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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.

RESPONDENT'S MOTION TO DISMISS APPEAL

The Respondent, Auto-Owners Insurance Company, respectfully moves this Honorable Court for an order dismissing the above-captioned appeal. The first basis for this motion is that the grant of partial summary judgment is not immediately appealable. Alternatively, if the Court deems the Order granting partial summary judgment was immediately appealable, Appellant failed to timely file a Notice of Appeal. In support of this Motion, Respondent respectfully submits the following:

PROCEDURAL HISTORY

The appeal arises from an Order of the Honorable R. Kirk Griffin, entered on October 13, 2023, granting Respondent, Auto-Owners Insurance Company, partial summary judgment on the Plaintiff's bad faith cause of action. *See, Exhibit A, Order dated October 13, 2023.* The Order did

not dispose of all the Appellant's causes of action alleged in the Complaint, but did make a final ruling by dismissing the Appellant's bad faith cause of action.

FACTUAL BACKGROUND

On August 1, 2024, approximately ten months after Judge Griffin granted partial summary judgment in favor of Respondent as to Appellant's bad faith cause of action, counsel for Appellant filed two additional motions. Appellant filed a Motion to Revise the Judgment pursuant to Rule 54 (b), SCRPC; and a Motion for Reconsideration pursuant to Rule 54 (b), SCRPC. *See, Exhibit B – Rule 54, SCRPC Motions dated August 1, 2024.*

A hearing was held before Judge Griffin on September 11, 2024 on the two Rule 54 (b), SCRPC motions. Counsel for Respondent argued the October 13, 2023 Order of Judge Griffin lacked “finality language” and thus should be revised because it was only a “partial grant of summary judgment”. Opposing counsel also argued that the Rule 54(b), SCRPC rule was timely. *See, Exhibit C – Transcript of Rule 54 hearing dated September 11, 2024.*

Counsel for Respondent argued, at the September 11, 2024 Rule 54, SCRPC motions hearing, that Plaintiff was not entitled to any relief pursuant to Rule 54, SCRPC regarding Judge Griffin's October 13, 2023 Order granting partial summary judgment. Respondent also asserted that Appellant failed to file a timely motion to reconsider the October 13, 2023 Order in accordance with Rule 59(e), SCRPC, and the Order dismissing the bad faith cause of action should not be reconsidered or revised. *See Exhibit C – Transcript of Rule 54 hearing dated September 11, 2024.*

On May 1, 2025, an Order denying the Appellant's Rule 54(b), SCRPC motions was entered holding Appellant: (a) failed to file a Rule 59(e), SCRPC motion timely; and (b) simply reiterated the October 13, 2023 Order granting partial summary judgment in favor of Respondent,

was the Circuit Court’s final order. *See, Exhibit D, Order denying Rule 54 motions dated May 1, 2025.*

ARGUMENT

A. THE ORDER GRANTING PARTIAL SUMMARY JUDGMENT WAS IMMEDIATELY APPEALABLE, APPELLANT DID NOT TIMELY FILE THE NOTICE OF APPEAL, AND THIS APPEAL SHOULD BE DISMISSED FOR LACK OF APPELLATE JURISDICTION

Appellant’s notice of appeal was untimely. Appellant did not file a notice of appeal within 30 days of receiving written notice of the October 13, 2023 Order granting partial summary judgment. Appellate jurisdiction to review orders of the circuit court is present where the lower court order strikes out an answer or any part thereof or any pleading in any action. *S.C. Code Ann. Section 14-3-330 (2)(c)(1976)*; *C.f. Olson v. Faculty House of Carolina, Inc., and the University of South Carolina*, 344 S.C. 194, 544 S.E. 2d 38 (Ct. App. 2001) (*final adjudication by the trial court of all rights between the parties required for appellate jurisdiction to be present*).

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. *Rule 203(b)(1), SCACR*. Moreover, service of the notice of appeal is a jurisdictional requirement, and the Court of Appeals has no authority to extend or expand the time in which the notice of intent to appeal must be served. *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 192, 847 S.E.2d 471, 474 (Ct. App. 2020).

In this case Appellant’s notice of appeal was filed over 18 months after Judge Griffin issued the October 13, 2023 Order granting partial summary judgment in favor of Respondent and then filed Rule 54, SCRCP motions in an attempt to revise the Order. Appellant’s interpretation of Rule 54, SCRCP asserting that the Circuit Court is required to include “finality language” in orders granting partial summary judgment misconstrues Rule 54, SCRCP. The grant of a partial summary judgment dismissing a cause of action in a Complaint does not require a Court finding

of finality pursuant to Rule 54, SCRCPP. *Lebovitz v. Mudd*, 289 S.C. 476, 347 S.E. 2d 94 (1986)(lack of Rule 54(b), SCRCPP certification does not preclude an immediate appeal of an order which is directly appealable under S.C Code Ann. Section 14-3-330(1976)Order granting a 12(b) motion as p one of multiple claims.

In this case, the grant of partial summary judgment was immediately appealable under S.C. Code Section 14-3-330 (2)(c) (1976) because one of Appellant’s causes of action was dismissed. Appellant’s Rule 54, SCRCPP motions were both untimely and irrelevant as the Order denying the Rule 54, SCRCPP motions was denied. *See, Exhibit D, Order denying Rule 54 motions dated May 1, 2025.*

Appellant’s Rule 54, SCRCPP motions were untimely, irrelevant, and had no impact on immediate appealability of the October 13, 2023 Order. Appellant therefore missed the deadline to file a notice of appeal of Judge Griffin’s October 13, 2023 Order granting partial summary judgment in favor of Respondent. *Rule 203(b)(1), SCACR; Lemmons v. Macedonia Water Works, Inc.*. Accordingly, the notice of appeal was not timely filed and this appeal should be dismissed for lack of appellate jurisdiction.

B. ALTERNATIVELY, ALL OF PLAINTIFF’S CLAIMS HAVE NOT BEEN FINALLY ADJUDICATED BY THE LOWER COURT, AND THIS APPEAL SHOULD BE DISMISSED PENDING FINAL ADJUDICATION IN THE LOWER COURT

All rights of the Appellant and Respondent have not yet been finally adjudicated and this appeal should be dismissed pending final adjudication of all claims by the trial court. For appellate jurisdiction to be present, all rights of the parties must be finally determined by the lower court. *Olson v. Faculty House of Carolina, Inc., and the University of South Carolina*, 344 S.C. 194, 544 S.E. 2d 38 (Ct. App. 2001).

The trial court order in the *Olson* case which granted the University of South Carolina's motion for summary judgment, expressly ruled that all of Olson's claims against the University of South Carolina were barred by the statute of limitations. This ruling adjudicated constituted a final adjudication in the trial court and the Court held that appellate jurisdiction was present. *Id.*

In the case at bar, all rights of the Appellant and Respondent have not yet been finally adjudicated. Only the bad faith cause of action has been adjudicated. Thus, the interlocutory Order granting Respondent's motion for summary judgment as to the Appellant's bad faith cause of action cannot be appealed at this time. *Olson*, 344 S.C. 194, 212 S.E.2d 38,47. Accordingly, this appeal should be dismissed until such time as all matters have been finally adjudicated by the Circuit Court.

CONCLUSION

For the above-stated reasons, if the Court finds that the October 13, 2023 Order granting partial summary judgment was immediately appealable, Appellant's appeal is untimely pursuant to Rule 203(b)(1), SCACR and this Court lacks appellate jurisdiction. In the alternative, Appellant's appeal is interlocutory and should be dismissed until all rights of the parties' have been finally adjudicated by the Circuit Court.

Respectfully submitted,

s/Douglas E. Leadbitter

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July 10, 2025

PIEDMONT ROOFING SERVICE, LLC V. AUTO-OWNERS INSURANCE COMPANY

APPELLATE CASE NUMBER: 2025-001045

RESPONDENT'S MOTION TO DISMISS APPEAL

EXHIBIT D – ORDER DENYING RULE 54 MOTIONS DATED MAY 1, 2025

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Piedmont Roofing Services, LLC,

Plaintiff,

vs.

Auto-Owners Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-43-01681

**ORDER DENYING THE PLAINTIFF'S
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 54, SCRPC**

PROCEDURAL BACKGROUND

On April 14, 2023, Defendant filed a Motion for Judgment on the Pleadings or in the alternative Summary Judgment on the Plaintiff's bad faith cause of action alleged in the Complaint. A hearing was held on Defendant's motion for partial summary judgment on October 11, 2023. Despite receiving notice of the Defendant's Motion, Counsel for Plaintiff (Cochran) did not appear. It must be noted that on October 11, 2023 Cochran, had still not been relieved as Counsel for the Plaintiff. The Court granted the Motion for Partial Summary Judgment by Order dated October 13, 2023.

Nevertheless, Plaintiff's newest attorney, Mr. Adam Wood filed a Motion To Revise the Judgment pursuant to Rule 54, SCRPC on August 1, 2024.

ARGUMENT

A hearing on Plaintiff's Rule 54, SCRPC motion filed by Mr. Wood was held on September 11, 2024. Mr. Wood appeared for Plaintiff, and Joseph Thoensen appeared for Defendant.

At the September 11, 2024 hearing, Counsel for Plaintiff argued the prior Order lacked “finality language” and thus could be revised because it was only a “partial grant of summary judgment”.

Counsel for Defendant argued that Plaintiff was not entitled to any relief from the October 13, 2023 Order. Counsel for Defendant argued that Plaintiff failed to file a timely motion to reconsider in accordance with Rule 59 (e), SCRCP and that the October 13, 2023 Order dismissing the bad faith cause of action should stand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds the arguments by Plaintiff’s newest counsel requesting relief under Rule 54, SCRCP are completely without merit. The Court agrees with Defendant and finds 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) SCRCP in a timely matter as clearly set forth in that rule. Clearly, Plaintiff failed to file a Rule 59 (e), SCRCP motion timely.

IT IS THEREFORE ORDERED:

Plaintiff’s motion is denied, the Order of the Court dated October 13, 2023 granting partial summary judgment on the bad faith cause of action is final.

AND IT IS SO ORDERED.

The Honorable Kirk Griffin, Judge of the Third Judicial Circuit

Date: _____, 2025



Sumter Common Pleas

Case Caption: Piedmont Roofing Services, Llc VS Auto-Owners Insurance Company

Case Number: 2022CP4301681

Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768

PIEDMONT ROOFING SERVICE, LLC V. AUTO-OWNERS INSURANCE COMPANY

APPELLATE CASE NUMBER: 2025-001045

RESPONDENT'S MOTION TO DISMISS APPEAL

EXHIBIT C – TRANSCRIPT OF RULE 54 HEARING DATED SEPTEMBER 11, 2024

I N D E X

WITNESS (ES)

PAGE

Certificate of Service

8

E X H I B I T S

(There were no exhibits marked during this hearing)

1 THE COURT: The next matter is Piedmont Roofing
2 vs. Auto Owners. There are two motions before the court.
3 Motion to be relieved and then a reconsideration motion. Is
4 that correct?

5 MR. WOOD: That's correct, Your Honor. I don't
6 believe that former plaintiff's counsel is here today for
7 that motion.

8 THE COURT: Okay. All right. We will, I guess
9 take up the reconsideration motion.

10 MR. WOOD: Yes, Your Honor. Plaintiff is asking
11 that the court revise its ruling on summary judgment that
12 was issued back in October, I believe. Pursuant to Rule
13 54(b) this order, since it was a partial, can be revised at
14 any time since it did not include any of the finality
15 language contained in that rule. Specifically, there's no
16 just reason for delay. And in the alternative, we're
17 requesting that the court add that language for purposes of
18 appealability, Your Honor.

19 THE COURT: All right, I'll be happy to hear from
20 you.

21 MR. THOENSEN: Thank you, Your Honor, may it
22 please the court.

23 THE COURT: Yes, sir.

24 MR. THOENSEN: Joe Thoensen, on behalf of Auto-
25 Owners Insurance Company. Your Honor, as the initial

1 matter, the Order that you issued approximately eleven (11)
2 months ago, in October of last year, is not a judgment
3 under Rule 54. It does not assign finality of rights as to
4 any party. It granted dispositive relief as to one cause
5 of action among three in the Complaint and it specifically
6 provided that the other two causes of action are not
7 affected and that the case is not dismissed and those two
8 causes of action survived and the case survives and
9 proceeds. So as an initial matter our position is that
10 what you issued is not a judgment and therefore it is not
11 subject to Rule 54, any of their provisions, including
12 54(b).

13 In addition to that, Your Honor, what the
14 plaintiff seeks to do is to appeal a ruling that you made
15 eleven (11) months ago, not having filed a 59(e) motion,
16 not having done anything that should have been done in the
17 rules to reserve their right to appeal and then use Rule 54
18 to try to go around their own, you know, their own failure
19 to act as they should act. The right to appeal has long
20 expired. It was never preserved. The time to do that has
21 long passed and I understand at the hearing back eleven
22 months ago that resulted in the order that we're talking
23 about. Plaintiff's counsel did not appear, and I
24 appreciate that; however, similar to a default situation,
25 the negligence of an attorney is imputable to the client

1 and so they can't come to the court now eleven months later
2 and seek relief on the basis that, well, our lawyer didn't
3 show up for us and we should have done this but we didn't,
4 that's not appropriate either. And so, in addition to that,
5 my final point is, in the plaintiff's motion that he's
6 arguing now, he asked the court to either add language to
7 that order from eleven months ago so that the plaintiff can
8 appeal it, which I believe is inappropriate, or to
9 completely revisit and revise that order, which again the
10 mechanism for doing that is a motion for reconsideration
11 under Rule 59. There is no mechanism for that under Rule
12 54. So we believe that the present motion should be denied
13 and that your order issued last October should stand as you
14 issued it.

15 THE COURT: All right, anything else from either
16 side?

17 MR. WOOD: Yes, Your Honor, real briefly, the
18 arguments that defendant's counsel is raising, with regards
19 to the timeliness of this, I don't feel are applicable
20 because Rule 54(b) says that, excuse me, I was just pulling
21 it up. It says that the order or other form of decision is
22 subject to revision at any time before the entry of
23 judgment adjudicating all the claims. So for that reason,
24 since this was only a partial summary judgment, I do
25 believe that it does meet the definition of a judgment for

1 purposes of this rule, Your Honor. And as section(b)
2 states, it is subject to revision at any time. And with
3 respect to the merits of that ruling, Your Honor, with
4 respect, I don't believe that the court was fully briefed
5 of the issues since, as defendant's counsel mentioned,
6 former plaintiff's counsel failed to appear. So I don't
7 believe that the court was given the opportunity to fully
8 considered the issues as to why that summary judgment
9 should or should not have been granted you.

10 THE COURT: I appreciate the arguments on both
11 sides, but I feel like my ruling back in October was
12 appropriate, so I therefore deny the motion for
13 reconsideration.

14 MR. THOENSEN: Thank you, Your Honor.

15 THE COURT: Could you give us your name for the
16 record, sir?

17 MR. WOOD: Yes, I apologize. Adam Wood.

18 THE COURT: Thank you, sir.

19 MR. THOENSEN: Will that be a Form Four? Do you
20 want me to submit anything?

21 THE COURT: If you will submit an order outlining
22 this --- this may be one that --- Since a cause of action
23 was dismissed pursuant to a summary judgment, I feel like
24 it would be better if the order had a little more meat to
25 it. So if you will submit that via e-file, I will sign the

1 Order. Thank you.

2 MR. WOOD: Excuse me. Your Honor. Before we go, I
3 just wanted to get a ruling on the issue of the inclusion
4 of that? No just reason for delay language, because for the
5 purposes of appeal or finality to make this a final
6 judgment I do believe that it's ...

7 The Court: Well, I think my --- I think the
8 basis of my ruling is that the underlying decision back in
9 October was correct. So I'm not making a ruling on the
10 timeliness of it. I believe that there's no error in the
11 decision that I made back in October, and that's the basis
12 for the denial of the motion for reconsideration. But that
13 ground is preserved for the record. Thank you.

14 MR. ADAMS: Thank you, Your Honor.

15 MR. THOENSEN: Thank you, Judge.

16 End of Hearing

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF SUMTER)

Be it known that I, the undersigned Melissa R. Singletary, Certified Verbatim Reporter, for the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of the testimony and evidence introduced in during this testimony of the captioned case, before the Circuit Court for Sumter County, South Carolina, so given on September 11, 2024, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 14TH day of March, 2025.

Melissa R. Singletary

Melissa R. Singletary, CVR
Certified Verbatim Reporter

PIEDMONT ROOFING SERVICE, LLC V. AUTO-OWNERS INSURANCE COMPANY

APPELLATE CASE NUMBER: 2025-001045

RESPONDENT'S MOTION TO DISMISS APPEAL

EXHIBIT B – RULE 54, SCRCP MOTIONS DATED AUGUST 1, 2024

STATE OF SOUTH CAROLINA
SUMTER COUNTY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 22-CP-43-01681

PIEDMONT ROOFING SERVICES,)
 LLC)
 Plaintiff,)
)
 v.)
)
)
 AUTO-OWNERS INSURANCE)
 COMPANY)
 Defendant.)

**PLAINTIFF’S RULE 54(b) MOTION TO
REVISE THE JUDGMENT**

Pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure, Plaintiff Piedmont Roofing Services, LLC, by and through its undersigned counsel, hereby moves this Honorable Court to revise its judgment on Defendant Auto-Owners Insurance Company’s Motion for Summary Judgment, for which it granted Partial Summary Judgment. Alternatively, Plaintiff Piedmont Roofing Services, LLC respectfully requests the Court revise said judgment to include a Rule 54(b) certification, indicating its finality for purposes of appeal. This motion is on the grounds that Rule 54(b) states judgments, unless so otherwise indicated, may be revised at any time until a final judgment on all claims is entered. Additionally, that Plaintiff’s prior counsel failed to appear for the Summary Judgment hearing and, therefore, Plaintiff was unable to present arguments and evidence in the alternative to those proffered by the Defendant. *See* Order Granting Defendant’s Motion for Partial Summary Judgment, ¶ 1.

GOVERNING LAW

Rule 54(b) of the South Carolina Rules of Civil Procedure states:

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, 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.

[Emphasis added.]

ARGUMENT

1. The Court should revise its ruling pursuant to Rule 54(b) due to common law rulings validating such assignments.

The Court has the discretion to revise its ruling at any time until the case has been finally and completely resolved, or such orders are certified final. *See* Rule 54(b); "An appeal following a Rule 54(b) certification is the exception rather than the rule." *Griffin Plumbing & Heating v. JJ & G*, 351 S.C. 459, 570 S.E.2d 197 (S.C. App. 2002). For the reasons articulated below, Plaintiff respectfully requests the Court exercise such discretion as principles of law and equity would justify.

First, regarding the issue of whether assignments of insurance bad faith claims are assignable, the Court should revise its decision based on additional information and/or distinctions and clarifications. The cases cited to justify granting partial summary judgment in

favor of the Defendant are distinguishable on multiple grounds. In *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 434 S.C. 18, 862 S.E.2d 248 (S.C. 2021), the Supreme Court held: "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." (Citing *Schneider v. Allstate Insurance Co.*, 487 F. Supp. 239 (D.S.C. 1980)) [Emphasis added.]. It was based on this distinction that the Supreme Court held bad faith claims were not assignable, a distinction that is inapplicable to the case at bar since Plaintiff received the assignment from an individual. *Ibid*. Moreover, the footnote cited by the Supreme Court when it held "This Court has never recognized the validity of any assignment of a bad faith claim" does not point to a clear, unambiguous ruling that South Carolina *never* recognizes assignments of bad faith claims. *Id.* at fn. 8. To the contrary, it stated that *some* assignments have been held invalid but that such cases "illustrate[] reasons it may not be appropriate to permit assignment of bad faith claims under all circumstances. *But see* Constance A. Anastopoulo, A New Twist on Remedies: Judicial Assignment of Bad Faith Claims , 50 Ind. L. Rev. 727 (2017) (arguing bad faith claims should be assignable)." *Ibid.* [Emphasis added.] Indeed, the operative word in the Court's statement "This Court has never recognized the validity of any assignment of a bad faith claim" appears to be "any," meaning *all* assignments would be valid. *Id.* at 255. However, this does not mean that *no* assignments of bad faith claims are valid.

The other case cited when granting Defendant's Motion for Partial Summary Judgment, *Jacobs v. Zurich Am. Ins. Co.*, Civil Action 5:21-2617-MGL (D. S.C. Nov 15, 2022), cites the same statement from the South Carolina Supreme Court. For the foregoing reasons, this precedent is likewise inapplicable in reaching the conclusion that *no* assignments of bad faith claims are valid. Similarly to the case at bar, the plaintiff in *Jacobs* failed to respond to this

argument and, therefore, the District Court likely failed to receive any contradictory cases or arguments on this point. *Jacobs*, at ¶ 6. Accordingly, this should not be interpreted as either controlling or persuasive precedent. Lastly, the remaining cases cited by Defendant when moving for Partial Summary Judgment, *Horton v. New South Ins. Co.*, 468 S.E.2d 856 (1996) and *Piedmont Roofing Services, LLC v. State Farm Fire and Casualty Company*, 4:22-cv-04114-JD (Dkt. 23, April 11, 2023), are North Carolina cases and are therefore not controlling on this Court.

In the case at bar, since there is not unambiguous, unequivocal South Carolina precedent that all assignments of bad faith claims are invalid, and those holding so are distinguishable on factual grounds, the Court should revise its ruling. Furthermore, public policy reasons behind barring certain assignments are not applicable in the instant matter. Courts and legislatures are rightfully concerned about profiteers receiving assignments in personal injury actions or other matters where public morals and conventional equitable principles would preclude such contracts. That is not the case here, as Plaintiff has merely received an assignment of a bundle of claims, including bad faith, that are economic in nature. Since neither law nor equity requires the Court to find this assignment invalid, Plaintiff respectfully requests the court revise its ruling.

2. In the alternative, the Court should issue a Rule 54(b) certification regarding its decision on Defendant's Motion for Partial Summary Judgment

If the Court is not persuaded by the foregoing arguments, Plaintiff respectfully requests that it issue a Rule 54(b) certification. Without such certification, since the language of the rule allows the order to be revised at any time, the decision is considered not final for purposes of appeal. *See* S.C. R. Civ. P. Rule 54(b); *Shirley's Iron Works v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); *Griffin Plumbing & Heating v. JJ & G*, 351 S.C. 459, 570 S.E.2d

197 (S.C. App. 2002). Based on the circumstances of the case at bar and the foregoing arguments, Plaintiff intends to appeal the Court's ruling on Defendant's Motion for Partial Summary Judgment if the same remains unrevised. Plaintiff contends that receiving a Rule 54(b) certification, for purposes of this argument, is necessary under multiple grounds. Primarily, being able to appeal the subject order is necessary to prevent "piecemeal appeals" and spare the appellate courts from "relearning the facts of [the] case on successive appeals." *Griffin*, at 467. Arguments based on judicial economy are in addition to the legal arguments raised above. Plaintiff does not intend any disrespect to the Court or opposing counsel, or possess ulterior motives in making such appeal, but rather seeks to efficiently resolve the necessary issues in this matter before proceeding through trial. If such issues remain unresolved, the appellate and trial courts will be burdened by motions, appeals, and, at worst, multiple trials. For these reasons, Plaintiff respectfully asks the Court to issue a Rule 54(b) certification if it decides not to revise its order on Defendant's Motion for Partial Summary Judgment.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court:

1. Revise its Order on Defendant's Motion for Partial Summary Judgment, or in the alternative
2. Issue a Rule 54(b) Certification regarding its Order on Defendant's Motion for Partial Summary Judgment.
3. Plaintiff respectfully requests a hearing on this matter.

(Remainder of this page intentionally left blank. Signature block follows.)

s/ Adam G. Wood
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PIEDMONT ROOFING SERVICE, LLC V. AUTO-OWNERS INSURANCE COMPANY

APPELLATE CASE NUMBER: 2025-001045

RESPONDENT'S MOTION TO DISMISS APPEAL

EXHIBIT A – ORDER DATED OCTOBER 13, 2023

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Piedmont Roofing Services, LLC,

Plaintiff,

vs.

Auto-Owners Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2022-CP-43-01681

**ORDER GRANTING DEFENDANT
AUTO-OWNERS INSURANCE
COMPANY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

This case came before the Court on October 11, 2023, for a hearing on the motion of the Defendant Auto-Owners Insurance Company (“Defendant”) for partial summary judgment pursuant to Rule 56, SCRCP. Present at the hearing was counsel for the Defendant, Joseph E. Thoensen of Crowe LaFave Garfield & Bagley. Despite having been given notice of the hearing by the Clerk of Court’s office, the Plaintiff did not appear at the hearing. After careful consideration of the pleadings and the written memorandum submitted by the Defendant, the Court, for the reasons set forth below, finds and concludes that there are no genuine issues of material fact and that the Defendant is entitled to judgment as a matter of law on the Plaintiff’s bad faith cause of action. The Court, accordingly, grants the Defendant’s motion for partial summary judgment.

NATURE OF THE CASE

Plaintiff in this case brings claims for breach of contract, bad faith refusal of insurance claim, and declaratory judgment. This is an insurance coverage action whereby Plaintiff has obtained an assignment of rights from the named insureds on a policy issued by the Defendant for

replacement of a residential roof. Plaintiff attached a copy of the Assignment of Rights forming the basis of their contention that they have standing to bring such an action to the Complaint; thus, such assignment is now part of the record.

Defendant has moved for partial judgment on the pleadings as to Plaintiff's bad faith claim. Alternatively, Defendant has moved for partial summary judgment, pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure, as to Plaintiff's bad faith claim. Defendant's motion is brought on the grounds that Plaintiff cannot establish, through any admissible evidence causing reasonable minds to differ under the laws of the State of South Carolina, facts necessary to sustain their claim of bad faith by the Defendant.

STANDARD OF REVIEW

The Court initially notes that because the Assignment of Rights is outside the four corners of the Complaint and has been considered as part of the Court's analysis, it is deciding this matter as a Motion for Partial Summary Judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC; Etheredge v. Richland School District One, 341 S.C. 307, 311, 534 S.E. 2d 275, 277 (2000). "For purposes of summary judgment, an issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action." Nelson v. Piggly Wiggly Central, Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct. App. 2010).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Baughman v. American Tel. and Tel. Co., 306 S.C.

101, 410 S.E. 2d 537 (1991). “The plain language of Rule 56(c), SCRCPP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” Carolina Alliance for Fair Employment v. S.C. Department of Labor, Licensing and Regulation, 337 S.C.476, 485, 523 S.E. 2d 795, 800 (Ct. App. 1999).

A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Rule 56(e), SCRCPP. It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment is warranted. Ellis v. Davidson, 358 S.C. 509, 517-518, 595 S.E.2d 817, 821 (Ct. App. 2004).

LEGAL DISCUSSION AND ANALYSIS

In 2021, South Carolina’s Supreme Court opined that South Carolina has never recognized the validity of the assignment of a bad faith claim. Based on the opinion of the high court, Plaintiff lacks standing to bring a bad faith claim against Defendant because Plaintiff’s bad faith claim is improperly based on an assignment from the named insureds to the insurance contract. *See Reeves v. South Carolina Mun. Ins. and Risk Fin. Fund*, 862 S.E. 2d 248, 255 (S.C. 2021)(“This Court has never recognized the validity of any assignment of a bad faith claim.”); *Jacobs v. Zurich Am. Ins. Co.*, No. CV 5:21-2617-MGL, 2022 WL 16952013, at *3 (D.S.C. Nov. 15, 2022)(“Under South Carolina law, an insured is precluded from assigning its rights to pursue a bad faith claim.”); *see also Horton v. New South Ins. Co.*, 468 S.E.2d 856 (1996)(Holding assignments of personal

tort claims are void as against public policy and bad faith claims, specifically, cannot be assigned because they are personal to the insured.). *See also, Piedmont Roofing Services, LLC v. State Farm Fire and Casualty Company*, 4:22-cv-04114-JD (Dkt. 23, April 11, 2023) (granting carrier's Motion to Dismiss bad faith refusal of insurance claim).

A bad faith claim on the insurance policy in question is a personal tort and cannot be assigned as a normal contract right could be assigned. Furthermore, an assignment does not create new rights and duties owed to the assignee. Therefore, Plaintiff cannot establish through any evidence their claim of bad faith by Defendant, and partial summary disposition as to the bad faith cause of action is appropriate.

DECISION AND ORDER

For the reasons discussed above, the Court finds and concludes that there are no genuine issues of material fact, and the Defendant is entitled to partial judgment as a matter of law on the Plaintiff's bad faith cause of action. Additionally, the Plaintiff's remaining causes of action for breach of contract and declaratory judgment were not at issue at the hearing on Defendant's motion, and this Order has no application to or effect on those causes of action.

Accordingly, **IT IS ORDERED** that the motion of Auto-Owners Insurance Company for partial summary judgment as to Plaintiff's bad faith cause of action is **GRANTED**.

AND IT IS SO ORDERED.

R. Kirk Griffin, Circuit Court Judge

October ____, 2023



Sumter Common Pleas

Case Caption: Piedmont Roofing Services, Llc VS Auto-Owners Insurance Company

Case Number: 2022CP4301681

Type: Order/Summary Judgment

So Ordered

s/ R. Kirk Griffin 2768

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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.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Appeal on the Appellant by electronic email to Adam G. Wood, Esquire.

July 10, 2025

s/Douglas E. Leadbitter

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