

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Appellate Case No: 2012-212896

RECEIVED

AUG 16 2013

SC Court of Appeals

Charles Taylor,

Appellant,

v.

Thomas Davis and
State Farm Mutual Automobile Insurance Company, Respondents,

AMENDED APPELLANT'S FINAL REPLY BRIEF

Charles Taylor
Post Office Box 3652
Sumter, South Carolina 29151-3652
(803) 883-7005
For the Appellant/Pro-Se

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STATEMENT of ISSUES on APPEAL

Once a notice of appeal was filed 6/8/11(R.p.23) did the lower court have jurisdiction-
authority (SCACR 205-221-242) &/or erred to rule to Respondent State Farm the
relief in (appellant's final brief p.5 B1-b6)
or any relief in a closed 6/27/11 Appeals Court Case (R.p.2-5)
that wasn't appeal from by Respondent State Farm until
almost 1 year late from 6/27/11 to 5/7/12 (R.p.2-5 to p.6 1st para. L.3 May 7, 2012)?

STATEMENT of THE CASE

Same statement of the case as in appellant's final brief
Same statement of the case as in respondent Thomas Davis' final brief

RELEVANT FACTS

Same relevant facts as in appellant's final brief
Same relevant facts as in respondent Thomas Davis' final brief

REPLY-ARGUMENT

(Discussion, Citation, Authority)

**(1). As to Respondent Thomas Davis' Final brief, Appellant adopts by reference ALL
of same pursuant to SCACR 208 (b)(6); and incorporates
same herein as part Appellant's rebuttal-reply to Respondent State Farm Brief;**

2. That notwithstanding anything else-Appellant reply to State Farm brief argues herein #2 that;

Appellant main & central position is a simple & clear one; here stated again; that the bottom line is: That whatever relief respondent state farm wanted from the subject \$1,735,000.00 final judgment it cause; ending the case in the S.C. Court of Appeals on 6/27/11 see (R. p.2-5); that such relief wanted, being that in appellant's brief, (p.5 B-1 thru b-6), should have been more timely sought procedurally via SCACR 221 (15 days to file for a rehearing in the same Appeals Court from 6/27/11 (R.p.2-5); and/ or SCACR 242 (30 days to file for writ of certiorari to S.C Supreme Court); but--*instead*--State Farm-their attorney---they forgot---or for whatever reason, they waited from 6/27/11 until a motion hearing date May 7, 2012 (R.p.6 L.3) (almost 1 year late); untimely indeed regardless their reason!!; to Appeal for such relief and then back to the original lower court; All of which relief--except final judgment entry--(R.p.24-25 p.6 L.2-3 & p.10 L.4-5); **violated;** 1st SCACR 205; 2nd SCACR 221; 3rd SCACR 242; & 4th the latter 2 permanently barred state farm from any relief from any court due to the above filing deadlines missed; thus appellant argues the lower court did err &/or without jurisdiction grant such relief (per Appellant's final brief p.5 B-1 thru b-6) and Appellant appeals to this court for its reversal;

3. But apart from the above; Appellant can't resist the temptations to reply to a few other false claims in Respondent State Farm brief"; (1).State farm falsely alleges in its brief p.1 L.13-16; "that after defense counsel withdrew from the case & while there was no counsel of record for Davis-Appellant then sought and then was awarded an uncontested judgment against Davis for \$1,500,000.00 on June 19, 2009 based upon a Rule 68 SCRCR Offer of judgment, which had been accepted by Davis"; **Appellant replies;** simply see (R.p.13 bottom-then p.15) they speak for themselves as to the truth of the subject matter; although it's irrelevant per para. #2 above;

4.State farm alleges on its p.1 at bottom essentially that the subject covenant (R.p.59-61) was not approved by Respondent Davis or his counsel; **Appellant replies;** but that Respondent Davis disagrees, see his brief page 3 third paragraph L.3-6 & the last paragraph on same page 3 & otherwise (R.p.15 & 13 bottom);

5.State Farm alleges on its page 2 in the very last line, that Appellant; “ require State Farm to pay the higher judgment”; **Appellant replies;** simply see, (R.p.44 & 69), which speak for themselves as to the falsity of this State Farm claim;

6.State Farm alleges on its page 3 second paragraph that; “The crux of Appellant argument is that State Farm as UIM carrier, is obligated and bound by a private agreement to which State Farm was never a party” **Appellant replies;** simply see (R.p.44-52) which speak for themselves as to the falsity of this State Farm claim that it essentially have no contract with appellant & therefore State Farm can’t be bound in anyway; see (R.p.69) again;

7.State Farm alleges on same page in same paragraph lines 5-6 that State Farm-its attorney; “never purported to represent him (Respondent Davis) in anyway in this action”; **Appellant replies;** simply see (R.p.37-38; p.22 shaded areas; p.2 at bottom; p.5 at bottom; p.11 shaded areas; and p.68 etc. etc.); as to the falsity of this State Farm-attorney claim in this item #7;

8.State Farm alleges in same that its attorney only defended this case pursuant to 38-77-160; **Appellant replies;** that what they didn’t say per that section is that the parties were free to settle at anytime without needing their consent (R.p.40) & furthermore, if State Farm can’t be bound in anyway as they alleges, then what does the contract (R.p.44-52) means; and if their answer is—it means nothing---then what are State Farm-attorney doing in this case for about

6 years now?; and if State Farm--attorney was not originally on Respondent Davis' side and not on its under insured Appellant Taylor side; whose side were they on from the beginning?

9.State Farm failed to mentioned that they were gambling to bind the other Respondent Davis per the (R.p.53-54);

10.State Farm alleges on its page 4 2nd paragraph that; "At no time before or after Appellant filed this action was they privy to or involved in any discussions or settlement negotiations between the parties; **Appellant replies**; simply that is not true--see—State Farm brief p.2 1st para. L.3-4 and quote State Farm-Attorney; "the case remain unresolved"; **Appellant now wants the owing & due remainder—per (R.p.44 & 69 &/or p.2-5 & p.10 L.4-5)**;

11.That as to same page 4, 2nd paragraph lines 3-7; as to Respondent Davis' actions, he can Explain that best but in the interim the record is quite clear as to his predicament as to what choices was available to him upon appeal before he capped his potential liability (R.p.53-54 & p.2-5); which given the lifetime damages, he knows that he was smart to do; or he could have otherwise done what State Farm wanted him to do; let them gamble in his name to the end and see if they could be lucky; and if they couldn't, then only Respondent Davis would suffer the consequences & thus in either case, they--State Farm would risk loosing nothing;

12.State Farm on its page 4 last paragraph, alleges once again, that it can't be bound in anyway is the gist of that paragraph; **Appellant replies**; They would be correct if they didn't take for years Appellant's premiums and if they honored the contract (R.p.44 & 69);

13.State Farm says on its page 5 first paragraph, essentially that--nowhere in the agreement (R.p.2-4) is State Farm mentioned; **Appellant replies;** that's because of State Farm claiming falsely that they couldn't be a named party (R.p.68) respondent until this court added them as such; (see present case captioned) & (R.p.11 without the judgment \$1,735,000.00 amount);

14.State Farm alleges on its page 4 last paragraph L.4 at the end; essentially says; the initial jury verdict and not a final judgment after appeal entered by the court, determines what obligations State Farm owe Appellant; **Appellant replies;** That he believes the latter is controlling & asked on numerous occasions for a copy of his contract policy (R.p.44-52) so he can be shown where what State Farm alleges is true, before the May 7, 13 hearing (R.p.6 L.3 May 7, 2012); but to no avail; the contract evidently does not say as State Farm alleges;

15.State farm on its page 5 middle paragraph, speaks of its statutory right to defend but make no mention of such corresponding right to be bound by the ultimately final judgment entered in the case; State Farm likes and wants the former but not the latter; see (R.p.40);

16.Again-para.3-16 & whatever else's in state farm brief is irrelevant per paragraph 2 above..

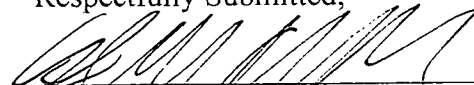
CONCLUSIONS

Same conclusion-relief, + back interest & costs, as requested in Appellant's **Final** Brief p.7

Same conclusion-relief, + back interest & costs, requested in Respondent Davis' **Final** Brief p.8

August 15, 2013

Respectfully Submitted,



CHARLES TAYLOR, Appellant

Post Office Box 3652

Sumter, South Carolina 29151

(803) 883-7005

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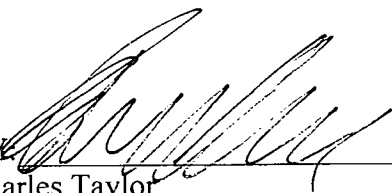
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Appellant's Final Reply Brief complies with rule 211(b).

August 15, 2013

BY 
Charles Taylor
Post Office Box 3652
Sumter, South Carolina 29151-3652
(803) 883-7005
For the Appellant/Pro-Se

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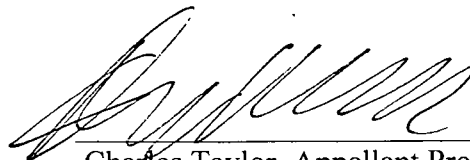
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PROOF OF SERVICE

I hereby certify that a copy of the; Amended Appellant's Final Reply Brief; was served upon Respondents Thomas Davis & State Farm Mutual Automobile Insurance Company to its counsel below by depositing same in the U.S. Mail, from Sumter, SC. on the 15th day of August, 2013, w/1st class duly affixed postage & a return address indicated clearly thereon the envelope, addressed as follows:

August 15, 2013



Charles Taylor, Appellant Pro Se
Post Office Box 3652
Sumter, SC 29151/(803) 883-7005

Mr. Thomas Davis, Respondent
PO Box 773
Manning, S.C. 29105

State Farm Mutual Automobile
Insurance Company/Respondent
Mr. James B. Lybrand, Jr., Esq.
PO Box 58 / Columbia, S.C. 29202