, South Carolina 29601
Tel.: (864) 331-8940
Fax: (864) 232-2921
Attorney for Respondent

A

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Tuesday, April 20, 2021 at 1:49 PM
To: Josh Hawkins <josh@hillcsc.com>, Stephen Anderson <sanderson@clarksonwaisn.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Stephen and Josh,

I've been retained to represent Defendant Knox. It's my understanding default has been entered. Josh, please let me know if you'll agree to allow us out of default. I'm going to go ahead and file a motion today but of course will withdraw it if you agree to let us out.

If any discovery requests or responses have been exchanged yet in the case, will y'all please send that my way?

Thank you,

Jeanmarie



Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
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Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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ELECTRONICALLY FILED - 2022 Nov 11 4:59 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303851

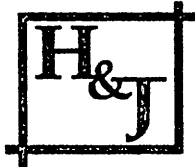
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Ok, Jeanmarie I found it.

Yes, we will withdraw our motion based on what we sent.

Yall do agree to negotiate between the amount of your reserve and the policy limit, correct?

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
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josh@hjlsc.com
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www.hawkinsandjedziniak.com

From: Josh Hawkins <josh@hjlsc.com>
Date: Tuesday, April 20, 2021 at 2:57 PM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

We are happy to let yall out if yall agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.

Otherwise, since there is no good cause for letting the defendant out of default, I think it would be counter to the best interest of my client to voluntarily let a defendant out of default where liability is clear and the default is solely the fault of the insurance company. I think we even have email correspondence between us and the insurer showing the insurance company just refused to do anything. I think when we present this to the Court, and since no attorney was involved, the Court will be slow to set aside the default.

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
Office (864) 275-8142 | Fax (864) 752-0911
josh@hjlsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:56 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Correct. We'll let the court know about the motions.



Jeanmarie Tankersley
Licensed in SC and GA

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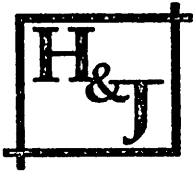
From: Josh Hawkins <josh@hjlsc.com>
Sent: June 2, 2021 11:18 AM

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From: Josh Hawkins <josh@hillcsc.com>
Sent: June 2, 2021 10:47 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Thanks, Jeanmarie. I have had good results with Lee Plumblee. If youre good with him, we will reach out to him.

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
Office (864) 275-8142 | Fax (864) 752-0911
josh@hillcsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 10:39 AM
To: Josh Hawkins <josh@hillcsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

We can move forward with the early mediation now. Who do you want us to use as the mediator?

Thanks,

Jeanmarie



Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
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From: Josh Hawkins <josh@hjlsc.com>
Sent: June 2, 2021 11:09 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

We can continue it until after mediation. That way, if we resolve the case, a stipulation will be entered and the case will end. If we don't resolve it, we can go forward. Monica please look on Lee's calendar and bounce dates around with Ginny May.

Sincerely,



Joshua T. Hawkins
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www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:04 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

That's fine with me. Please loop Ginny May (gmay@clawsonandstaubes.com) in on the scheduling emails.

I'll go ahead and withdraw our Motion to Set Aside Default and will file an Answer. I can't tell based on the age of the Motion for Default Judgment if that has already been withdrawn or not. If not, do you want us to tell the Court that a hearing for that Motion is also no longer needed?

Thanks,

Jeanmarie



Jeanmarie Tankersley
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On Jun 3, 2021, at 4:38 PM, Ritchie, Virginia <VRitchie@greenvillecounty.org> wrote:

Thank you for your e-mail regarding the withdrawal of the motions in the above-referenced case. I have removed them from the motions roster and cancelled the hearings, accordingly.

Ginger Ritchie
Non-Jury/Motions Coordinator
Greenville County Clerk of Court
Ph (864) 467-8546
Fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

From: Ginny May <gmay@clawsonandstaubes.com>
Sent: Thursday, June 3, 2021 4:01 PM
To: NJCoord <NJCoord@greenvillecounty.org>
Cc: Josh Hawkins <josh@hjllcsc.com>; mcoulter@clarksonwalsh.com; Paralegal <monica@hjllcsc.com>; Crystal Fuller <cfuller@clarksonwalsh.com>; Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Subject: C.A. No. 2020-CP-23-02877 - James Dustin Lucas vs. Meghan Seely and Andre Knox

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good afternoon, Ms. Ritchie. I am writing on behalf of Jeanmarie Tankersley, who represents Defendant Andre Knox in the above-numbered and entitled action.

Please be advised that, per agreement of counsel, the Plaintiff is withdrawing his Motion for Default Judgment, Summary Judgment, and Damages Hearing, and Defendant Knox is in turn withdrawing his Motion to Set Aside Default. Both motions are currently scheduled for hearing on June 28 at 2:00 p.m.

I have copied counsel of record with this e-mail. Please *reply to all* and confirm that these hearings are canceled.

Thank you.

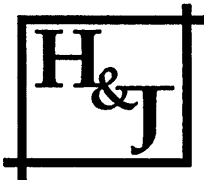
<image001.png>
Ginny May

Paralegal

From: Josh Hawkins
Sent: Thursday, August 17, 2023 4:34 PM
To: Jeanmarie Tankersley; Ethan Jedziniak; Helena Jedziniak
Cc: Paralegal
Subject: Re: James Dustin Lucas v. Andre Knox 2023-001135

10-4, will do.

Sincerely,



Joshua T. Hawkins
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www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@cslaw.com>
Date: Thursday, August 17, 2023 at 4:33 PM
To: Josh Hawkins <josh@hjlsc.com>, Ethan Jedziniak <ethan@hjlsc.com>, Helena Jedziniak <Helena@hjlsc.com>
Cc: Paralegal <Paralegal@hjlsc.com>
Subject: RE: James Dustin Lucas v. Andre Knox 2023-001135

Josh,

I can consent to the dismissal without prejudice. Please send it over to me to review before adding my signature.

Thank you,

Jeanmarie



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From: Jeanmarie Tankersley

Sent: August 13, 2023 9:29 PM

To: 'Josh Hawkins' <josh@hjlsc.com>; Ethan Jedziniak <ethan@hjlsc.com>; Helena Jedziniak <Helena@hjlsc.com>

Cc: Ginny May <gmay@cslaw.com>; Paralegal <Paralegal@hjlsc.com>

Subject: RE: James Dustin Lucas v. Andre Knox 2023-001135

Josh,

I don't think that'll be an issue. I'll get back to you shortly to confirm.

Thanks,

Jeanmarie



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Greenville, SC 29601

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From: Josh Hawkins <josh@hjlsc.com>

Sent: August 10, 2023 6:12 PM

To: Jeanmarie Tankersley <jtankersley@cslaw.com>; Ethan Jedziniak <ethan@hjlsc.com>; Helena Jedziniak <Helena@hjlsc.com>

Cc: Ginny May <gmay@cslaw.com>; Paralegal <Paralegal@hjlsc.com>

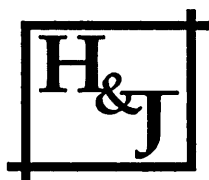
Subject: Re: James Dustin Lucas v. Andre Knox 2023-001135

Jeanmarie,

Will you agree to a dismissal of the appeal without prejudice? Since it appears the issue is preserved, we are willing to dismiss the appeal if you will consent to that.

If you consent, I will prepare a dismissal for your review.

Sincerely,



Joshua T. Hawkins

Partner • Hawkins & Jedziniak, LLC

Office (864) 275-8142 | Fax (864) 752-0911

josh@hjlsc.com

1225 South Church Street | Greenville, SC 29605

www.hawkinsandjedziniak.com

From: "Clark, Tyler P." <tpclark@sccourts.org>
Date: Thursday, August 10, 2023 at 4:49 PM
To: "jtankersley@cslaw.com" <jtankersley@cslaw.com>, Josh Hawkins <josh@hillcsc.com>
Cc: "gmay@clawsonandstaubes.com" <gmay@clawsonandstaubes.com>, Paralegal <Paralegal@hillcsc.com>
Subject: James Dustin Lucas v. Andre Knox 2023-001135

Dear Counsel,

Please find correspondence from the Court of Appeals. Do not respond to this email. Please send all correspondence to ctappfilings@sccourts.org.

Sincerely,

Tyler Clark

Appeals Specialist
SC Court of Appeals
1220 Senate St.
Columbia, SC 29201
Ph. (803) 734-1890
F. (803) 734-1839

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