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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-001045

Piedmont Roofing Service, LLC, Appellant,

v.

Auto-Owners Insurance Company, Respondent.

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE ISSUES PRESENTED

1. Whether the trial court erred in denying Appellant's Rule 54(b) motion to revise an interlocutory order, where the original order adjudicated fewer than all claims and contained no express certification of finality.
2. Whether the trial court erred in holding that assignments of bad faith insurance claims are categorically invalid under South Carolina law.

STATEMENT OF THE CASE

This is an appeal from the trial court's order granting Defendant's Motion for Partial Summary Judgment on Plaintiff's bad faith cause of action, which was subsequently certified as final pursuant to Rule 54(b), S.C.R.Civ.P. This Court has jurisdiction pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules.

On October 13, 2023, the Honorable Judge Ryan Griffin granted Defendant's Motion for Partial Summary Judgment, ruling that bad faith insurance claims are not assignable under South Carolina law. On August 1, 2024, Appellant filed a Rule 54(b) motion seeking revision of

the interlocutory order or, alternatively, certification of the order as final for purposes of appeal. On May 1, 2025, the trial court denied the motion to revise but certified the order as final pursuant to Rule 54(b). Appellant timely filed its Notice of Appeal.

STATEMENT OF FACTS

Appellant Piedmont Roofing Services, LLC performed roofing repair services for a homeowner insured by Respondent Auto-Owners Insurance Company. [R. at 3, *et seq.*] As part of its service contract with the homeowner, Appellant received an assignment of the homeowner's claims against Respondent, including any bad faith claims, to ensure complete and fair compensation for the repair work performed. [R. at 3].

Respondent did not fully cover the costs of the necessary repairs performed by Appellant. [R. at 3, *et seq.*] Appellant brought this action pursuant to the assignment to recover the unpaid amounts and seek damages for Respondent's bad faith refusal to provide adequate coverage. [R. at 2, *et seq.*].

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo, applying the same standard as the trial court under Rule 56(c), S.C.R.Civ.P. *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 522, 787 S.E.2d 916, 918 (2016). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Rule 56(c), S.C.R.Civ.P.* This Court examines all evidence, ambiguities, and reasonable inferences in the light most favorable to the nonmoving party. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 414, 633 S.E.2d 136, 138 (2006).

Questions of law, including the interpretation of statutes and rules, are reviewed de novo without deference to the trial court's conclusions. *S.C. Dep't of Soc. Servs. v. Smith*, 423 S.C. 60, 65, 814 S.E.2d 418, 421 (2018). The assignability of tort claims under South Carolina law presents a pure question of law subject to de novo review.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S RULE 54(b) MOTION TO REVISE AN INTERLOCUTORY ORDER

The trial court's denial of Appellant's Rule 54(b) motion was based on a misapplication of procedural rules. As the court's subsequent order granting a stay pending appeal confirms, the original October 13, 2023 order "granting partial summary judgment on Plaintiff's bad faith cause of action" was "made final pursuant to Rule 54(b)" only upon the court's later certification. [R. at 55.] This timeline demonstrates that the original order was interlocutory and subject to revision under Rule 54(b).

A. The Original Order Was Interlocutory and Subject to Revision Under Rule 54(b)

Rule 54(b) expressly provides that "any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." S.C. R. Civ. P. 54(b) (emphasis added).

The October 13, 2023 order granting partial summary judgment on the bad faith cause of action adjudicated fewer than all claims and

contained no express determination "that there is no just reason for delay" or "express direction for the entry of judgment." S.C. R. Civ. P. 54(b). [R. at 47, *et seq.*] Under the plain language of Rule 54(b), it therefore remained "subject to revision at any time" until final judgment on all claims. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (Ct. App. 2013).

B. Rule 59(e) Was Inapplicable to This Interlocutory Order

The trial court concluded that "the proper procedural avenue for the Plaintiff to seek reconsideration of the October 13, 2023 Order would have been to file a motion under Rule 59(e) SCRPC in a timely [manner]." [R. at 47, *et seq.*] This conclusion misapplies the procedural rules.

Rule 59(e) applies to final judgments, not interlocutory orders. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004); *Camp v. Camp*, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010) (Rule 59(e) motions allow trial courts "to alter or amend a final judgment"). By contrast, "Rule 54(b) provides a mechanism for parties to seek changes to interlocutory orders." *Barron v. Labor Finders of S.C.*, 384 S.C. 21, 25, 681 S.E.2d 796, 798 (Ct. App. 2009). As the Court of Appeals has

recognized, "interlocutory orders are not binding as the law of the case and may be reconsidered by the trial judge at any time prior to final judgment." *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989).

C. The Court's Later Certification Confirms the Original Order's Interlocutory Nature

The trial court's subsequent actions confirm that Appellant's Rule 54(b) motion was procedurally proper. When granting Appellant's motion for stay pending appeal, the court specifically noted that the appeal was "from this Court's Order granting partial summary judgment on Plaintiff's bad faith cause of action, which was made final pursuant to Rule 54(b)." [R. at 55.] This language acknowledges that finality was achieved only through Rule 54(b) certification, not through the original order itself.

Had the original order been final when entered, no Rule 54(b) certification would have been necessary. The court's certification process confirms that the original order was interlocutory and that Appellant was

entitled to seek revision under Rule 54(b) before any such certification occurred.

II. THE TRIAL COURT ERRED IN HOLDING THAT ASSIGNMENTS OF BAD FAITH CLAIMS ARE CATEGORICALLY INVALID UNDER SOUTH CAROLINA LAW

A. The South Carolina Supreme Court Has Not Categorically Barred All Bad Faith Claim Assignments

The trial court's ruling rested on a fundamental misreading of *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 434 S.C. 18 (2021). Rather than announcing a categorical prohibition against all bad faith assignments, the Supreme Court indicated that some assignments may be valid while others are not, and explicitly reserved the assignability question for future cases.

In *Reeves*, the Court stated: "This Court has never recognized the validity of any assignment of a bad faith claim." 434 S.C. 18, 24, 862 S.E.2d 248, 255 (2021). The word 'any' in that sentence is doing the heavy lifting for purposes of this appeal. Standing alone, this statement could

support either interpretation: (1) that no assignments are ever valid, or (2) that some, but not all, assignments are valid.

The surrounding context decisively supports the second interpretation. In footnote 8, the Court explained that certain cases "illustrate[] reasons it may not be appropriate to permit assignment of bad faith claims **under all circumstances.**" *Id.* at 24 n.8 (emphasis added). The phrase "under all circumstances" plainly indicates that assignments might be appropriate under *some* circumstances. *Id.* The Court further cited scholarship arguing that "bad faith claims should be assignable," which would be entirely unnecessary if the Court had already determined that no such assignments could ever be valid. *Id.*

Most importantly, the Court explicitly declined to decide the assignability question, stating: "we cannot be sure the claim is assignable" and "we are hesitant to answer the question posed by the parties in this case." *Id.* at 32, 862 S.E.2d at 256. This careful reservation of the issue demonstrates that *Reeves* left the door open for future cases presenting different factual circumstances.

B. The Supreme Court Distinguished Between Municipal and Individual Assignors

The *Reeves* Court explicitly distinguished the case before it from *Schneider v. Allstate Insurance Co.*, noting: "The assignment in *Schneider*, however, appears considerably different from the assignment in this case. The party making the assignment was an individual, not a town." 434 S.C. at 24, 862 S.E.2d at 252 (citing *Schneider v. Allstate Insurance Co.*, 487 F. Supp. 239 (D.S.C. 1980)) (emphasis added).

This distinction directly applies to the present case, where the assignment was made by an individual homeowner, not a municipal entity. The Supreme Court's specific emphasis on this distinction strongly suggests that assignments from individuals might be treated differently than those from municipalities. The Court further noted that the *Schneider* court "relied exclusively on the applicability of the South Carolina survival statute" to find the bad faith claim assignable, and that survival statute "applies to 'a deceased person and . . . an insolvent person or a defunct or insolvent corporation'" but not to towns. *Id.* at 32-33, 862 S.E.2d at 256.

The trial court failed to consider this critical factual distinction when interpreting *Reeves* as imposing a categorical ban on all assignments.

C. The District Court Misinterpretation in *Jacobs* and Its Cascading Effect

The misreading began in earnest with *Jacobs v. Zurich Am. Ins. Co.*, where the federal district court stated flatly: "Under South Carolina law, an insured is precluded from assigning its right to pursue a bad faith claim." 2022 U.S. Dist. LEXIS 207933, at *8 (D.S.C. Nov. 15, 2022). The *Jacobs* court reached this conclusion by citing only the isolated "never recognized" language from *Reeves*, completely ignoring the surrounding context that qualified and limited that statement.

Critically, the *Jacobs* court noted that the plaintiff "fails to respond to this argument." *Id.* The district court therefore received no contrary briefing on this issue—no analysis of footnote 8, no discussion of the "under all circumstances" language, and no recognition that *Reeves* had reserved the assignability question. The court's summary disposition of

this complex issue without adversarial testing represents precisely the type of error that occurs when legal precedent is read in isolation.

The trial court's error demonstrates how *Jacobs'* flawed interpretation has acquired unwarranted precedential weight. By treating *Jacobs* as definitively resolving South Carolina law, the trial court perpetuated the original misreading without engaging with the Supreme Court's actual reasoning in *Reeves*.

D. South Carolina Law Has Always Distinguished Between Personal and Economic Torts for Assignability Purposes

South Carolina courts have recognized a fundamental distinction between personal injury torts and economic torts when determining assignability for over 140 years. This longstanding doctrine supports the assignability of bad faith claims, which are fundamentally economic in nature.

1. The Foundational Principle from *Miller v. Newell*

In *Miller v. Newell*, 20 S.C. 123 (1883), the South Carolina Supreme Court established that torts fall into two categories: "(1) those that injure

the estate, real or personal, of a party, which are assignable, and (2) those that cause strictly personal injuries, which are not assignable." The court emphasized that "torts affecting the estate may be assigned because they survive to the administrator, while personal torts, which do not survive, cannot be assigned." *Id.*

This distinction was not merely theoretical. The *Miller* court explained that the assignability of tort claims depends on whether they affect property interests or cause purely personal harm. Economic injuries to one's estate have consistently been held assignable, while injuries to reputation, dignity, or character have not.

2. Consistent Application Through Subsequent Decisions

South Carolina courts have consistently applied the *Miller* principle for more than a century. In *Ex parte Hiers*, 67 S.C. 108, 45 S.E. 146 (1903), the court reiterated that "torts affecting property or the estate are assignable, while personal torts are not," and emphasized that "the assignability of a cause of action is tied to whether it survives under the law, as survival is a criterion for assignability."

The principle was further applied in *Robinson v. Saxon Mills*, 124 S.C. 415, 117 S.E. 424 (1923), where the court held that "a right of action for a tort affecting property, whether real or personal, is assignable." Similarly, in *Doremus v. Atlantic Coast Line R.R. Co.*, 242 S.C. 123, 130 S.E.2d 370 (1963), the court confirmed that "the test for assignability is whether the cause of action survives" and recognized that personal torts are non-assignable because they do not survive under the statute.

3. Federal Recognition of the Economic/Personal Distinction

Even the *Schneider* court, which the Supreme Court noted in *Reeves*, applied this very distinction. The *Schneider* court explained that "unlike a purely 'personal' tort which basically causes damage to a party's character and reputation, a tort which results in an excess judgment being recovered against a party . . . causes injury . . . to that party's estate." 487 F. Supp. at 245. The court concluded that bad faith claims fall into the latter category because "the principal injury suffered by the insured was a pecuniary loss, or potential therefor, to his estate."

E. Bad Faith Claims Are Economic Torts, Not Personal Torts

Bad faith insurance claims are fundamentally economic in nature. They seek compensation for financial injuries arising from the breach of contractual obligations and duties owed to the insured party, not redress for personal injuries to reputation, dignity, or character. The public policy concerns that animate restrictions on personal injury assignments—such as preventing ‘trafficking in personal suffering’—are absent in the context of economic bad faith claims.

In the present case, the bad faith claim arises from property damage covered under a homeowner's insurance policy. The assignment serves legitimate business interests in securing payment for necessary repairs and benefits the insured by relieving them of litigation burdens. This aligns perfectly with the category of economic torts that South Carolina case law has recognized as assignable for over 140 years.

Under the *Miller* framework, consistently applied through *Ex parte Hiers*, *Robinson*, and *Doremus*, bad faith claims clearly affect "the estate, real or personal, of a party" rather than causing "strictly personal injuries." Such claims survive the death of the insured and therefore satisfy South Carolina's established test for assignability.

F. The Assignment Does Not Implicate Champerty Concerns

The doctrine of champerty, which prohibits "officious intermeddling in a lawsuit by a mere stranger," is inapplicable to the assignment at issue here. *See Osprey, Inc. v. Cabana Ltd. P'ship*, 340 S.C. 367, 532 S.E.2d 269 (2000). Champerty historically involved a third party supporting litigation in exchange for a portion of the proceeds without any legitimate interest in the underlying dispute.

This case fundamentally differs from champerty because: (1) the assignee is not a "mere stranger" but a business with a direct economic interest as the service provider who performed repairs on the insured property; (2) the assignment represents a legitimate commercial transaction rather than speculative investment in litigation; and (3) the assignment serves the practical purpose of allowing the service provider to recover payment for work already performed, benefiting both parties.

G. Conclusion

For the foregoing reasons, the trial court erred in concluding that assignments of bad faith claims are categorically invalid under South Carolina law. The Supreme Court in *Reeves* explicitly reserved this

question and distinguished assignments by individuals from those by municipalities. More fundamentally, South Carolina's 140-year-old distinction between assignable economic torts and non-assignable personal torts supports the validity of bad faith assignments, which seek compensation for financial harm to the insured's estate rather than vindication of personal injuries. This case presents the appropriate circumstances for recognizing the assignability of bad faith claims consistent with South Carolina's longstanding legal principles.

Respectfully submitted, this 3rd day of July, 2025.

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CERTIFICATE OF SERVICE

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