

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE YORK COUNTY COURT OF COMMON PLEAS

Daniel Hall, Circuit Court Judge

Case No. 2024-001311

Ina Shtukar

Appellant,

v.

Erie Insurance Group

Respondent,

RESPONDENT'S MOTION TO DISMISS APPELLANT'S APPEAL

Respondent respectfully moves this Honorable Court to dismiss this appeal pursuant to South Carolina Appellate Court Rules, Rule 260, on the grounds that the Appellant has attempted to appeal a non-appealable, Form 4 Interlocutory Order contemplating the entry of a subsequent final order, has not appealed the subsequently entered-final order, and time for Appellant to appeal the subsequently entered final order in this matter has elapsed.

WHEREFORE, Respondent respectfully requests that this Court:

1. Dismiss Appellant's appeal;
2. Tax all costs of the appeal to Appellant; and
3. For any other relief this Court deems just and proper.

Respectfully submitted on this the 19th day of September, 2024.

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THE STATE OF SOUTH CAROLINA

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Daniel Hall, Circuit Court Judge

Case No. 2024-001311

Ina Shtukar

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Respondent,

**RESPONDENT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO
DISMISS APPELLANT'S APPEAL**

Respondent states the following in support of its motion to dismiss Appellant's appeal filed concurrently with this memorandum:

I. PROCEDURAL BACKGROUND

Although there is a great deal of procedural history in this case, going back over almost two years, only three dates are relevant to this motion. On July 31, 2024, the Honorable Judge Daniel Hall heard the Appellant's Motion for Default Judgment and the Appellee's Motion to Dismiss. On August 6, 2024, Judge Hall entered a Form 4, forecasting that he would grant Respondent's motion to dismiss and deny Appellants motion for entry of default and default judgment. This Form 4 is attached hereto as Exhibit A. This Form 4 instructed "Attorney Martineau to prepare and file a formal order." Within six (6) hours of Judge Hall's order, Plaintiff filed and served her notice of appeal of the Form 4. *See* "Notice of Appeal" attached hereto as Exhibit B. It was not until ten days later on August 16, 2024 that the circuit court issued the final written order in this case. (hereinafter "Final Order")¹. The Final Order was properly served on Appellant the same day. The Final Order and Certificate of Electronic Notifications dated August 14, 2024 and August 16, 2024 are attached hereto as Exhibits C, D, and E respectively. Since August 16, 2024, Appellant has not filed a Notice of Appeal of the Final Order.

¹ Appellant improperly styles the Final Order as a "Memorandum of Decision," this is inaccurate and wholly divorced from reality. The Final Order is titled "Order Granting Defendants Motion to Dismiss & Denying Plaintiff's Motion for Default Judgment." Appellant's Initial Brief, p.7.

II. APPLICABLE LAW

Rule 260 of the South Carolina Appellate Court Rules states, “[w]henver it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk *shall* issue an order of dismissal.” SCACR, Rule 260 (emphasis added). Under Rule 201 of the SCACR, “[a]ppeals may be taken. . .from any final judgment, appealable order, or decision.” SCACR, Rule 201; S.C. Code Ann. §14-3-330 (2024). The provisions of §14-3-330 “are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’” Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). For an order to be final, it must leave nothing else remaining to be done by the circuit court after it is signed. Cheap-O’s Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002). Additionally, interlocutory appeals are generally not allowed, unless they fit within one of three well-established categories:

(a) in effect [the order] determines the action *and* prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action.

Hagood v. Sommerville, 326 S.C. 191, 197, 607 S.E.2d 707, 709 (2005)(emphasis added). Additionally “an order that does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order *from which no immediate appeal is allowed.*” Id. (citing Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)(emphasis added). Finally, a petitioner has thirty (30) days after receipt of written notice of entry of an

appealable order or judgment to timely appeal said order or judgment. SCACR, Rule 203(b)(1).

III. ARGUMENT

A. **The Form 4 issued by Judge Hall on August 6, 2024, was not, and could not be, a final order.**

While a Form 4 can be final, this is only the case if the order indicates that nothing else remains to be done after it is signed. Cloyd, 350 S.C. at 605. This is a well settled area of law in South Carolina, with the Supreme Court holding in Metts v. Mims, “[w]hen a Form 4 Order indicates some further, formal order is forthcoming it is *in no way* a final order.” 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2008)(*citing Clubertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)(emphasis added)). As to leave no questions, the Court clarified the position it took in Clubertson in the Cloyd case. With respect to Form 4s, the Court held that a Form 4 is “**NOT** efficacious as a final order [if the order] specifically and with certitude signif[ies] (1) a more formal order is forthcoming; **OR** (2) the final order will be prepared by Attorney _____ . . .” Cloyd, 350 S.C. at 605.

The Form 4 which is the subject of this appeal, indicates both that a more formal order would be forthcoming, and that it was to be prepared by the below signed attorney (*See Exhibit A*). Applying the above decisions to the situation in this case it is clear that the Form 4 issued on August 6, 2024, was not efficacious as, nor could be, a final order. It indicated both that some further action was forthcoming from the court, and exactly what that action would be, i.e., the signing of a formal order.

Therefore, the Form 4 was not a final order, and cannot be properly appealed as such under SCACR Rule 201.

B. The Form 4 issued by Judge Hall, was an interlocutory order and was not immediately appealable.

As indicated above, “[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.” Mid-state Distribs, Inc. v. Century Imps., Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). The Form 4 issued by Judge Hall did indeed leave something to be done prior to the determination of the rights of the parties, namely, issuing the Final Order as requested. Some interlocutory appeals are appealable; however, an order that does not finally end a case or prevent a final judgment from which a party may seek appellate review does not usually fall within this category. Hagood, 362 S.C. at 195, 607 S.E.2d at 709. As discussed earlier, the Form 4 issued by Judge Hall on August 6, 2024, did not finally end this case or prevent a final judgment from which Appellant could seek an appeal. In fact, ten (10) days later on August 16, 2024, Judge Hall issued the Final Order, which Plaintiff could have appealed. Unfortunately, the thirty (30) day deadline to appeal the August 16, 2024 formal order expired as of 12:00am on September 17, 2024.

IV. CONCLUSION

Appellant’s currently pending appeal is of an interlocutory order which is ineligible for appellate review as it was not a final order and left something still to be done by the circuit court. The Final Order issued by the court and served on

Appellant as of August 16, 2024, was appealable, however, the deadline for Appellant to appeal that order ran as of midnight on September 17, 2024. As it is now clear that Appellant failed to comply with the rules as set out in the SCACR, the clerk for the South Carolina Court of Appeals should dismiss this appeal, effective immediately.

Respectfully submitted on this the 19th day of September, 2024.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE YORK COUNTY COURT OF COMMON PLEAS

Daniel Hall, Circuit Court Judge

Case No. 2024-001311

Ina Shtukar

Appellant,

v.

Erie Insurance Group

Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent's Memorandum in Support of its Motion to Dismiss Appellant's Appeal was served on all counsel of record pursuant to Appellate Case Number 2022-000029 and SCACR Rule 262 via e-mail: addressed as follows:

Ina Shtukar "Steinburg"
1687 Saybrook Court,
Rock Hill, SC 29732
ina@blackandwhiteimmigrationlaw.org

[SIGNATURE PAGE TO FOLLOW]

On this the 19th day of September, 2024

MARTINEAU KING PLLC
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Attorneys for Defendant / Respondent

Ina Shtukar
PLAINTIFF(S)

Erie Insurance Group
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:

After careful consideration, Defendant's Motion to Dismiss is GRANTED. The Court instructs Attorney Martineau to prepare and file a formal order.

Plaintiff's Motion for Default Judgment is DENIED.

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 08/06/2024 .

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.



York Common Pleas

Case Caption: Ina Shtukar VS Erie Insurance Group

Case Number: 2023CP4600392

Type: Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Danniel Hall, Circuit Court Judge

Case No. 2023-CP-46-0039

Ina Shtukar “Steinberg,” Appellant,

v.

Erie Insurance Exchange, aka Erie Insurance Group, Erie Insurance Company, and Erie Insurance, Respondent.

NOTICE OF APPEAL

Ina Shtukar “Steinberg” appeals the dismissal Order of the Honorable Dan Hall, dated August 6, 2024. Appellant received written notice of entry of this Order on August 6, 2024. The aforementioned Order denied Appellant’s motion for entry of default and default judgment and granted Respondent’s motion to dismiss. Form 4 Order is enclosed. At the time of the filing of this Notice of Appeal, the memorandum of the decision has not yet been reduced to writing.

August 6, 2024

s/ Ina Shtukar “Steinberg”
Ina Shtukar Steinberg, Esquire
SC Bar No.105916
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(704)-309-0992
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ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Danniel Hall, Circuit Court Judge

Case No. 2023-CP-46-0039

Ina Shtukar “Steinberg, Appellant,

v.

Erie Insurance Exchange, aka Erie Insurance Group, Erie Insurance Company, and Erie Insurance, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Notice of Appeal and Form 4 Order were electronically served by a Notice of Electronic Filing (NEF) that was automatically transmitted by e-mail to all counsel of record and by depositing a hard copy of the same with the United States Postal Service, postage prepaid, on August 6, 2024, addressed as follows:

Elizabeth A. Martineau
MARTINEAU KING PLLC
PO BOX 241268
Charlotte, NC 28224

August 6, 2024

s/ Ina Shtukar “Steinberg”
Ina Shtukar Steinberg, Esquire
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Rock Hill, SC 29732
(704)-309-0992
ina@blackandwhiteimmigrationlaw.org
ATTORNEY FOR APPELLANT

time when she resided in North Carolina.

3. The Filed Summons and Complaint alleges that in July of 2020, Plaintiff signed a contract to purchase a house in Rock Hill, SC.

4. The Filed Summons and Complaint further alleges that Plaintiff contacted her Erie agent on or about August 2, 2020, and was told that she needed to procure a new auto policy since she was moving to South Carolina and Erie did not write policies in South Carolina. Plaintiff's Filed Summons and Complaint alleges that Plaintiff told her agent that she was going to procure an auto policy in SC with an effective date of September 6, 2020, which she did.

5. Plaintiff alleges that on September 30, 2020, she was contacted by her agent who wanted to see if she obtained insurance in South Carolina. The agent indicated in an email that "We still have active auto and renter's insurance policies for you. If you have gotten other coverage, if you can provide proof of when the SC policies started, we can backdate the cancellation of the NC ones."

6. Plaintiff's Filed Summons and Complaint alleges that Plaintiff immediately emailed the agent back with SC proof of insurance that indicated Plaintiff did obtain a policy of insurance with Travelers effective September 6, 2020.

7. Plaintiff's Filed Summons and Complaint alleges that the agent responded and indicated to Plaintiff that "[w]e will get your car removed from the North Carolina policy effective 9/6/2020. Since you and [Bunn] were sharing the auto policy, we are going to transfer the interest from you as the first named insured to Michael."

8. Plaintiff's Filed Summons and Complaint further states that "[t]his is how Plaintiff learned for the first time that Bunn was added to her auto policy even though Plaintiff expressly declined Becky's inquiry."

9. Plaintiff's Filed Summons and Complaint alleges claims and damages arising out of the agent and or Erie's acts and omissions stated above.

10. Plaintiff's Filed Summons and Complaint alleges causes of action against Erie for (1) Bad Faith; (2) Unfair and Deceptive Trade Practices; (3) Injunction; and (4) Punitive Damages.

11. Plaintiff never served the Summons or the Filed Summons and Complaint.

12. Instead, Plaintiff caused to be mailed to both the South Carolina Department of Insurance and Erie Insurance Exchange documents in the form of a summons and complaint, that were never filed with the clerk. These documents listed a case caption that was different from the Filed Summons and Complaint. Instead of listing "Erie Insurance Group," the documents sent to the South Carolina Department of Insurance and Erie Insurance Exchange identified the defendant in the case caption as "Erie Insurance Exchange." The documents Plaintiff caused to be mailed to the South Carolina Department of Insurance and Erie Insurance Exchange were different from the Filed Summons and Complaint.

13. Rule 3 of the South Carolina Rules of Civil Procedure, Commencement of Action, states:

A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the

statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

14. Plaintiff never offered an explanation to the Court that explained the discrepancies between her Filed Summons and Complaint and the different documents she sent to the S.C. Department of Insurance and Erie Insurance Exchange.

15. .On or about February 28, 2023, attorneys for Erie requested an extension of time to respond to Plaintiff's Filed Summons and Complaint, out to April 28, 2023. In that email exchange, the attorney for Defendant Erie Insurance Group specifically asked if Plaintiff could still consent to the 4/28/23 deadline to respond to the Field Complaint to which Plaintiff responded, "That will be fine – I consent to 4/28."

16. On April 28, 2023, the attorney for Defendant Erie Insurance Group timely filed a motion to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted.

17. On May 31, 2023, Plaintiff filed a motion for entry of default based in part on her grant of an extension to April 28. 2023, stating that she could not grant such an extension.

18. Both motions first came to be heard before this court on November 14, 2023. This court continued the hearing on these motions in order to give the Plaintiff time to amend her original complaint and for the parties to explore a possible settlement.

19. On January 5, 2024, Plaintiff filed with the clerk an amended summons and complaint (“Amended Summons and Complaint”) naming Ere Insurance Exchange as a defendant for the first time. The Amended Complaint alleges causes of action for bad faith, unfair and deceptive trade practices, conversion, wrongful appropriation of identity, for an injunction and for punitive damages.

20. Per the Plaintiff’s own Filed Summons and Complaint and Amended Complaint, she knew or should have known about the existence of each and every of the above mentioned claims on September 30, 2020.

21. The statute of limitations period for bad faith claims is three years (S.C. Code Ann. §15-3-530(8) and begins running from the date Plaintiff reasonably ought to have discover the claim (*Martin v. Companion Healthcare Corp.*, 593 S.E.2d 624. 627 (S.C. Ct. App. 2004).

22. The statute of limitations period for unfair and deceptive trade practices is three years (S.C. Code Ann. §39-5-150) and begins running from the date the unlawful conduct is discovered.

23. The statute of limitations period for conversion is three years (S.C. Code Ann. §§ 15-3-530(4) and 15-3-530(5)) and begins running from when the injured party knew or by the exercise of reasonable diligence should have known that it has a cause of action.

24. The statute of limitations period for misappropriation of identity is three years (S.C. Code Ann. § 1-52(5)) and begins running from the date the misappropriation was discovered or in the exercise of reasonable diligence should

have been discovered by the Plaintiff.

25. That the statute of limitations for all of Plaintiff's claims in this action began running on September 30, 2020, based solely on the language in Plaintiff's Filed Summons and Complaint and Amended Complaint.

26. That the statute of limitations for all of Plaintiff's claims ran on September 30, 2023.

27. Pursuant to Rule 3, of the South Carolina Rules of Civil Procedure, Plaintiff failed to commence her action as required by this rule; she failed to serve the summons and complaint upon the defendant within the applicable statute of limitations.

28. Default judgment cannot be granted on a claim that was never properly served or commenced under Rule 3(a), and this court finds no basis for changing the law to allow this to occur.

29. Defendant's motion to dismiss is proper and should be allowed.

NOW, THEREFOR IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants motion to dismiss is granted;
2. Plaintiff's motion for entry of default is denied; and
3. This matter is dismissed with prejudice.

SO ORDERED. This the _____ day of August, 2024.

Honorable Judge Daniel Hall



York Common Pleas

Case Caption: Ina Shtukar VS Erie Insurance Group

Case Number: 2023CP4600392

Type: Order/Other

So Ordered

s/Daniel D. Hall 2753

Certificate of Electronic Notification

Recipients

Elizabeth Martineau - Notification transmitted on 08-14-2024 08:46:37 AM.

Ina Shtukar - Notification transmitted on 08-14-2024 08:46:37 AM.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2023CP4600392

Official File Stamp: 08-14-2024 08:45:19 AM

Court: CIRCUIT COURT

Common Pleas

York

Case Caption: Ina Shtukar VS Erie Insurance Group

Event(s):

Order/Order Cover Sheet \$25.00

Document(s) Submitted: Proposed Order/Other

Filed by or on behalf of: Elizabeth Ann Martineau

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Elizabeth Ann Martineau for Erie Insurance Group

Ina Shtukar for Ina Shtukar

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Elizabeth Ann Martineau for Erie Insurance Group

Certificate of Electronic Notification

Recipients

Elizabeth Martineau - Notification transmitted on 08-16-2024 01:05:46 PM.

Ina Shtukar - Notification transmitted on 08-16-2024 01:05:46 PM.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2023CP4600392

Official File Stamp: 08-16-2024 01:05:39 PM

Court: CIRCUIT COURT

Common Pleas

York

Case Caption: Ina Shtukar VS Erie Insurance Group

Document(s) Submitted: Order/Other Order/Other

Filed by or on behalf of: Daniel D. Hall

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Elizabeth Ann Martineau for Erie Insurance Group

Ina Shtukar for Ina Shtukar

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THE STATE OF SOUTH CAROLINA

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Daniel Hall, Circuit Court Judge

Case No. 2024-001311

Ina Shtukar

Appellant,

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Erie Insurance Group

Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent's Motion to Dismiss Appellant's Appeal was served on all counsel of record pursuant to Appellate Case Number 2022-000029 and SCACR Rule 262 via e-mail: addressed as follows:

Ina Shtukar "Steinburg"
1687 Saybrook Court,
Rock Hill, SC 29732
ina@blackandwhiteimmigrationlaw.org

[SIGNATURE PAGE TO FOLLOW]

On this the 19th day of September, 2024

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