RECEIVED
Jan 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Trial Court Case No.: 23-CP-4600392
Appellate Case No. 2024-001311

Ina Shtukar, Appellant,

v.

Erie Insurance Group, Respondent.

FINAL BRIEF OF RESPONDENT

Natasha M. Durkee, Esq. (S.C. Bar No.: 105581)
Elizabeth A. Martineau, Esq. (S.C. Bar No.: 78732)
MARTINEAU KING PLLC
P.O. Box 12151
Rock Hill, SC 29731
Telephone: (704) 980-0721
ndurkee@martineauking.com
emartineau@martineauking.com
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules and Statutes

STATEMENT OF ISSUES ON APPEAL[1]

1. **DID THE TRIAL COURT ERR IN FINDING AND CONCLUDING THAT APPELLANT NEVER SERVED THE FILED-STAMPED COPY OF THE SUMMONS AND COMPLAINT UPON RESPONDENT AND, THEREFORE, DID NOT COMMENCE THE ACTION IN ACCORDANCE WITH RULE 3(a) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?**

2. **DID THE TRIAL COURT ERR IN FINDING AND CONCLUDING THAT RESPONDENT TIMELY FILED A MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED IN RESPONSE TO APPELLANT'S INITIAL COMPLAINT AND, THEREFORE, DENYING APPELLANT'S MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT?**

3. **DID THE TRIAL COURT ERR IN FINDING AND CONCLUDING THAT APPELLANT'S CAUSES OF ACTION AGAINST RESPONDENT WERE BARRED BY THE STATUTE OF LIMITATIONS, IN LIGHT OF APPELLANT'S FAILURE TO COMMENCE THE ACTION IN ACCORDANCE WITH RULE 3(a) OF THE SOUTH CARLOLINA RULES OF CIVIL PROCEDURE BEFORE OR ON SEPTEMBER 30, 2023?**

4. **DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?**

STATEMENT OF THE CASE

Appellant Ina Shtukar ("Appellant" and "Plaintiff") filed a lawsuit against Erie Insurance Group, Inc. in York County Court of Common Pleas on February 7, 2023 (the "Initial Complaint"). Appellant's Initial Complaint alleged that Appellant had purchased an auto policy of insurance on September 7, 2017 (the "Subject Policy"), from Erie Insurance Company[2], which she alleged was a foreign corporation licensed to write insurance policies in North Carolina. At the time that the Subject Policy was issued, Appellant resided in North Carolina. On August 2, 2020, after allegedly

[1] Respondent is dissatisfied with Appellant's Statement of Issues on Appeal and Statement of the Case and, therefore, has included its own within this brief pursuant to Rule 208(b)(2) of the South Carolina Rules of Appellate Court.

[2] The Subject Policy was actually issued by Erie Insurance Exchange. However, at the time that Plaintiff filed her Initial Complaint, the only named defendant was "Erie Insurance Group, Inc., which Appellant interchangeably used in conjunction with "Erie insurance Company."

purchasing a home in Rock Hill, South Carolina, Appellant alleges she contacted her insurance agent, who explained that Appellant would have to obtain a new auto policy as she was moving to South Carolina, a state where Erie Insurance Exchange did not write insurance policies. On or around September 6, 2020, Appellant obtained a new auto policy in South Carolina. On September 30, 2020, Appellant provided a copy of proof of insurance to her insurance agent that showed Appellant had obtained a new policy of insurance with Travelers, which was effective on September 6, 2020. As a result, Appellant alleged that her insurance agent emailed her, and stated that her agent would "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" – Appellant's prior boyfriend. However, Appellant did not want the Subject Policy to be transferred to her ex-boyfriend in hopes that it would leave her ex-boyfriend uninsured for an unrelated motor vehicle accident and, as such, allegedly directed that the Subject Policy be terminated, even though Appellant was no longer a named insured under said Policy as of September 6, 2020.

Appellant filed her Initial Complaint, which included the following causes of action against Erie Insurance Group, Inc. (the improper entity) for (1) Bad Faith; (2) Unfair and Deceptive Trade Practices; (3) Injunction; and (4) Punitive Damages. Notably, the Initial Complaint named "Erie Insurance Group, Inc.", as the named defendant. The filed Summons that was issued pursuant to the Initial Complaint named "Erie Insurance Group" as the named Defendant. However, when served upon Respondent through the South Carolina Department of Insurance, the served complaint and summons did not include the court's file-stamped markings and strangely named "Erie Insurance Exchange" as the sole named defendant (the "Sham Complaint and Summons"). The Sham Complaint and Summons were served upon the South Carolina Department of Insurance

on February 10, 2023. Appellant also served a copy of the Sham Complaint and Summons via certified mail upon Respondent on February 28, 2023. Once received, undersigned counsel reached out to Appellant to obtain an extension of time, through and including April 28, 2023, to respond, which Appellant agreed to in writing. On April 28, 2023, Appellant filed a Motion to Dismiss pursuant to Rules 12(b)(2) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP") in response to Appellant's Initial Complaint.

Shortly thereafter, Appellant filed a Motion for Entry of Default and Default Judgment against Respondent, on the basis that, although she had consented to an extension of time through and including April 28, 2023, she had no authority to grant same pursuant to Rule 12(a) of the SCRCP. On January 5, 2024, Appellant filed an Amended Complaint to include the proper entity that issued the Subject Policy as the named Defendant – "Erie Insurance Exchange a/k/a Erie Insurance Group, Erie Insurance Company, and Erie Insurance" (the "Amended Complaint"), and added a cause of action against Respondent for (1) Conversion; (2) Wrongful Appropriation of Identity; (3) Punitive Damages; and (4) Declaratory Judgment. This was the first time that the Respondent had been properly named in any pleading that had been filed by Appellant. On Monday, February 5, 2024, Respondent again filed a Motion to Dismiss and Answer in response to the Amended Complaint. The trial court heard arguments on Appellant's Motion for Entry of Default and Default Judgment and Respondent's Motion to Dismiss on July 31, 2024. The trial court ultimately denied Appellant's Motion for Entry of Default and Default Judgment, and granted Respondent's Motion to Dismiss on August 6, 2024, and entered a formal written order on August 16, 2024. On August 14, 2024, Appellant appealed the trial court's August 6, 2024 and August 16, 2024, Orders.

On August 18, 2024, Appellant filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e) of the SCRCP. On August 29, 2024, the trial court denied Appellant's Motion to Alter or Amend Judgment. On September 20, 2024, Appellant amended her appeal to include the trial court's August 29, 2024, Order.

STANDARD OF REVIEW

A trial court's order on a motion for entry of default is not to be disturbed "unless there is a clear showing of an abuse of discretion." *See Mauro v. Clabaugh*, 299 S.C. 184, 191, 383 S.E.2d 244, 249 (Ct. App. 1989); *see also Meeks v. Friedman*, 128 F. App'x 316, 317 (4th Cir. 2005) (*citing to Consol. Masonry & Fireproofing, Inc. v. Wagman Constr. Corp*., 383 F.2d 249, 251 (4th Cir. 1967)).

With respect to granting Respondent's Motion to Dismiss, this Court has two different standards of review. In regards to Respondents 12(b)(2) motion, this Court has adopted a clearly erroneous standard of review. *Askins v. Firedoor Corp. of Fla.*, 281 S.C. 611, 614-15, 316 S.E.2d 713, 715 (Ct. App. 1984). Therefore, this court is bound by the factual findings of the trial court, that was rendered after conflicting evidence was presented by the parties. *Id.* (*citing to City of Chester v. Addison*, 277 S.C. 179, 284 S.E. (2d) 579 (1981), *appeal dismissed*, 456 U.S. 967, 102 S. Ct. 2227, 72 L. Ed. (2d) 840 (1982)); *see also Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) ("The decision of the trial court should be affirmed unless unsupported by the evidence or influenced by an error of law") (internal citations omitted).

On the other hand, in regards to Respondent's 12(b)(6) motion, this Court should "appl[y] the same standard of review as the trial court." *Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 216, 886 S.E.2d 483, 484 (Ct. App. 2023). This standard requires this Court to review the facts *de novo*, and "construe the complaint in a light most favorable to the nonmovant and determine if the

facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* Further, "[i]f the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.*

Finally, although undersigned counsel could not find a South Carolina case on point as it relates to the standard of review for a Rule 59(e) Motion, undersigned counsel refers this Court to the 4th Circuit Court of Appeals decision in *Barton v. Sindall Transportation, Inc.*, where the 4th Circuit held that it would review the denial of a motion to alter or amend a judgment pursuant to Rule 59(e) under the standard of abuse discretion. 1991 U.S. App. LEXIS 12089, 20 Fed. R. Serv. 3d (Callaghan) 39.

FACTS

On February 7, 2023, Appellant filed her Initial Complaint in the York County Court of Common Pleas against a single named defendant, "Erie Insurance Group, Inc.", for the following causes of action: (1) bad faith; (2) unfair and deceptive trade practices; (3) injunction; and (4) punitive damages. *See* Complaint (R. p. 20-31). That same day, a summons was issued to a single named defendant, Erie Insurance Group.[3] *See* Summons (R. p. 19). Appellant's Initial Complaint stemmed from the Subject Policy, which was an auto policy of insurance that was issued by Erie Insurance Exchange, and became effective on September 7, 2017. *See* Complaint at ¶10 (R. p. 21, line 10). When Appellant was residing with her now ex-boyfriend, Appellant's ex-boyfriend was added to the Subject Policy as a named insured. *See* Complaint at ¶11 (R. p. 21-22, line 11). After Appellant moved to South Carolina, she contacted her insurance agent to notify them that she had procured insurance through Travelers. *See* Complaint at ¶17 (R. p. 22, line 17). As such, Appellant

[3] Although the Summons was issued to Erie Insurance Group, as the named defendant, the Initial Complaint stated that the named defendant was Erie Insurance Group, Inc.

was removed as a named insured from the Subject Policy. *See* Complaint at ¶43 (R. p. 27, line 43). However, the Subject Policy remained in effect for Appellant's ex-boyfriend, as the sole named insured. *Id*. Although Appellant was removed as a named insured, as requested, effective on September 6, 2020, Appellant has filed suit against Respondent claiming that Respondent has acted in bad faith because the Subject Policy should have been terminated in its totality instead of simply removing Appellant as a named insured. *See* Complaint at ¶45 (R. p. 27, line 45).

On February 10, 2023, pursuant to S.C. Code Ann. § 15-9-285, the South Carolina Department of Insurance accepted service of a document that purported to be the Initial Complaint and Summons. *See* Appellant's Affidavit of Service, Ex. A (R. p. 217). However, the South Carolina Department of Insurance actually received, and was served with, a copy of the Sham Complaint and Summons. *Id.* (identifying the case caption in the Initial Complaint as "Ina Shtukar v. Erie Insurance Exchange, et al."); *see also* Defendant's Exhibit filed on August 1, 2024 (R. pp. 260-276). Notably, not only did the Sham Complaint and Summons not have a filed-stamp marking by the York County Court of Common Pleas, but the named defendant within the documents was listed as "Erie Insurance Exchange," and not Erie Insurance Group, Inc. or Erie Insurance Group. *Id*. To date, Appellant has not only failed to provide an explanation as to why the Sham Complaint and Summons differs from the Initial Complaint, but Appellant has conceded that the Sham Complaint and Summons were in fact the documents that were served upon Respondent. *See* Appellant's Final Brief p. 5.

On or around February 22, 2023, the South Carolina Department of Insurance mailed a copy of the Sham Complaint and Summons to Erie Insurance Exchange, which Erie Insurance Exchange received on or around February 28, 2023. *See* Defendant's Exhibit filed on August 1, 2024 (R. pp. 260-267). On February 27, 2023, Appellant also served a copy of the Sham Complaint

and Summons upon Respondent via certified mail. *See* Appellant's Certificate of Service, which was filed on March 2, 2023 (R. p. 348-349) (stating that a copy of the same complaint and summons were served by her upon the South Carolina Department of Insurance and via Certified Mail to "Erie Charlotte Office Branch."). On February 28, 2023, undersigned counsel on behalf of Erie Insurance Group, Inc., the entity that was named as the sole Defendant in the Initial Complaint, reached out to Appellant and requested a thirty (30) day extension of time to respond to the Initial Complaint, through and including April 28, 2023. *See* Exhibit "A" to Respondent's May 17, 2023, Brief in Opposition to Appellant's Brief in Opposition to Respondent's Motion to Dismiss and Request for Entry of Default (R. pp. 219-222).

On March 2, 2023, Appellant filed an Affidavit of Compliance with S.C. Code Ann. § 15-9-285 and a Certificate of Service, attesting, incorrectly, that a copy of the Initial Complaint and Summons had been served upon the named defendant, Erie Insurance Group, Inc., through the South Carolina Department of Insurance and via Certified Mail. *See* Appellant's Affidavit of Compliance pp. 1-2 (R. pp. 350-352) and Certificate of Service p. 1 (R. pp. 348-349). On March 2, 2023, Appellant also agreed to Respondent's request for a continuance of time to respond to the Initial Complaint, through and including April 28, 2023. *See* Appellant's Final Brief p. 2; *see also* Exhibit "A" to Respondent's May 17, 2023, Brief in Opposition to Appellant's Brief in Opposition to Respondent's Motion to Dismiss and Request for Entry of Default (R. pp. 219-222).

On April 28, 2023, Respondent filed a motion to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(2) and 12(b)(6) of the SCRCP. *See* Respondent's Motion to Dismiss (R. p. 119). In compliance with Rule 7 of the SCRCP, Respondent's motion was made in writing, stated with particularity the grounds for the motion to dismiss (i.e. lack of personal jurisdiction and failure to state a claim), and stated

the relief/order sought (i.e. "an order dismissing Plaintiff's complaint with prejudice"). *Id*.; *see also* Rule 7 of the SCRCP.

On May 15, 2023, Appellant filed a memorandum titled, "Plaintiff's Memorandum in Opposition to Defendant's Untimely Motion to Dismiss and Plaintiff's Motion for Entry of Default" ("Plaintiff's May 15, 2023 Memorandum")[4]. (R. pp. 158-167). In Plaintiff's May 15, 2023 Memorandum, Appellant argued that Defendant's Motion to Dismiss was untimely, because Plaintiff claimed that SCRCP Rule 6(b) prevented her from granting an extension through April 28, 2023, as it would have allegedly extended Respondent's time to respond to the Initial Complaint by 77 days, and not 60 days. *See* Plaintiff's May 15, 2023 Memorandum pp. 2-5 (R. pp. 159-162). Importantly, Appellant's argument was premised upon service of the Sham Complaint and Summons, which was served upon Erie Insurance Exchange, an entity that was not yet named as a defendant in the lawsuit, through the South Carolina Department of Insurance on February 10, 2023. *Id*. p. 2 (R. p. 159).

Moreover, in Plaintiff's May 15, 2023 Memorandum, Appellant further argued that Respondent's Motion to Dismiss failed to comply with Rule 12(a), and cited to cases referring to appellate briefs or briefs that are required to be filed in federal court in support of her position.[5] *Id*. p. 4 (R. p. 161). Plaintiff's May 15, 2023 Memorandum then moves to the merits of Respondent's Motion to Dismiss, and asserts that (1) Respondent consented to personal jurisdiction in South Carolina by allegedly engaging in the unauthorized business of insurance; (2)

[4] This document did not contain a Motion for Entry of Default or Default Judgment. Appellant did not actually file a formal Motion for Entry of Default or Default Judgment until May 31, 2023.

[5] The portions that are referenced within Plaintiff's May 15, 2023, Memorandum are purposely tailored to support Appellant's baseless argument, and fail to candidly represent the nature of the courts, respective, rulings in said matters. (e.g. Appellant cites to *See In re Marriage of Grounds*, 256 Mont. 397, 398, 846 P.2d 1034, 1035 (1993) and represents that in this case the moving party failed to file a brief in support of its motion and, as such, the court held the motion was without merit. However, in *See In re Marriage of Grounds*, the Court actually held that the district court ***did not*** have to dismiss the motion simply because a brief had not been submitted. *Id*. Regardless, this case discusses a very specific local rule from a Montana state court. *See Id*.).

Respondent was subject to South Carolina's long-arm statute; and that (3) Respondent waived personal jurisdiction by making an appearance in the case, through counsel, and engaging in settlement negotiations. *Id.*

On May 17, 2023, in response to Plaintiff's May 15, 2023 Memorandum, Respondent filed "Defendant's Memorandum in Opposition to Plaintiff's Motion for Entry of Default and in the Alternative Motion for Enlargement of Time Per Rule 6(b)(2), SCRCP" ("Defendant's May 17, 2023 Memorandum"). *See* Defendant's Memorandum in Opposition to Plaintiff's Motion for Entry of Default and in the Alternative Motion for Enlargement of Time Per Rule 6(b)(2), SCRCP (R. pp. 168-173). Contrary to Appellant's representations to this Court, Defendant's May 17, 2023 Memorandum, referred to the issues it had identified as it relates to the documents that had been served upon Respondent by the South Carolina Department of Insurance. *Id.* Specifically, Defendant's May 17, 2023 Memorandum, stated that "the DOI's correspondence is addressed to "Erie Insurance Exchange" and incorrectly lists the case name in the body of the letter as "Ina Shtukar v. Erie Insurance Exchange, et al." *Id.* p. 3 (R. p. 170). Respondent also clarified that "Erie Insurance Group, Inc." was not a legal entity, and unequivocally stated the following:

> To the extent Plaintiff uses "Erie Insurance Group, Inc." and "Erie Insurance Group" and "Erie Insurance Company" interchangeably, they are not the same. This does not satisfy Rule 4(b), SCRCP. For example, the caption on the Summons lists "Erie Insurance Group." The caption of the Complaint lists "Erie Insurance Group, Inc." Paragraph 2 of the Complaint (page 2) lists "Erie Insurance Company." Paragraph 10 of the Complaint lists "Erie Insurance." Paragraph 14 uses the term "Erie." If Plaintiff is suing Erie Insurance Company, then the Complaint must be dismissed for insufficiency of process because the Summons does not name Erie Insurance Company. Rule 12(b)(4), SCRPCP. If Plaintiff is suing "Erie Insurance Group" or "Erie Insurance Group, Inc." then the Complaint must be dismissed for failure to state a claim because the Complaint is void of any reference to those purported entities. Rule 12(b)(6), SCRCP.

Id. Defendant's May 17, 2023 Memorandum further clarified that S.C. Code Ann. § 15-9-285 did not apply to the case at hand, as "the subject policy of insurance at issue was not '[issued] and

[delivered]' in South Carolina," and that said policy was "a North Carolina policy that was issued to Plaintiff while she was a resident of North Carolina." *Id.* p. 3 (R. p. 170). Regardless in the alternative, Defendant's May 17, 2023 Memorandum requested an enlargement of time to respond to the Initial Complaint, per Rule 6(b)(2), SCRCP. *Id.* p. 6 (R. p. 173).

On May 31, 2024, Appellant filed a Motion for Entry of Default and Default Judgment ("Plaintiff's Motion for Default"). (R. pp. 120-122). This motion simply restated, in an abbreviated form, the arguments that were raised in Plaintiff's May 15, 2023 Memorandum. *See* Plaintiff's Motion for Default (R. pp. 120-122). Respondent did not submit an additional memorandum in opposition to Plaintiff's Motion for Default, as Respondent's Defendant's May 17, 2023 Memorandum already included Respondent's arguments in opposition to Plaintiff's request to enter Respondent into default. *See* Defendant's May 17, 2023 Memorandum (R. pp. 168-173).

A hearing on all of the pending motions before the court was originally scheduled to take place on November 14, 2023. On November 10, 2023, although under no obligation to do so, Respondent filed a document styled, "Defendant's Brief [sic] in Support of Its Motion to Dismiss" ("Defendant's Nov. 10, 2023 Memorandum"). *See* Defendant's Nov. 10, 2023 Memorandum (R. pp. 174-178). Defendant's Nov. 13, 2023 Memorandum again clarified that the wrong entity, Erie Insurance Group, Inc., had been named in the Initial Complaint. *Id*. pp. 1-2 (R. pp. 174-175). Moreover, Respondent argued that, even if the proper entity – Erie Insurance Exchange, which is the entity that issued the Subject Policy – had been named, the Court would still lack personal jurisdiction over Respondent because Respondent does not do business in South Carolina, and the Subject Policy was issued in North Carolina. *Id*. pp. 2-3 (R. pp. 175-176).

On November 14, 2023, during the hearing on the pending motions, undersigned counsel and then counsel for Respondent agreed to continue both pending motions. On November 20,

2023, the underlying Court issued an order continuing both pending motions. *See* Form 4 issued November 20, 2023 (R. pp. 1-3). After that hearing, Counsel for both parties discussed the filing of an amended complaint in which Appellant would name the proper entity, Erie Insurance Exchange, as the named defendant, and undersigned counsel agreed to accept service of the Amended Complaint on behalf of Respondent.

On January 5, 2024, Appellant filed her Amended Complaint, which changed the name of the Defendant to "Erie Insurance Exchange, aka Erie Insurance Group, Erie Insurance Company, and Erie Insurance." *See* Amended Complaint (R. pp. 32-67). Although not previously discussed or agreed upon by the parties, the Amended Complaint also added causes of actions against the named defendant for (1) Conversion; (2) Wrongful Appropriation of Identity; and (3) Declaratory Judgment; and converted Appellant's original request for Injunctive Relief under S.C. Code Ann. § 39-5-50 into a request for common law injunction. *Id.* An Acceptance of Service was never filed. Nevertheless, Respondent upheld to its agreement to accept service on behalf of Erie Insurance Exchange, and filed a Motion to Dismiss and an Answer in response to the Amended Complaint on Monday, February 5, 2024.[6] *See* Defendant's Motion to Dismiss For Lack of Personal Jurisdiction and Answer (R. pp. 68-99). Respondent's Motion to Dismiss and Answer included the argument that the Amended Complaint should be dismissed due to the Court's lack of personal jurisdiction over Respondent.[7] *Id.*

[6] In an abundance of caution, on the same day that Respondent filed its Motion to Dismiss and Answer to Appellant's Amended Complaint, Respondent filed a motion for extension of time to respond to the Amended Complaint, which was granted by the Court on February 6, 2024.

[7] Appellant attempts to make the argument that Respondent was late in responding to the Amended Complaint as Respondent did not file a response until February 5, 2024 – which is thirty-one (31) days after the Amended Complaint was filed. However, Appellant fails to explain that thirty (30) days after the Amended Complaint was filed would have been Sunday, February 4, 2024. As such, the next business day was in fact Monday, February 5, 2024. Moreover, as further explained below, the Amended Complaint is the only complaint in this action that could have "commenced" this action pursuant to Rule 3 of the SCRCP, as the Initial Complaint was never served upon Respondent. Further, as a new entity was named as a defendant, Respondent would have had 30 days to respond to the Amended Complaint.

On June 5, 2024, the underlying court held a status conference, where both parties consented to a December trial date despite the pending motions.[8] The motions were later set to be heard on June 24, 2024, but then continued to July 31, 2024, due to Appellant's then attorney's unrelated personal matter.

On June 14, 2024, Appellant filed her first "Supplemental Brief in Support of Motion [sic] for Entry of Default" ("Plaintiff's June 14, 2024 Memorandum"). (R. pp. 179-186). Plaintiff's June 14, 2024 Memorandum simply reiterated the arguments she made in Plaintiff's May 15, 2023 Memorandum. *Id.* On June 24, 2024, Appellant filed a "Notice of Termination" explaining that she had terminated her attorney and was electing to proceed *pro-se*.

On July 31, 2024, a hearing on Appellant's Motion for Entry of Default and Default Judgment and Respondent's Motion to Dismiss were heard before Honorable Judge Daniel D. Hall. (R. pp. 100-118). During this hearing, Respondent pointed out the discrepancy between the named Defendant in the Initial Complaint versus the Sham Complaint and Summons that were actually served upon the South Carolina Department of Insurance. *See* July 31, 2024, Hearing Transcript pp. 5-7 (R. pp. 104-106). In response, Appellant objected to Respondent's argument, and argued that the issue had not been "preserved" as it had not been "properly raised" in Respondent's prior filings, and relied upon Rule 6(d) of the SCRCP in support of her position. *Id.* pp. 7, 14-23 (R. p. 106, lines 14-23).

In support of Appellant's Motion for Entry of Default and Default Judgment, Appellant once again argued that Respondent had not timely responded to the Initial Complaint, as Appellant claimed that, despite her written agreement allowing Respondent through and including April 28,

[8] Appellant misleads this Court in her Final Brief when she claims to have objected to the December trial date at the hearing. At no point during that hearing did Appellant object to the December trial date, in fact a transcript of that hearing would reveal that Plaintiff consented, on the record and in open court, to the December trial date.

2023, to respond to the Initial Complaint, she was unable to grant said extension pursuant to Rule 12 of the SCRCP. *Id.* pp. 9-10 (R. pp. 108-109). Moreover, Appellant argued that the Amended Complaint did not negate Respondent's default, if any. *Id.* p. 11 (R. p. 110).

Respondent argued that Appellant had the burden to show that she had in fact served Respondent, or any entity, with the Initial Complaint in compliance with Rule 3(a). *Id.* p. 12 (R. p. 111). Respondent further argued that, even if Respondent had been served in compliance with SCRCP, the Court would still not have personal jurisdiction over Respondent because S.C. Code § 15-9-285 did not apply to Respondent as the Subject Policy was issued in North Carolina, for a vehicle and insured that was garaged/resided in North Carolina. *Id.* p. 15 (R. p. 114). Moreover, based upon the plain language of the Subject Policy, Respondent argued that the Subject Policy extinguished as soon as Appellant had secured a South Carolina auto policy of insurance. *Id*. Finally, Respondent noted that, due to Appellant's failure to commence the action in accordance with Rule 3(a) of the SCRCP, Appellant's claims were now time barred by the applicable statutes of limitations. *Id.* p. 16 (R. p. 115).

On August 1, 2024, in accordance with the Court's direction, Respondent filed a copy of the Sham Complaint and Summons that it received from the South Carolina Department of Insurance. *Id*. p. 18 (R. p. 117).

On July 31, 2024 and August 1, 2024, although not requested, Appellant filed additional briefs in support of Appellant's Motion for Entry of Default and Default Judgment. Of note, in Appellant's August 1, 2024, Brief, Appellant conceded that the documents that were served upon Respondent, in an effort to commence the action pursuant to Rule 3 of the SCRCP, were the Sham Complaint and Affidavit, and not the Initial Complaint or Summons. *See* Plaintiff's August 1, 2024, Second Supplemental Brief in Support of Plaintiff's Motion for Entry of Default (R. pp.

195-201). Yet, both supplemental briefs failed to address the Appellant's failure to commence the action pursuant to Rule 3(a), SCRCP.

In an effort to clarify any confusion created by Appellant in her supplemental briefs, Respondent filed its own Supplemental Brief on August 2, 2024 - Defendant's Supplemental Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiffs [sic] Motion for Entry of Default" ("Defendant's August 2, 2024 Memorandum"). In Defendant's August 2, 2024 Memorandum, Respondent reiterated the four arguments it made at the July 31 hearing that: (1) the pending motions before the trial court were moot in light of the Amended Complaint; (2) Appellant failed to properly commence the action against Respondent in accordance with Rule 3(a) of the SCRCP; (3) because Appellant had failed to commence the action, the statute of limitations for her claims had now passed, barring her claims; and (4) that Appellant's request for a default and/or resulting default judgment should be denied or in the alternative set aside for good cause shown in light of Appellant's agreement of extension of time through and including April 28, 2024, for Respondent to respond to the Initial Complaint. *See* Defendant's August 2, 2024 Memorandum (R. pp. 202-210).

The next day, Appellant filed a third supplemental brief - "Plaintiff's Reply Brief to Defendant's Supplemental Memorandum" ("Plaintiff's August 3, 2024 Memorandum"). In Plaintiff's August 3, 2024 Memorandum, Appellant attempted to argue that service of the same unfiled Sham Complaint and Summons via certified mail on Respondent's Charlotte branch office in some way cured her failure to commence the action under Rule 3(a). *See* Plaintiff's August 3, 2024 Memorandum, pp. 1-3 (R. pp. 211-213).

On August 6, 2024, the trial court issued a Form 4 Order, granting Defendant's Motion to Dismiss and Denying Plaintiff's Motion for Default Judgment and Default Judgment. *See* the trial

court's August 6, 2024, Form Order (R. pp. 6-8). This order further instructed undersigned counsel to prepare and file the final formal written order. *Id.*

Later that afternoon, Appellant filed her initial Notice of Appeal in this matter, removing jurisdiction from the Trial Court pursuant to Rule 205, SCACR. *See* Notice of Appeal, filed August 6, 2024. On August 13, 2024, Appellant then filed a Motion for New Trial pursuant to Rule 59 of the SCRCP in the trial court. *See* Motion for New Trial (R. pp. 126-128). On August 14, 2024, Respondent submitted its proposed order to the trial court.[9]

On August 16, 2024, the Trial Court issued its "Order Granting Defendant's Motion to Dismiss and Denying Plaintiff's Motion for Entry of Default" (the "Final Order"). (R. pp. 9-15). Specifically, the Trial Court held that Appellant's Motion for Entry of Default and Default Judgment was denied due to (1) Appellant's express written agreement to the extension of time for Respondent to answer her Initial Complaint; and (2) because Appellant failed to commence her action pursuant to Rule 3(a) of the SCRCP when she failed to serve a copy of the Initial Complaint and Summons upon Respondent. *See* Final Order, pp. 3-6 (R. pp. 11-14). Instead, the Trial Court held that Appellant served "documents in the form of a summons and complaint, that were never filed with the clerk." *Id*. p. 3 (R. p. 11). The Trial Court further held that because Appellant had failed to commence her action in compliance with Rule 3(a) of the SCRCP, the statutes of limitation for all of Appellant's claims now barred said claims and, therefore, granted Respondent's Motion to Dismiss. *Id.* Therefore, Respondent's Motion to Dismiss pursuant to Rule 12(b)(2) and 12(b)(6) was granted. *Id*.

[9] Appellant has asserted that a copy of this Proposed Order was never served upon her. *See* Appellant's Final Brief p. 7 (claiming that, although the Proposed Order had been e-filed, Appellant was not able to view same). However, as evidence by the NEF that was issued by the Court's electronic filing system, this is simply not true. *See* NEF dated August 14, 2024 (R. p. 360-361). Moreover, until approved by the Clerk of Court, all attorneys in this State have access to all pleadings, including proposed orders, that have been filed or submitted by any party through the AIS system.

Two (2) days after the trial court issued the Final Order, and twelve (12) days after Appellant removed jurisdiction from the trial court by filing her notice of Appeal, Appellant filed a second null motion pursuant to Rule 59 of the SCRCP ("Rule 59(e) Motion"). This time Appellant's motion requested the trial court to alter or amend the ruling issued in the Final Order. *See* Rule 59(e) Motion (R. pp. 129-157). On August 29, 2024, the trial court denied Appellant's Rule 59(e) motion. *See* the trial court's August 29, 2024, Order (R. pp. 16-18). On September 20, 2024, Appellant amended her appeal to include the trial court's Order on Appellant's Rule 59(e) Motion. *See* Appellant's Amended Notice of Appeal.

Both the Trial Court's ruling in the Final Order and on Appellant's Rule 59(e) motion are now before this Court.

ARGUMENT

I. APPELLANT FAILED TO COMMENCE THE UNDERLYING ACTION PURSUANT TO RULE 3(a) OF THE SCRCP.

Rule 3(a) of the SCRCP specifically states the following:

> (a) **Commencement of Civil Action.** 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.

Rule 3(a) of the SCRCP (emphasis original). In *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, this Court held that a "a civil action is commenced by filing ***and*** service of a summons and complaint" and not simply the filing date. 422 S.C. 388, 397, 811 S.E.2d 807, 811 (Ct. App. 2017) (emphasis added) (*citing to First Palmetto State Bank & Trust Co. v. Boyles*, 302 S.C. 136, 139, 394 S.E.2d 313, 315 (1990) holding that because Rule 3(a), SCRCP, stated a civil action is *commenced* by the filing *and* service of a summons and complaint, the action was

commenced on the date of service, not the earlier filing date)(emphasis added)). As such, if a lawsuit is filed but not properly served upon the named defendant, then the action has not yet commenced.

Here, Appellant named "Erie Insurance Group, Inc." as the single named defendant in her Initial Complaint. The Summons for the Initial Complaint was then issued, and named "Erie Insurance Group" as the sole defendant. However, neither the Initial Complaint or Summons were ever served upon Respondent. Instead, on or around February 10, 2023, Appellant served a copy of the Sham Complaint and Summons upon the South Carolina Department of Insurance, which named "Erie Insurance Exchange" as the sole defendant in the action. *See* Appellant's Affidavit of Service, Ex. A. (R. p. 217); *see also* Defendant's Exhibit filed on August 1, 2024 (R. pp. 260-276). A copy of the Sham Complaint and Summons were then mailed by the South Carolina Department of Insurance via certified mail to Erie Insurance Exchange on or around February 22, 2023. *Id*. Appellant also served a copy of the Sham Complaint and Summons upon Respondent via certified mail on or around February 28, 2023. *Id*. To date, Respondent has not been served with a true and accurate copy of the Initial Complaint and Summons that were filed with the court on or around February 7, 2023, by Appellant. Importantly, Appellant has conceded that true and accurate copy of the filed-stamped copy of the Initial Complaint and Summons were never served upon Respondent, but claims that this discrepancy is simply a "misnomer" of no relevance. *See* Appellant's Final Brief p. 19.

However, Rule 3(a) is clear – a copy of the actual summons and complaint must be filed *and* served upon a defendant to commence an action. The rule does not allow for an altered copy of a filed complaint and summons to be served upon a party. If it did, Rule 3 would ultimately be rendered futile. Appellant appears to equate improperly naming a party as a defendant in a

complaint but serving a true, filed-stamped complaint and summons with improperly naming a party as a defendant and serving an un-filed, altered copy of the complaint and summons. The two are not the same, and the later is what is at issue here.

Appellant further argues that the trial court erred in considering any arguments regarding Appellant's failure to properly commence the action in accordance with Rule 3(a), because Appellant claims that said arguments were waived by Respondent as Respondent did not outline its positon within any of its written Motions to Dismiss or briefs in support of same, which Respondent denies. Nevertheless, even if this was the case, the trial court, at all times relevant, had the ability, at its own initiative, to dismiss the action for Appellant's failure to serve a true and accurate copy of the Initial Complaint and Summons upon Respondent. *See* Rule 5(d) of the SCRCP (stating, in part, that "[u]pon failure to serve the summons and complaint, the action may dismissed by the court on the court's own initiative or upon application of any party.").

II. ASSUMING, ARGUENDO, THAT THE UNDERLYING ACTION WAS COMMENCED IN ACCORDANCE WITH RULE 3(a) OF THE SCRCP, RESPONDENT TIMELY FILED A RESPONSE TO APPELLANT'S INITIAL COMPLAINT, AND THE MERITS BEHIND THE ARGUMENTS CONTAINED WITHIN RESPONDENT'S MOTION TO DISMISS CALL FOR DISMISSAL OF THE UNDERLYING ACTION.

A. RESPONDENT TIMELY FILED A RESPONSE TO APPELLANT'S INITIAL COMPLAINT.

Appellant argues that Respondent was served with a copy of the Initial Complaint and Summons on February 10, 2024, when the South Carolina Department of Insurance was served with a copy of the Sham Complaint and Affidavit. Rule 4 of the SCRCP specifically states, in part, the following:

> **(a) Summons: Issuance.** The summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.
> **(b) Summons: Form.** The summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file

> number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default be rendered against him for the relief demanded in the complaint.

See Rule 4 of the SCRCP. (emphasis original).

As discussed in detail above, the Sham Complaint and Summons that were served upon Respondent through the South Carolina Department of Insurance did not include the *original* summons, nor he proper *names of the parties*. As such, service of the Sham Complaint and Summons upon the South Carolina Department of Insurance on February 10, 2023, was invalid, and would not commence the time allowed under Rule 12 of the SCRCP to respond to the Initial Complaint.

Moreover, the South Carolina Department of Insurance lacked authority to accept service on behalf of Respondent pursuant to S.C. Code Ann. § 15-9-285(a) , as Respondent does not write insurance policies in South Carolina, and did not issue the Subject Policy in South Carolina or to a South Carolina insured.

Appellant further argues that, even if service was not obtained through the South Carolina Department of Insurance, Appellant served a copy of the Sham Complaint and Summons via certified mail on or around February 27, 2023. For the same reasons that are outlined above, service of the Sham Complaint and Summons, even through certified mail, would still not qualify as proper service pursuant to Rule 4 of the SCRCP. Nevertheless, even assuming, arguendo, that a copy of the Initial Complaint and Summons were actually the documents that were served upon Respondent via certified mail on February 27, 2023, which is denied, Appellant's argument would still not hold water. Specifically, Appellant's argument for her Motion for Entry of Default and Default Judgment is premised upon the fact that Rule 12(a) of the SCRCP rendered Appellant's

written consent of an extension of time through and including April 28, 2023 moot, as the Rule only allowed a sixty (60) day extension of time. Because the South Carolina Department of Insurance lacked authority to accept service, the only service at issue, if valid – which is denied, would be service obtained on February 27, 2023, via certified mail.[10] Therefore, even if the Court were to give credence to Appellant's argument that she was not able to grant more than a thirty (30) day extension of time, for a total of sixty (60) days after being served, Respondent's Motion to Dismiss would have been timely, as it was filed on April 28, 2023 (i.e. 60 days after February 27, 2023).

Appellant also argues that Respondent's Motion to Dismiss, without a brief in support of same, in response to the Initial Complaint violated Rule 12(a) of the SCRCP and, therefore, warranted default against Respondent. However, Appellant's argument again misses the mark. Respondent's Motion to Dismiss was filed on April 28, 2023, and stated with particularity the grounds for said motion (i.e. lack of personal jurisdiction and failure to state a claim upon which relief can be granted). Moreover, Respondent's Motion to Dismiss clearly requested the trial court to enter an "order dismissing Plaintiff's complaint with prejudice" – the relief or order sought.

Ultimately, Respondent's Motion to Dismiss complied with Rule 7 of the SCRCP and was filed timely, especially in light of the fact that Respondent was never served with a copy of the Initial Complaint and Summons. As such, the trial court's denial of Appellant's Motion for Entry of Default and Default Judgment was proper, and should be affirmed by this Court.

B. THE TRIAL COURT LACKED PERSONAL JURISDICTION OVER RESPONDENT AND, THEREFORE, THE INITIAL COMPLAINT WAS PROPERLY DISMISSED PURSUANT TO RULE 12(B)(6) OF THE SCRCP.

[10] Respondent maintains and reiterates that service of the Sham Complaint and Summons through both the South Carolina Department of Insurance and via certified mail were improper, and did not comply with Rule 4 of the SCRCP.

Plaintiff's Initial Complaint misidentifies the proper legal entity as the named defendant, and instead names "Erie Insurance Group, Inc." as the sole Defendant. Erie Insurance Group, Inc. simply does not exist. The entity that Appellant should have named, and ultimately did name in the Amended Complaint, was Erie Insurance Exchange, as Erie Insurance Exchange is the legal entity that issued the Subject Policy which is at core of Appellant's causes of actions against Respondent. Regardless, to establish personal jurisdiction over an out-of-state defendant, a plaintiff must demonstrate that the defendant has minimum contacts with the forum state, such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice, as articulated in *Cribb v. Spaholt*, 382 S.C. 475, 484 (2009).

Respondent does not conduct business in South Carolina, and does not market its services in South Carolina. Additionally, courts in this jurisdiction have found, time and time again, that an "individual's contract with an out-of-state party cannot alone establish sufficient minimum contact's in the other party's home forum." *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 270 (2013).

It is important to note that the Supreme Court of North Carolina has held that the question of whether a foreign insurer issued or delivered a policy to a South Carolina resident, and was otherwise doing business in South Carolina, to justify service of process on State Insurance Commissioner under the Uniform Unauthorized Insurers Act "was a question of fact to be determined by court of common pleas, whose finding would not be reviewed by [the] Supreme Court unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law." *Sanders v. Columbian Protective Ass'n*, 208 S.C. 152, 154, 37 S.E.2d 533, 533 (1946).

To date, Appellant has not been able to identify any minimum contact, other than her complaints stemming from a policy of insurance that was issued in North Carolina to a North

Carolina insured. *See* Exhibit 1 to Respondent's Brief in Support of its Motion to Dismiss (R. pp. 229-233). In fact, the moment that Appellant notified Respondent that she no longer resided in the state of North Carolina and had procured other insurance, Appellant was removed as a named insured under the Subject Policy, effective September 6, 2020. *See* Complaint at ¶¶ 17-18 (R. p. 22, lines 17-18-p. 23, line 18). Moreover, the record evidence shows that Respondent did not collect or receive a premium payment from the Appellant after she moved to South Carolina in relation to the Subject Policy. In fact, the allegations in the Amended Complaint specifically state the opposite – that the premium issued after September 9, 2020, was sent to named insured on the policy – which was Appellant's ex-boyfriend at that time – which went unpaid. *See* Exhibit 1 to Defendant's Nov. 10, 2023 Memorandum in Support of Defendant's Motion to Dismiss; (R. pp. 229-233); *see also* Amended Complaint at ¶43 (R. p. 42, line 43). As such, at no point did Respondent have any meaningful connection with South Carolina that would subject Respondent to the court's personal jurisdiction.

Therefore, the trial court did not and does not have personal jurisdiction over Respondent, and Respondent's Motion to Dismiss was properly granted.

III. APPELLANT'S FAILURE TO SERVE A COPY OF THE TRUE INITIAL COMPLAINT AND SUMMONS UPON RESPONDENT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS NOR WITHIN 120 DAYS AFTER FILING THE INITIAL COMPLAINT, PURSUANT TO RULE 3(a) OF THE SCRCP, BARRS APPELLANT'S CLAIMS AGAINST RESPONDENT.

Appellant's Amended Complaint was filed on January 5, 2024. The causes of actions against Respondent in Appellant's Amended Complaint, include a cause of action for the following (1) bad faith; (2) unfair and deceptive trade practices; (3) conversion; (4) wrongful appropriation of identity; and (5) declaratory judgment. This Court has previously held that the statute of limitations for a bad faith claim is three years pursuant to S.C. Code Ann. § 15-3-530(8), and

begins running from the date Plaintiff reasonably ought to have discovered the claim. *See Martin v. Companion Healthcare Corp.*, 593 S.E.2d 624, 627 (S.C. Ct. App. 2004). Similarly, the statute of limitations for a unfair and deceptive trade practices claim is three years pursuant to S.C. Code Ann. § 39-5-150, and begins running from the date the unlawful conduct is discovered.

The statute of limitations for a conversion claim is also three years pursuant to 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. *See* S.C. Code Ann. §§ 15-3-530(4) and 15-3-530(5); S.C. Code Ann. § 15-3-20 (providing the statute of limitations starts to run when the "cause of action shall has accrued"); *Brown v. Sandwood Dev. Corp.*, 277 S.C. 581, 583, 291 S.E.2d 375, 376 (1982) (adopting the "discovery rule" to determine when a cause of action accrues); and *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) ("According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered," and "[t]he statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.").

The statute of limitations for a misappropriation of identity is three years pursuant to 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 Appellant. Finally, the statute of limitations for a declaratory judgment action in South Carolina is determined by the underlying causes of action in the complaint, which here would make it three years.

The statute of limitations for all of Appellant's causes of actions against Respondent would have began running on September 30, 2020, which is the date that Appellant allegedly notified Respondent that her ex-boyfriend had "procured coverage through fraud" as her ex-boyfriend had

allegedly been added to Appellant's insurance policy without her knowledge or consent. *See* Amended Complaint at ¶¶ 50-54 (R. pp. 44, lines 50-53-p. 45, lines 53-54). As such, the statute of limitations for Appellant's claims against Respondent would have ran on September 30, 2023.

As argued in detail above, Appellant's Initial Complaint was never served upon Respondent. Based upon the record, the first date that Appellant was served, was on January 5, 2024, when Appellant filed her Amended Complaint, which Appellant agreed to accept service of. This Court analyzed a nearly identical statute of limitations issue in the *Estate of Mims*. *See* 422 S.C. 388, 811 S.E.2d 807 (Ct. App. 2017). In the *Estate of Mims*, this Court affirmed the trial court's order dismissing an action, and held that the action had not commenced pursuant to Rule 3(a) of the SCRCP until the complaint had been filed *and* the defendant had been served with a copy of said complaint. *Id*. at 811. This Court noted that, although the initial complaint had been filed within the prescribed statute of limitations, it had not been properly served upon the defendant. *See generally Id*. In fact, the defendant had not been served with a copy of a filed-stamped complaint, until the time that the Amended Complaint was filed. *Id*. As such, the trial court held, and this Court affirmed, that the action had not commenced until the time that the Amended Complaint had been filed *and* served, which was a date past the applicable statute of limitations. *Id*. at 811-812. Therefore, in reliance upon the clear language contained within Rules 3 and 15 of the SCRCP, the court held that the plaintiff's claims were time barred as the relation-back doctrine of Rule 15(c) of the SCRCP could not apply because the original complaint had never been served and, therefore, the action had not yet commenced. *Id*.

Since the Initial Complaint and Summons were never served upon Respondent in accordance with the SCRCP, the date the action "commenced" pursuant to Rule 3(a) was the date that the Amended Complaint was filed and Respondent accepted service of same, through

undersigned counsel, on January 5, 2024. As such, Appellant's claims against Respondent are time-barred, and were properly dismissed by the trial court. Appellant tries to argue that Respondent waived its right to make this argument, as it was not explicitly listed within the motions it submitted to the trial court. However, pursuant to Rule 12(b) of the SCRCP, the defense of statute of limitations, is not waived if not specifically identified within a defendant's first pleading. See Rule 12 of the SCRCP. Therefore, Respondent's arguments still stand and Appellant's causes of action against Respondent are barred by the applicable statute of limitations.

IV. APPELLANT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) of the SCRCP WAS PROPERLY DENIED BY THE TRIAL COURT.

Filing a Rule 59(e) motion should not be filed, unless a plaintiff has a legitimate argument that the trial court erred in finding the complaint deficient. *See Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 181, 826 S.E.2d 585, 588 (2019) (*citing to* Rule 11(a), SCRCP ("The . . . signature of an attorney . . . constitutes a certificate by him that . . . there is good ground to support [the pleading] . . . .")). Rule 59(e) of the SCRCP follows, in large part, Rule 59(e) of the Federal Rules of Civil Procedure. As such, although involving Rule 59(e) of the Federal Rules of Civil Procedure, this Court should look to the District Court's analysis in *Gibson v. United States* as to when a Rule 59(e) motion should be filed and considered.[11] 2024 U.S. Dist. LEXIS 63800, 2024 WL 1521436. In *Gibson*, the District Court stated as follows:

> A Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008) (internal quotation marks omitted). Further, "mere disagreement [with a district court's ruling] does not support a Rule 59(e) motion." *Hutchinson [v. Staton]*, 994 F.2d at 1082. "In general[,] reconsideration of a judgment after its entry is an extraordinary remedy which should be used

[11] Pursuant to *Maybank v. BB&T Corp*., when the language of a South Carolina Rule of Civil Procedure is substantially similar to its federal counterpart the interpreting court may "look for guidance [in] cases interpreting the federal rules." 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (*citing Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (internal quotation marks omitted).

Id. at *7. In essence, a Rule 59(e) motion briefly suspends finality to allow the trial court to correct any errors in the judgment, before the matter is ripe for appeal. *See Id.* at *8. A Rule 59(e) motion is not an opportunity for a litigant to make new arguments that he or she has not already made.

Here, Appellant's Rule 59(e) motion, for the most part, reargued the issues before the Court during the hearing on Appellant's Motion for Entry of Default and Default Entry and Respondent's Motion to Dismiss. As such, Respondent refers this Court to the detailed arguments that are outlined above.

CONCLUSION

Based upon the foregoing, the trial court's order denying Appellant's Motion for Entry of Default and Default Judgment, and granting Respondent's Motion to Dismiss should be affirmed in its entirety. Similarly, the trial court's order denying Appellant's Motion to Alter or Amend Judgment pursuant to Rule 59(e) of the SCRCP should also be affirmed.

MARTINEAU KING PLLC

Natasha M. Durkee, Esq. (S.C. Bar No.: 105581)
Elizabeth A. Martineau, Esq. (S.C. Bar No.: 78732)
P.O. Box 12151
Rock Hill, SC 29731
Telephone: (704) 980-0721
Facsimile: (704) 247-8582
ndurkee@martineauking.com
emartineau@martineauking.com
Attorneys for Respondent

Rock Hill, South Carolina
January 17, 2025

RECEIVED
Jan 17 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Trial Court Case No.: 23-CP-4600392
Appellate Case No. 2024-001311

Ina Shtukar, Appellant,

v.

Erie Insurance Group, Respondent.

CERTIFICATE OF COMPLIANCE AND PROOF OF SERVICE

I hereby certify that this Final Brief of Respondent complies with Rule 211 of the South Carolina Appellate Court Rules. Moreover, I hereby certify that it was served on counsel of record by electronic mail, as agreed upon by the parties, to: ina@blackandwhiteimmigrationlaw.org.

MARTINEAU KING PLLC

Natasha M. Durkee, Esq. (S.C. Bar No.: 105581)
Elizabeth A. Martineau, Esq. (S.C. Bar No.: 78732)
P.O. Box 12151
Rock Hill, SC 29731
Telephone: (704) 980-0721
ndurkee@martineauking.com
emartineau@martineauking.com
Attorneys for Respondent

Rock Hill, South Carolina
January 17, 2025