THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Appellant Case No: 2012-212896

Charles Taylor, Appellant,

v.

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

AMENDED FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

THAT ONCE A NOTICE OF APPEAL WAS FILED 6/8/11, DID THE LOWER COURT HAVE JURISDICTION-AUTHORITY (SCACR 205) &/or ERRED;

As detailed specifically in (**B-1 thru b-6**) on p.5 herein?

STATEMENT OF THE CASE

(In Brief); That on 12/14/07, Charles Taylor-Appellant, brought a $10ML action, (later amended up to $40ML), for gross negligence against Thomas Davis--Respondent, for damages he cause in a truck accident on 9/7/07.Taylor suffered severe personal injuries (R.p.6 L.7-8 & p.12 L.6-7) including lifetime disabling re-injured spinal cord surgery with more needed; samples, (R.p.41-42), among others, with medical bills from $50,000.00 to $60,000.00 & up to $125,000.00, and past $135,000.00 & continues & property damages of $110,000.00 due to load of business materials just picked up in brand new automobile--all destroyed in the accident-(admitted)-(R.p.15 & 4) & all resulting from being rear ended / sandwiched-into another car-the Brown family---by a rental truck driven by underinsured at fault driver-Davis (R.p.4 L8-9) which Truck Co. paid their limits $25T to Taylor; who then turn to his under insurer-State Farm (R.p.44) who paid Taylor $25T of $100T contract coverage & later renege on other $75T; forcing further litigation and a potential ultimate judgment for up to the $40ML against Davis with no indemnification, per State Farm, that he would have to pay himself beyond Appellant remaining $75T coverage w/SF (R.p.44);

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1 Note Respondent State Farm drumbeat complaint throughout its brief about not wanting to be held liable for final $1,735,000 judgment they caused (R.p.53-54); & yet they never mention the untold offers to settle well within their—Appellant's policy limit and they refused each & every time to date (R.p.69). The problem is that they wanted their cake & eat it too. Appellant believes they can't have it both ways; but Respondent State Farm disagrees! They believe that they can!

That on 5/17/11, the Taylor v. Davis case was tried with; Taylor's own **contract**-non-party under insurer-state farm atty. defending Davis (R.p.22,37,38,68) who could not attend. A jury found for Taylor, awarding him $615.00 in total damages (R.p.22) wherein there were no attempt to refute-dispute Taylor losses, as such was so obvious, thoroughly & without question documented. On 6-8-11 Taylor filed an appeal (R.p.23) on among other appealable grounds, a juror acquaintance w/the defense wasn't reveal (R.p.67) until later after trial per the $615 for all damages p.3 above.

RELEVANT FACTS

With appeal pending, the parties reached & filed a settlement agreement for $1,735,000.00 of the $40,000,000.00 that was being sought; in exchange to dismiss the appeal & no further litigation against (Davis). That pursuant to the agreement-(R.p.3-4) the appeals court dismissed the appeal by its order of **6/27/11** and **thus closed the case**-(R.p.2); remitting same to the Clerk of Court for Richland County (R.p.2). That Taylor later on 8/18/11 filed a motion (R.p.24) to the lower Court asking administratively per, (SCRCP 58b, the Appeals Court Order, & the agreement), to enter the final $1,735,000.00 judgment-(R.p.25). The Lower Court entered final judgment pursuant to the agreement **which**, among other things, **vacated,** (R.p.4 L.4-d), the initial erroneous $615.00 damages award, **replacing** it retroactively with final $1,735,000.00 judgment (R.p.10 L.4) total damages to appellant in its 7/17/12 order-(R.p.10 L.4); **& the lower Court then went beyond-to rule as follows on p.5 B-1 thru B-6 on the next page—*the reasons for this appeal*.**

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2 Note Importantly That: If Appellant could just sum it up---essentially----Respondent State Farm don't want to acknowledge--for obvious reasons--that the Final $1,735,000.00 Judgment entered 7/17/13 (R.p.10 L4) vacated & replaced (R.p.4 L4d) the erroneous $615.00 one (R.p.22).

ARGUMENT

(Discussion and Citation of Authority)

APPELLANT ARGUES: THAT ONCE NOTICE OF APPEAL WAS FILED 6/8/11, (R.p.23) **THE LOWER COURT HAD NO JURISDICTION-AUTHORITY** (SCACR 205) **&/or erred;** (as detailed per **B-1 thru B-6 b**elow):

(**A-1**). [**Except of course so as to enter the Court Final $1,735,000.00 Judgment**--(R.p.2-5) **per Appeals Court Agreement Order of 6/27/11** (R.p.2-5); **& per appellant motion request 8/18/11** (R.p.24) **to enter same per SCRCP 58-b** (R.p.25 L6)] **otherwise erred;**

(**B-1**).To rule, without motion, (SCRCP 7-b), for non-party State Farm (R.p.68) in the closed Appeals Court Case (R.p.2-5)

b-2. That state farm had no other financial duty to appellant in the matter; (R. p. 9 L. 20); (see R.p.44 thru 52 and 53-54 and 2-5 all in the roa);

b-3. That state farm obligations in the matter were exhausted w/initial $615; (R.p.9 L.17); (see R.p.23 & 2-5 & paragraph below bottom this page & R.p.10 L.4 thru p.11 roa);

b-4. That state farm not required to participate in the $1,735,000.00 judgment; (R. p. 10); (see R.p.23 & 2-5 & paragraph below bottom this page & R.p.10 L.4 thru p.11 roa);

b-5. That state farm attorney did not represent defendant Davis; (R.p.9 L.13-14 & 21-22); (see R.p.37-38 p.68 & 22 yellow shaded-attorney for defendant / same on p.11 roa);

b-6. That appellant also alleges the lower court, even if it had authority to rule; erred to rule as per above without even seeing--let alone reviewing, the subject under insured contract provisions to see what they provided for between parties (R.p.44-52)

Further

& **Another Main Point:** Note with great emphasis that the initial $615 award was **vacated &** replace w/the $1,735,000 (R.p.4 L.4d & p.10 L4-p.11) & the **b-3** ruling **above** should especially, specifically & accordingly be [**reversed**] as prima facie contradictory err; [**in that**] **the initial**

award for all purposes was legally $1,735,000.00--not the $615--thus State Farm *obligations* per b-3 above, *exhausts* accordingly--(EMPHASIS!!)--to this most salient err by the Lower Court; even if it had Jurisdiction--Authority, to rule in the case and on the subject matter; & further reason to reverse (B-1 thru b-6 p.5 above) **is because:** The Lower Court rulings on these was done without **motion** (R.p.6 1st paragraph) of any party **(SCRCP 7-b)** and in a **closed** Appeals Court Case that had **ended** (R.p.2-5). Appellant simple motion above **A-1** p.5; required only simple entry per, **SCRCP 58b** (R. p.25 L6); Because beyond that, Respondent State Farm-themselves had earlier caused the subject $1,735,000.00 final judgment in several instances & in each & every instance could've avoided such if they wanted to beforehand; (R.p.44;53-54 & 69).

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3 Note w/great emphasis: (R.p.13 last para.) & especially in that light (R.p.15 Atty. Tyler letter) and square these with Respondent State Farm's assertions in its brief (p.1 2nd para. L.5 *"After defense counsel withdrew from the case and while there was no counsel for Davis, Appellant then sought and was awarded an uncontested judgment against Davis for $1,500,000.00 on June 19, 2009 based upon a Rule 68 SCRCP Offer of Judgment which had been accepted by Davis");* Again, see the just above referenced in the Record on Appeal for the truth of that matter and the deliberate falsehoods by Respondent State Farm-Attorney so they can prevail at whatever cost.

4 Also note w/same emphasis & light: Ref. the (R.p.59-61) Appellant's True Certified Correct Copies & (R.p.62-66) Respondent State Farm altered copies & view same in light of their brief p.1 @ bottom & their brief p.4 2nd para. & @ bottom that page, as to the subject covenant and in light of the undisputed damages suffered herein on p.3 above.

CONCLUSION

Accordingly-Appellant Seeks the Following Relief:

Declare the Lower Court Rulings;

(B-1 thru b-6)

p.5 above was done without

Jurisdiction-Authority &/or Erred

Pursuant to SCACR 205, SCRCP 58b, 7b,

& Any/All other Applicable Authorities

& accordingly should be

REVERSED &

That the Final Judgment $1,735,000.00 be properly included & recorded per form 4 (R.p.11); to include correctly named: State Farm Mutual Automobile Insurance Company; (which it managed to evade before per (R.p.68); (until their ***inclusion*** in this Court's 2/15/13 order--1st time as a proper defendant-respondent).

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5 Finally: **Note that Respondent State Farm's whole argument essentially is that;** Appellant asked the lower court via motion (R. p. 24 thru 25) and that door then gave the lower court the necessary jurisdiction-authority to rule B-1 thru B-6 p.5 herein above to State Farm and Appellant says---*even with an appellant's motion*---can anyone who may want, for whatever reason--as State Farm in the instant case wanting--a different Appeals Court Ending than in the instant case, (R. p. 2 thru 5), can they say; well--we'll just go back to the lower court & ask for a different ruling B-1 thru B-6 p.5 herein above, and because it's asked via whatever appellant motion, then that confers jurisdiction-authority, otherwise not there, to the lower court to rule to Respondent State Farm, in the instant case, B-1 thru B-6 p.5 herein above; **Appellant Disagrees with Respondent State Farm's argument;** because if such rulings, B-1 thru B-6 p.5 herein above are affirmed, then the above—back to the lower court from the Appeals Court as State Farm here---will thereafter be the end result by this precedent.

Also Appellant believes that such requests by State Farm for the B-1 thru B-6 p.5 rulings herein, should not have been back to lower court as in the instant case (SCACR 221&242) but that such requests by Respondent State Farm should have been instead in the Appeals Court Proceedings at the first appeal (R.p.23 & 2-5) within the allotted time for filing such by respondent state farm or thereafter be barred from asking (R.p.35 shaded) for such rulings as B-1 thru B-6 p.5 herein almost a year later from 6/27/11 case close at Appeals Court (R.p.2-5) to 5-7-12 (R.p.6 top) in a lower court hearing to enter the 6/27/11 final judgment that the lower court clerk office was ask to and should have entered promptly pursuant to SCRCP 58-b (R.p.25 L.6) in the first instance; and then the B-1 thru B-6 rulings per p.5 herein above would--could never have occurred and thus such rulings B-1 thru B-6 p.5 herein should be reversed per conclusion on top of p.7 herein.

Respectfully Submitted,

August 15, 2013

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6 VERY IMPORTANT LAST NOTE: **That Appellant gave up his right to further appeal in exchange for the 6/27/11 Appeals Court Agreement Order** (R.p.2-5); **note that Respondent State Farm never mentioned that they would have been liable for any final judgment up to the $40,000,000.00 amount then being sought against Respondent Davis if when the 1st appeal was reversed, absent the subject agreement** (R.p.4). **Simply put--Respondent State Farm could--should have settle within Appellant policy limits** (R.p.44) **if in fact they wish not to be subject to the $1,735,000.00 final judgment** (R.p.4 L.4d & 10 L.4) **that they caused by their refusal to settle** (R.p.53-54) **& otherwise** (R.p.69); **which all led to everything else.**

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Amended Final Brief of Appellant; complies with rule 211(b).

August 15, 2013

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PROOF OF SERVICE

I hereby certify that a copy of the; Amended Final Brief of Appellant; 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

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