

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

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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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**RECEIVED**

**Jun 14 2024**

**SC Court of Appeals**

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

v.

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

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**PETITION FOR WRIT OF CERTIORARI**

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Pamela R. Mullis, Esquire  
Mullis Law Firm  
1229 Elmwood Avenue  
Columbia, SC 29201  
(803) 799 9577  
prnullis@mullislawfirm.com

**COUNSEL FOR APPELLANT**

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**CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on and denied by the Court of Appeals on May 15, 2024.

June 14, 2024  
Columbia, South Carolina

s/Pamela R. Mullis  
Pamela R. Mullis

## QUESTIONS PRESENTED

1. **Did the Lower Court erred in finding the Plaintiff failed to offer sufficient material facts of unreasonable conduct and bad faith by the Defendant, State Farm?**
2. **Did the Lower Court err in dismissing the Plaintiff's breach of contract accompanied by fraud claim without any finding the pleadings were insufficiently specific to sustain a cause of action for fraud by the Defendant State Farm?**

## STATEMENT OF THE CASE

The matter before the Court is an appeal from the Court of Appeals partially affirming and partially reversing 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.

In its Unpublished Opinion number 067, filed February 28, 2024, the Court reversed the granting of summary judgment by the circuit court in regard to the statute of limitations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 breach of contract, determined the Plaintiff had not missed the three-year statute of limitations and found State Farm was estopped and precluded from asserting a statute of limitations defense.

The Court further held State Farm had a reasonable basis to deny the Plaintiff's insurance claim due to the Plaintiff's failure to protect some of the property involved in her claim from further damage or loss. For that reason, the Court upheld the grant of summary judgment dismissing the bad faith claim. This was not the reason provided by State Farm to their insured for denial of the claim, as the 'wet clothes' the Plaintiff failed to protect were a small portion of items submitted to State Farm for payment.

Finally, the Court found the Plaintiff failing to comply with a prior Order to amend the complaint and assert fraud with particularly pursuant to Rule 9 of the South Carolina Rules of Civil Procedure; pursuant to Defendant's motion to dismiss pursuant to Rule 12 warranted dismissal of the Plaintiff's breach of contract accompanied by fraud. (*SCRCP 9&12*). The trial court failed to make a finding the Plaintiff's pleadings were insufficient as a matter of law in the fraud allegations and implemented a sanction in dismissing the cause of action. Furthermore, there was no finding of willful disobedience to support this harsh sanction.

Each party filed a petition for rehearing on March 14, 2024. The petitions for Rehearing were ruled upon on May 15, 2024, and the Court of Appeals substituted the original opinion of February 28, 2024.

The Petitioner files this Petition for Writ of Certiorari and respectfully submits the lower courts were in error in determining the Petitioner had failed to offer sufficient facts that State Farm acted unreasonably and in bad faith when denying the Plaintiff's claim January 8, 2014 and furthermore in dismissing the Plaintiff's breach of contract accompanied by fraud cause of action without a finding that the pleadings for fraud lacked specificity as a matter of law.

### **STATEMENT OF FACTS**

The Defendant State Farm Insurance Company (hereinafter "State Farm" or Defendant) provided a contract of insurance to the Plaintiff Sandra R. Hoffman for the contents of her home. (*ROA. pp. 103-113*) The insurance policy insured losses from - "sudden and accidental discharge...of water... from within a plumbing...system..." (*ROA p. 109*).

On January 8, 2014, the Plaintiff suffered a covered loss pursuant to the valid insurance policy. The Plaintiff promptly reported the claim to her insurance company State Farm and began a long and arduous process of listing, classifying, photographing, documenting, and researching her damages which included hundreds of items that were stored in her garage and the FROG, room over her garage, where the water damage had occurred. Throughout 2014, 2015, 2016 and 2017 Plaintiff was in contact with and submitted items on an admittedly erratic basis.

On December 6, 2017, a State Farm supervising adjuster performing a review of the file instructed the adjuster handling the claim to deny the current list of claimed items as the "new information [is being submitted] past the statute of limitations, therefore the claim would not be

covered due to “late reporting” (*ROA p. 163*). This letter advising their insured/ the Plaintiff that she had missed the statute of limitations was sent on January 10, 2018. (*ROA pp.173-175*).

Due to the wrongful failure to pay pursuant to the policy the Plaintiff filed suite against State Farm ten (10) months later on October 12, 2018, alleging a breach of contract, breach of contract accompanied by fraud and bad faith. (*ROA p. 24*).

## **ARGUMENT**

### **I. THE LOWER COURT ERRED IN FINDING THE PLAINTIFF FAILED TO OFFER SUFFICIENT MATERIAL FACTS OF UNREASONABLE CONDUCT AND BAD FAITH BY THE DEFENDANT STATE FARM.**

The lower courts, in merely accepting the assertion by State Farm the claim was denied for failure to submit the claim within the misapplied statute of limitations does not view the evidence in the light most favorable to the Plaintiff. The Defendant continues to assert the statute of limitations is three years from the date of loss while also asserting the Plaintiff, insured is charged with knowledge of the proper statute of limitations.

#### **A. State Farm’s Improper Assertion of a Statute Of Limitations Defense Is Unreasonable.**

The primary issue regarding 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 the light most favorable to the Plaintiff.

The submission of almost 700 items by the Plaintiff including 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 State Farm denied the claim based on the timing of submission, and a statute of limitations. (ROA p. 163) 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 litigation in the Defense of the case after suit and not asserted by State Farm as a reasonable basis for denying the claim. This legal defense should not be considered by the Court in making a determination of unreasonable 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 be submitted to a jury.

**B. State Farm Is Charged with Knowledge Of The Law And The Statute Of Limitations And Cannot Assert This Lack Of Knowledge As Proof Of Reasonable Conduct.**

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 the improper assertion of the statute of limitations by an insurance company is unreasonable as a matter of law but certainly a jury question as to the unreasonableness of the conduct and bad faith. For these reasons, the Plaintiff should be permitted to offer material evidence of State Farm's unreasonable basis for wrongfully denying the Plaintiff's claim for consideration of their bad faith to a jury.

**C. 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 of Appeals indicated "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." (*Ct. of Appeals Order 2024-UP-067, pg. 5, footnote 1*). This indicates 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, the lower courts have not charged State Farm with the same legal knowledge of a statute of limitations governing their own policies. The Court should properly consider the ongoing and continuing failure by State Farm to reissue a check not cashed by the Plaintiff. This unreasonable conduct is further evidence of bad faith. (if the check had 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.

**II. THE LOWER COURT ERRED IN DISMISSING THE PLAINTIFF'S BREACH OF CONTRACT ACCOMPANIED BY FRAUD CLAIM WITHOUT ANY FINDINGS THE PLEADINGS WERE INSUFFICIENTLY SPECIFIC TO SUSTAIN A CAUSE OF ACTION FOR FRAUD BY THE DEFENDANT STATE FARM.**

The trial court dismissed the fraud allegations as a sanction for failing to amend the complaint and allege the fraud allegations specifically and the Court of Appeals applying the same standard failed to issue a ruling, upon review of the pleadings, the allegations were insufficient as a matter of law pursuant the Rule 9. (*SCRCP Rule 9*).

**A. 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 asserts the Order was an incorrect statement of the Judge's ruling 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), SCRCP, 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 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.

**B. 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”. [ROA- pg.3].

This finding fails to properly apply a contempt of court standard. The trial judge simply struck the pleadings as a form of sanction for failure to comply with the August 16, 2019, ruling from Judge Manning on Defendant’s motion to dismiss, 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 clear evidence the Plaintiff had not acted with 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 that resulting dismissal was promptly appealed by the Plaintiff.

## CONCLUSION

Petitioner has offered genuine issues of material fact that demonstrate the Defendant State Farm had no reasonable basis to deny the Plaintiff’s claim under her insurance policy claiming the statute of limitations had run because an insurance company’s failure to know the statute of limitations is clear evidence of unreasonable action. Furthermore, the Petitioner asserts the lower courts failed to apply the correct standard for sanctions and failed to rule on the adequacy of the Plaintiff’s pleadings which results in an abuse of discretion by the trial judge.

For all the above reasons Plaintiff – Appellant would request certiorari be granted to review the decision of the Court of Appeals and that a decision be issued remanding the matter for trial on the merits.

Respectfully submitted:

June 14, 2024  
Columbia, South Carolina

s/ Pamela R. Mullis  
Pamela R. Mullis  
MULLIS LAW FIRM  
1229 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 799-9577  
prnullis@mullislawfirm.com

**ATTORNEY FOR APPELLANT**

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PROOF OF SERVICE

I hereby certify that I have served the **PETITION FOR WRIT OF CERTIORARI** on counsel for Respondent by electronic service on June 14, 2024, as per the attached email as referenced below:

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

I further certify that a copy of this document was emailed to the South Carolina Court of Appeals via electronic service at: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).

June 14, 2024

*s/Pamela R. Mullis*  
Pamela R. Mullis  
MULLIS LAW FIRM  
1229 Elmwood Avenue  
Columbia, SC 29202  
(803) 799-9577