

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

Rommel McCants,

Plaintiff,

vs.

Allstate Insurance Company, Nettie Gass,  
and Unknown Managers, Administrators  
and Adjusters of Defendant Allstate  
Insurance Company (Collectively referred  
to as Defendants Doe),

Defendant.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

C/A#: 2023CP3801227

**DEFENDANTS' AMENDED RULE 59(e)  
MOTION TO RECONSIDER ORDER DATED  
MARCH 4, 2025**

**RECEIVED**

**Mar 13 2025**

**SC Court of Appeals**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Defendants will move before Judge Maite Murphy for an Order pursuant to Rule 59(e) SCRCPC, altering the Court's order dated March 4, 2025. The sole basis for the Court's order denying Defendants' Motion for Summary Judgment on the Barratry cause of action is stated as follows: "Defendant's alleged that the Cause of Action of Barratry was no longer valid. Upon review of the record, the relevant case law, and viewing the facts alleged in the light most favorable to the nonmoving party, the Court finds Barratry is a valid Cause of Action and respectfully DENIES this motion."

Grounds for the Motion to reconsider are as follows:

(1) Prior to the Court's March 4, 2025 Order, Plaintiff filed a Notice of Appeal to the South Carolina Court of Appeals which divested this Court of jurisdiction to take any further action regarding this case that would affect the issues on appeal. *See, Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 58, 906 S.E.2d 94, 100 (Ct. App. 2024) ("The notice of appeal divests the circuit court of jurisdiction over the matter on appeal, but the circuit court retains the power to proceed with

matters not affected by the appeal. S.C. App. Ct. R. 205. The circuit court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal under S.C. App. Ct. R. 205 and 241(a).” The March 4, 2025 Order does affect Judge McGee’s finding, which is currently on appeal, that the only causes of action recognized in South Carolina against an insurance company are breach of contract and bad faith. South Carolina does not recognize a negligence or barratry cause of action against an insurance company or an insurance company’s employees.

(2) As an alternative ground, the Court failed to rule on the issues raised in the Defendants’ Motion for Summary Judgment on the Barratry cause of action. Defendants’ summary judgment motion states that the Defendants move “for an Order pursuant to Rule 56 SCRPC granting the defendants summary judgment on the grounds that the Plaintiff fails to state or prove facts sufficient to constitute a cause of action for Barratry.”

While the Defendants did raise the question of whether Barratry remains a viable cause of action in South Carolina, the Court’s Order does not address the other grounds upon which Defendants moved for summary judgment: that the Complaint fails to properly plead a cause of action for Barratry and the Plaintiff has failed to prove facts sufficient to overcome a summary judgment motion. The Defendants’ orally and in their Memorandum in Support of Summary Judgment argued these grounds for summary judgment. Therefore, Defendants move that the Court reconsider its March 4, 2025 Order and address all the grounds raised by Defendants. A party must file motion to alter or amend judgment when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004).

Rather than restate their arguments in this motion, Defendants crave reference to their Memorandum in Support of Summary Judgment and supporting exhibits attached to their previous Rule 59(e) Motion.

**GALLIVAN, WHITE & BOYD, P.A.**

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