

**RECEIVED**  
**Mar 14 2024**  
**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS  
Edgar W. Dickson, Circuit Court Judge

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Case No: 2021-000797

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Sandra R. Hoffman,.....Appellant,

v.

State Farm Fire and Casualty  
Company,.....Respondent.

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**PETITION FOR REHEARING**

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**COUNSEL FOR APPELLANT**

## INTRODUCTION

The matter before the Court is an appeal from the trial court's granting of summary judgement on all claims against the Defendant State Farm including breach of contract, breach of contract by fraud, and bad faith. The Complaint included a plea by the Plaintiff for relief for costs and attorney fees against the Defendant for continuing unreasonable failure to pay benefits pursuant to an insurance contract. *S.C. Ann*, § 38-59-40. In its Opinion number 067, filed February 28, 2024, the Court reversed the granting of summary judgment by the circuit court in regard to the statute of limitations for the breach of contract claim and determined the Plaintiff had not missed the statute of limitations. The Court further held that State Farm had a reasonable basis to deny the Plaintiff's claim due to the Plaintiff's failure to protect the property from further damage or loss. This was not the reason provided by State Farm for denial of the claim and the 'wet clothes' the Plaintiff failed to protect were a small portion of items submitted to State Farm for payment that was wrongfully denied, as evidenced by the Defendant's own claims file. Finally, the Court found the Plaintiff failing to amend the complaint to assert fraud with particularly warranted dismissal of the Plaintiff's breach of contract accompanied by fraud.

Appellant respectfully petitions the Court for a rehearing for reconsideration of this appeal on the grounds the Court overlooked or misapprehended the facts and law applicable to this appeal as follows:

## ARGUMENT

**THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN DISMISSING THE PLAINTIFF'S CAUSES OF ACTION FOR BAD FAITH AND BREACH OF CONTRACT ACCOMPANIED BY FRAUD.**

**State Farm's Improper Assertion of a Statute Of Limitations Defense Is Unreasonable.**

The primary issue with regard to the Plaintiff's claims of unreasonable conduct and bad faith were the actions of State Farm in improperly asserting a statute of limitations defense for the purposes of denying the Plaintiff's claims. The Court indicated that the Plaintiff in failing to protect some clothes that made up a portion of the items submitted by the Plaintiff in her claim, made the conduct of State Farm reasonable in denying the Plaintiff's claim due to the statute of limitations. This finding fails to consider all the facts in favor of the Plaintiff. The submission of almost 700 items by the Plaintiff that included some bags of clothes does not make the conduct of State Farm reasonable for denying payment of ALL 700 items submitted. The testimony from the adjuster, as well as the insurance claims file clearly indicates that State Farm denied the claim based on the timing of submission, and a statute of limitations. There is no evidence State Farm denied the claim for failure to protect the damaged items claimed by the Plaintiff. Any assertion the claim was denied for failure to protect arose in the Defense of the case after suit, was not asserted by State Farm as a reasonable basis for denying the claim and should not be considered by the Court in making a determination of reasonable conduct during the claims process. Plaintiff alleges this excuse is merely pretext. Therefore, the reasonable conduct of an insurance company for failure to pay a claim due to the improper assertion of a statute of limitations should properly go in front of a jury.

State Farm, as an insurance company licensed to sell insurance to South Carolina citizens, is charged with the knowledge of South Carolina's three-year statute of limitations. *City of Myrtle Beach v. Juel P. Corp.*, 337 S.C. 157, 179, n.11 (Ct. App 199) see also *Oxford Fin. Cos. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991) (where a Landlord's mistaken view of the law is of no avail to him.) *Ignorantia juris quod quisque tenetur scire, neminem*

excusat. Ignorance of the [or a] law, which everyone is bound to know, excuses no man. BLACK'S LAW DICTIONARY 673 (5th ed. 1979). Our courts in finding the citizens of South Carolina are taxed with knowledge of the statute of limitations should also apply the same, if not a stricter, rule to an insurance company selling insurance, investigating and evaluating claims. Incorrect knowledge of the law is not a defense and is clear evidence of unreasonable conduct.

Plaintiff contends that improper assertion of the statute of limitations by an insurance company is unreasonable per se and at the least, a jury question as to the unreasonableness of the conduct and bad faith. The Court should reconsider the finding there was not sufficient material evidence before the Court that State Farm was acting unreasonable or in bad faith when denying the Plaintiff's claim.

**Failure To Reissue the Stale Dated Check To The Plaintiff Is Further Evidence Of Bad Faith.**

The Plaintiff testified that she had initially received a check from the Defendant for about \$10,000.00 as payment on the claim for approximately 50 items she submitted. Plaintiff further testified she did not cash the check, as she did not know if cashing the check would close her claim and prevent her from submitting additional items for payment. The Court indicated that "State Farm issued a check for Hoffman's first fifty items and Hoffman chose not to cash it; therefore, we are solely concerned with the denial of Hoffman's second submission of 700 items in October 2017." This seems to indicate the Plaintiff is taxed with some legal knowledge, in that cashing a partial payment would NOT end her ability to submit additional items. State Farm did in fact, close her claim. However, State Farm is not apparently charged with the same legal knowledge of a knowing the statute of limitations governing their own policies. The Court should properly consider the ongoing and continued failure of State Farm to reissue a check not

cash by the Plaintiff. This unreasonable conduct is further evidence of bad faith. (if the check has failed to clear State Farm would be required to reissue the check to the unclaimed funds department in South Carolina – not retain the money). The court should take these facts into account in their consideration of the Defendants bad faith and unreasonable conduct.

**Dismissal of a Cause of Action for Inadvertent Failure to Comply With A Court Order Fails to Consider the Pleading and Amounts to a Sanction by the Court.**

The Court found the Plaintiff's failure to appeal the circuit court order directing her to amend the complaint to state the cause of action for breach of contract accompanied by fraud with more particularly is the law of the case. Plaintiff not only claims the Order was an incorrect statement of the Judge at the hearing but cannot produce a transcript of the hearing as the court reporter had 'technical difficulties, did not have a recording of the hearing and could not produce a transcript.

A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCF, must be based solely on the allegations set forth on the face of the complaint. The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Therefore, pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties. *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973), *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

Striking the Plaintiff's pleadings for an inadvertent failure of the Plaintiff to amend her complaint is a harsh remedy and the court should permit the amendment or rule on the merits of

the motion finding that fraud was properly plead with specificity. The Court dismissing a cause of action without any consideration of the allegations, merely based on a misconstrued court order is tantamount to sanctions by the court.

**Court sanctions for failure to comply with an Order of the Court Are Considered an Extreme Measure and Not Lightly Asserted.**

Our courts have reviewed contempt orders primarily in a discovery context. A determination of contempt ordinarily resides in the sound discretion of the trial judge. *Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992). It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. *State v. Harper*, 297 S.C. 257, 27458, 376 S.E.2d 272 (1989); *Spartanburg County Dep't of Social Services v. Padgett*, 296 S.C. 79, 370 S.E.2d 872 (1988); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is defined as one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *Padgett*, 370S.E.2d at 874, *State v. Bevilacqua (in the Interest of Douglas F.)*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994).

The circuit court judge ruled :

“plaintiff did not amend her complaint by September 16, 2019, and has never done so. For this additional reason, State Farm is entitled to summary judgement with respect to plaintiff’s cause of action for breach of contract accompanied by a fraudulent act” failed to properly apply a contempt standard. [*Dickson Order ROA*- pg.1].

The trial judge simply struck the pleadings as a form of sanction for failure to comply with the August 16, 2019, Order of Judge Manning without any findings of willful disobedience

by the plaintiff or any findings the plaintiff acted with specific intent or bad purpose in inadvertently failing to comply with a court order. The hearing reveals Plaintiff's counsel requested the opportunity to amend and correct the mistake in the hearing, this is not willful disobedience. The dismissal of the Plaintiff's breach of contract action accompanied by fraud was therefore an abuse of discretion by the trial judge and the resulting dismissal was promptly appealed by the Plaintiff.

**A Finding By the Court that State Farm Acted Reasonably and In Good Faith precludes the Plaintiff from Pursuing attorney Fees pursuant to S.C. Ann. § 38-59-40.**

Finally, "[d]etermination of an insurer's liability for attorneys' fees pursuant to section 38-59-40 is a matter for decision by the trial judge." *Ocean Winds*, 241 F. Supp. 2d at 578 (citing *Dorman v. Allstate Ins. Co.*, 332 S.C. 176, 504 S.E.2d 127, 130 (S.C. Ct. App. 1998). (internal citations omitted)). To make this determination, the trial judge should decide whether or not an insurer's refusal to pay a claim was "without reasonable cause or in bad faith." *Id.* Such a determination is an issue of fact to be decided at trial. *Univ. Med. Assocs. of the Med. Univ. of S.C. v. Unum Provident Corp.*, No. 2:01-4145-18, 2004 U.S. Dist. LEXIS 31289, at 15 (D.S.C. Sep. 7, 2004).

The Plaintiff offered sufficient facts of the unreasonableness of State Farm's conduct. As such the Plaintiff should be permitted to present this allegation to the court and seek a finding by the trial judge, she is entitled to attorney fees and costs.

## **CONCLUSION**

Appellant/ Plaintiff would respectfully request for all the forgoing reasons, the Court reverse the granting of summary judgement on the cause of action for breach of contract accompanied by fraud and the bad faith action as there are sufficient material facts before the Court of unreasonable conduct by the Defendant and remand these claims for trial along with the breach of contract action of the Plaintiff.

Respectfully submitted:

March 14, 2024  
Columbia, South Carolina

s/ Pamela R. Mullis  
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**ATTORNEY FOR APPELLANT**

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**PROOF OF SERVICE**

I certify that I have served the **PETITION FOR REHEARING** on counsel for Respondent by electronic service on March 14, 2024, as per the attached email as referenced below :

Robert W. Whelan, Esquire  
[robbie@whelanmellen.com](mailto:robbie@whelanmellen.com)

March 14, 2024



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**COUNSEL FOR APPELLANT**

**From:** [Malia Lemke](#)  
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**Cc:** [Pamela Mullis](#)  
**Subject:** Hoffman v. State Farm Fire and Casualty Company  
**Attachments:** [Petition for Rehearing.pdf](#)  
[Proof of Service MLL.pdf](#)

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Mr. Whelan,

Enclosed herewith for service upon you is the **Appellant's Petition for Rehearing** in this matter.

*Malia L. Lemke*

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