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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Lower Court Case No. 2020-CP-26-00808

A. Tebele & Sons, a South Carolina General Partnership, Appellant-Respondent,

v.

Certain Underwriters at Lloyd's, HDI Global Specialty SE, General Security Indemnity Company of Arizona, and Crescent Coast Insurance, LLC, Respondents,

Of which Crescent Coast Insurance, LLC is the Respondent-Appellant.

Appellate Case No. 2024-000705

FINAL REPLY BRIEF
FOR APPELLANT-RESPONDENT

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ARGUMENTS IN REPLY TO INSURERS

1.

Tebele's argument that it was entitled to coverage as a matter of law is preserved for appellate review because Tebele moved for a directed verdict and renewed its directed verdict motion in its post-trial motion for JNOV.

The Insurers argue that Tebele failed to preserve its argument that it was entitled to coverage as a matter of law based on the ambiguities in the insurance policy by not making this argument in its motion for directed verdict and by requesting alternative relief in its post-trial JNOV motion. The Insurers' argument is without merit.

"A party making a motion for a directed verdict must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012) (citing Rule 50(a), SCRCP). "If the motion is denied, the party may thereafter move for a JNOV in order to have the verdict and judgment set aside and a judgment entered in accordance with the party's directed verdict motion." *Id*. (citing Rule 50(b), SCRCP). "[O]nly the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion." *Id*. at 331, 732 S.E.2d at 170-71.

Former Chief Justice Toal has cautioned that "an over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in result and dissenting in part). It is not the place of our appellate courts "to scour the records before [it] for the purpose of avoiding issues or, even worse, to play a 'gotcha' game with

attorneys by showcasing their alleged mistakes, at the expense of their clients." *Id*. This Court should keep in mind that "behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests." *Id*. "[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. at 333, 730 S.E.2d at 287).

The Insurers acknowledge that Tebele asked the circuit court to find that Tebele was entitled to coverage as a matter of law because the policy was ambiguous. Counsel for Tebele asked the trial judge to "find, as a matter of law, that there's an ambiguity in the insurance contract in this case." R. 1354, ll. 4 – 11. The Insurers characterize Tebele's request as "arguably . . . a bare bones directed verdict motion." BOR, 21. Counsel for Tebele pointed out the specific ambiguities in the policy, including that the word "maintain" was ambiguous, and asked the trial judge to find that the fire loss was covered as a matter of law and that the only issue for the jury to determine was the amount of damages. R. 1354, ll. 11 – 1355, l. 14.

Counsel for Tebele also cited to *State Farm Mut. Auto. Ins. Co. v. Windham*, 438 S.C. 156, 882 S.E.2d 754 (2022) and *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 757 S.E.2d 399 (2014) in arguing that when there are two reasonable interpretations of an insurance policy, the interpretation that provides for coverage should be adopted as a matter of law. R. 1360, l. 8 – 1361, l. 10. The trial judge ultimately ruled: "[a]s to ambiguity, I'm going to stick with my earlier ruling in that regard." R. 1365, ll. 6 – 7. The judge appeared to be referring to his earlier ruling during the motions in limine where he found the policy was not ambiguous as a matter of law and that testimony regarding ambiguity could be presented to the jury. R. 390, l. 2 – 392, l. 3.

The Insurers also acknowledge that Tebele argued it was entitled to coverage as a matter of law based on the ambiguities in the policy in its JNOV motion. BOR, 21. Specifically, Tebele argued that the trial judge erred in failing to find the policy was ambiguous as a matter of law. R. 250 – 251. Tebele maintained that because of the ambiguities in the policy the trial judge was required to award coverage to Tebele as a matter of law. Tebele argued that the issue regarding whether the loss was covered should have never been submitted to the jury but instead they should have only been allowed to consider whether the Insurers acted in bad faith. R. 255 – 256.

In its JNOV motion, Tebele argued *in the alternative* that the trial judge should grant a new trial because it did not charge the jury regarding the law of ambiguity in insurance policies. R. 274. Rule 50(b) of the South Carolina Rules of Civil Procedure specifically provides that "[a] motion for a new trial may be joined with this [JNOV] motion, or a new trial may be prayed for in the alternative." Thus, Tebele's request for a new trial based on the trial judge's failure to instruct the jury that the insurance policy was ambiguous is no waiver of Tebele's primary request in its JNOV motion—that the trial judge find coverage as a matter of law because of the ambiguities in the insurance policy. Requesting alternative forms of relief in a post-trial motion is explicitly permitted by the Rules of Civil Procedure. *See* Rule 50(b), SCRCP.

This issue is preserved. And even if it were "arguably" unpreserved as the Insurers suggest, "any doubt should be resolved in favor of preservation." *Johnson*, 422 S.C. at 412, 812 S.E.2d at 210. This Court should reach the merits of Tebele's argument that it is entitled to coverage as a matter of law due to the ambiguities in the insurance policy.

2.

Tebele has an insurable interest in the 1901 North Kings property.

The Insurers argue that this Court should affirm pursuant to Rule 220(c) of the South Carolina Appellate Court Rules on the ground that Tebele has no insurable interest in 1901 North Kings because Kings Realty, LP owns the property, not Tebele. BOR, 34 – 36. The Insurers' argument is without merit.

Our Supreme Court in *Nelson v. United Fire Ins. Co.*, specifically rejected the argument the Insurers press here—that insurable interest equates to legal title. 275 S.C. 92, 95, 267 S.E.2d 604, 606 (1980). Instead, our Supreme Court stated that "[a]n insurable interest in property is any right, benefit or advantage arising out of or dependent thereon, or any liability in respect thereof, or any relation to or concern therein of such a nature that it might be so affected by the contemplated peril as to directly damnify the insured." *Id*. (quoting *Reid v. Hardware Mut. Ins. Co.*, 252 S.C. 339, 344, 166 S.E.2d 317, 319-20 (1969)). "It may be said, generally, that any one has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction." *Nelson*, 275 S.C. at 95, 267 S.E.2d at 606 (quoting *Crook v. Hartford Fire Ins. Co.*, 175 S.C. 42, 59, 178 S.E. 254, 261 (1935)). This Court has also explained what constitutes an insurable interest:

> It is not necessary to constitute an insurable interest that the interest be such that the event insured against would necessarily subject the insured to loss; it is sufficient that it might do so, and that pecuniary injury would be the natural consequence. Moreover, an insurable interest in property does not necessarily imply a property interest in, or a lien upon, or possession of, the subject matter of the insurance, and neither the title nor a beneficial interest is requisite to the existence of such an interest, it is sufficient that the insured is so situated with reference to the property that he would be liable to loss should it be injured or destroyed by the peril against which it is insured. For instance, although a person has no title, legal or equitable, in the property, and neither possession nor right to

> possession, yet he has an insurable interest therein if it is primarily charged in either law or equity with a debt or obligation for which he is secondarily liable.

Benton & Rhodes v. Boden, 310 S.C. 400, 404, 426 S.E.2d 823, 826 (Ct. App. 1993).

In the partnership context, where an insurer insures real property and receives payment of the premium, "paid on the partnership's account, it cannot [thereafter] . . . be heard to question the policy on the basis that it was issued in the name of the partners instead of the partnership itself." *S.C. Ins. Co. v. Price*, 315 S.C. 212, 213, 432 S.E.2d 508, 509 (Ct. App. 1993). All property "acquired by purchase or otherwise, on account of the partnership . . . , [and] property acquired with partnership funds is partnership property." S.C. Code § 33-41-230(1) & (2); *see also Stephens v. Stephens*, 213 S.C. 525, 50 S.E.2d 577 (1948) (Real estate purchased with partnership funds is partnership property even if legal title is in the name of individual partners.).

Indeed, "anyone has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction." *Powell v. Ins. Co. of N. Am.*, 285 S.C. 588, 330 S.E.2d 550 (Ct. App. 1985). "The contractual duty to procure insurance gives rise to an insurable interest, as the party bound to obtain insurance will suffer a pecuniary loss on destruction of the property in the absence of insurance." *Jones v. Equicredit Corp.*, 347 S.C. 535, 542, 556 S.E.2d 713, 717 (Ct. App. 2001). "The lack of an ownership interest does not necessarily translate into lack of an insurable interest." *Studio Frames, Ltd. v. Std. Fire Ins. Co.*, 483 F.3d 239, 245 (4th Cir. 2007).

Tebele purchased 1901 North Kings in 1990 with title being in the names of its individual partners, David Tebele and Edward Tebele—Mr. Tebele's father and uncle respectively. R. 953, l. 16 – 954, l. 25; R. 1570 – 1572. 1901 North Kings was purchased with Tebele's money. R. 955, ll. 1 – 9. Today, the beneficial owners of Tebele, a general partnership, include Mr. Tebele, his

siblings, cousins, and in-laws. R. 951, l. 7 – 952, l. 15. Mr. Tebele testified that his compensation came primarily from Tebele and that Tebele was "the umbrella" which paid for health insurance for all the family members and other family expenses. R. 952, l. 21 – 953, l. 9.

As new types of entity forms evolved which provided benefits unavailable to general partnership entities, Tebele's partners formed Kings Realty, LP. Tebele deeded 1901 North Kings to Kings Realty in 1993. R. 954, ll. 12 – 22; R. 1573 – 1575. Tebele is the general partnership and management company utilized by Kings Realty and the other Tebele family-owned entities to perform managerial services, maintain Tebele's commercial real properties, and conduct the family business, which includes procuring insurance coverage for the Tebele family-owned entities. Thus, Tebele is the entity charged with the obligation of procuring insurance coverage for Tebele's properties, including 1901 North Kings.

Mr. Tebele signed the premium finance agreement for the insurance policy on behalf of Tebele agreeing to pay the $170,997.08 premium to procure coverage for Tebele's real properties, including 1901 North Kings. R. 1781 – 1783. Mr. Tebele also signed the $34,199.42 check that was payable to Crescent Coast from Tebele's funds. R. 1779. Tebele was the first-named insured of the policy in question in this case. R. 1580. Additionally, Mr. Tebele testified at trial that Tebele had lost significant money because of the fire that destroyed 1901 North Kings. R. 955, l. 20 – 957, l. 1.

Furthermore, as Tebele argued in its opposition to the Defendants' joint motion for summary judgment, even though Kings Realty owned 1901 North Kings and not Tebele, South Carolina's Valued Policy law would still entitle Tebele to recover the full amount of insurance. *See* S.C. Code § 38-75-20 ("[T]he amount of insurance must be fixed by the insurer and insured at or before the time of issuing the policy. In [the] case of [a] total loss by fire *the insured* is entitled to

recover the full amount of insurance") (emphasis added). "Under settled principles, this statute forms a part of every fire insurance policy issued in this State and policy provisions in conflict with the statute are null and void." *Tedder v. Hartford Fire Ins. Co.*, 246 S.C. 163, 166, 143 S.E.2d 122, 123 (1965). In the event of a total loss by fire, *the insured* "may recover the full value insured even though he has a limited interest worth less than the amount of the insurance." *Hunt v. Gen. Ins. Co.*, 227 S.C. 125, 132, 87 S.E.2d 34, 37 (1955). Tebele was the insured under this policy.

It is difficult to square the Insurers' argument that Tebele has no insurable interest in 1901 North Kings with the fact that Tebele was the named insured on the policy, in addition to the fact that Tebele paid the policy premiums and the consideration to purchase 1901 North Kings. Tebele unquestionably has an insurable interest in 1901 North Kings.

ARGUMENTS IN REPLY TO CRESCENT COAST

1.

If this Court finds that the policy procured by Crescent Coast does not cover the fire loss to Tebele, Tebele's damages by Crescent Coast's breach of fiduciary duty is the uncovered loss, not the commissions it was paid.

Crescent Coast argues that the jury's $15,000 award against them is supported by the evidence because this figure represents approximately their commission from the sale of the insurance policy to Tebele. Crescent Coast maintains that the disgorgement of commissions is one way to remedy a breach of fiduciary duty claim. BOR of R-A, 21-22. But in this case, the commission paid to Crescent Coast is not the damage Tebele suffered. The damage Tebele suffered was the Insurers' denial of coverage for the fire loss. $15,000 doesn't come close to accounting for this loss. As such, the verdict was merely inadequate at best, and grossly inadequate at worst.

Crescent Coast points out that Tebele introduced evidence at trial that Crescent Coast accepted commissions in exchange for a policy that was procured by an unlicensed agent, Joey Sutherland. BOR of R-A, 18-19. This evidence introduced by Tebele is part of what established the *existence* of a fiduciary duty to Tebele, and Crescent Coast's *breach* of that fiduciary duty. This evidence does not provide the measure of damages that Tebele suffered. If Crescent Coast accepted commissions in exchange for its unlicensed agent who procured a policy that did not provide Tebele with the fire loss he was promised, the damage to Tebele is the uncovered loss. *See RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012) (a claim for breach of fiduciary duty has three distinct elements: "(1) the existence of a fiduciary duty, (2) a breach of that duty . . . , and (3) damages proximately resulting from the wrongful conduct of the defendant").

"[T]he measure of damages in a tort case is 'the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury.'" *Turpin v. Lowther*, 404 S.C. 581, 592, 745 S.E.2d 397, 403 (Ct. App. 2013) (quoting *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004)); *see also Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) ("The goal [of compensatory damages] is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred").

In *Turpin v. Lowther*, this Court considered whether the circuit court properly increased the amount of damages in a breach of fiduciary duty claim by beneficiaries of an estate against the personal representative of that estate. 404 S.C. at 584, 745 S.E.2d at 398. In *Turpin*, the personal representative of the estate was engaged in negotiations to purchase interests in real property

belonging to the estate from the beneficiaries while simultaneously negotiating the sale of those properties with other parties. The PR did not disclose his negotiations to sell the property to the beneficiaries which he was seeking to purchase from. *Id*. at 585-86, 745 S.E.2d at 399. Two of the beneficiaries testified that they would not have sold their interest in the properties to the PR if they had known he already had contracts to sell. *Id*. at 588, 745 S.E. at 400.

The probate court awarded the beneficiaries $69,051. In coming to this number, the probate court started with the amount the PR earned after selling one of the properties at issue, which was $207,051. Then, the probate court subtracted the amount that the PR paid to the beneficiaries from the sale of a different property which was $138,000. *Id*. at 588, 745 S.E.2d at 400-01. On appeal from the probate court, the circuit court increased the damage award to $289,924. The circuit court, in relevant part, found that "the measure of damages should have been what the beneficiaries would have earned but for [the PR's] actions." *Id*. at 588-89, 745 S.E.2d at 401. This Court affirmed the circuit court's increase of the damage award finding that "the correct measure of damages in this case is the amount that will compensate the beneficiaries for the loss proximately caused by [the PR's] failure to disclose," and that "but for [the PR's] breach, the beneficiaries would have earned an additional $299,000. *Id*. at 593, 745 S.E.2d at 403.

In this case, Crescent Coast seeks to construe the evidence presented to prove the first two elements of Tebele's breach of fiduciary duty claim—the existence of a duty and its breach—as instead being evidence of the third element of Tebele's breach of fiduciary duty claim—the amount of damages. 1901 North Kings was insured for a total value of $2.85 million and the fire resulted in a total loss. R. 449, ll. 8 – 13; R. 451, ll. 19 – 21; R. 508, l. 22 – 509, l. 2. However, Tebele presented undisputed evidence that his damages far exceeded the value of the policy. Tebele's damages were estimated at $4.5 million by the consultant hired by Twaddell. R. 558, l. 17 – 559,

l. 9. Furthermore, Tebele also presented undisputed expert testimony that to rebuild the property in 2023—the time of trial—the cost was more than $8.4 million. R. 1202, l. 20 – 1203, l. 3.

South Carolina's Valued Policy Statute provides that: "In case of total loss by fire *the insured is entitled to recover* the full amount of insurance." S.C. Code § 38-75-20 (emphasis added); *see also Averill v. Preferred Mut. Ins. Co.*, 314 S.C. 49, 52, 441 S.E.2d 632, 633 (1994) (the Valued Policy Statute requires "that in a case of total loss by fire, recovery equals the full amount of insurance under the policy"). Had Crescent Coast not failed to obtain coverage for Tebele, a loss payment equal to $2.85 million would have been paid following the fire loss as required by the Valued Policy Statute. The measure of damages in this case is thus at least that, because that is at least the amount Tebele would have received but for Crescent Coast's use of an unlicensed agent who failed to procure coverage for 1901 North Kings after accepting a commission in exchange for a promise to do just that. Accordingly, the jury's award of $15,000 is grossly inadequate and this Court should order a new trial absolute or in the alternative, a new trial nisi additur. *See Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 522, 905 S.E.2d 380, 386 (2024); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530, 431 S.E.2d 557, 558 (1993).

2.

The Valued Policy Statute applies to the policy at issue in this case and serves as a reference for determining the sufficiency of the verdict.

Crescent Coast maintains that Tebele's reliance on the Valued Policy Statute as a baseline for measuring the proper amount of damages was raised for first time in post-trial motions, and that Tebele cites no authority that this statute serves as measure of damages.[1] Tebele referred to

[1] Tebele first referenced the statute in its memorandum in opposition to the Insurers' motion for summary judgment. R. 148.

the statute in its motion for a new trial absolute or nisi additur for the purpose of showing the inadequacy of the jury's verdict. And of course, Tebele could not complain about the adequacy of the jury's verdict until after the verdict had been rendered. In that context, Tebele's reliance on the Valued Policy Statute is properly before this Court. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 189 (3d ed. 2016) ("Post-trial motions are also utilized to raise issues that could not have been raised at trial").

"The cardinal rule of statutory interpretation is to determine the intent of the legislature." *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 275, 617 S.E.2d 135, 138 (Ct. App. 2005). "The legislature's intent should be ascertained primarily from the plain language of the statute." *Id*. at 276, 617 S.E.2d at 138. A statute's language "must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Id*.

The Valued Policy Statute is deemed to form a part of every policy issued in South Carolina, and any conflicting policy provision will be rendered null and void. *Tedder v. Hartford Fire Ins. Co.*, 246 S.C. 163, 166, 143 S.E.2d 122, 123 (1965). As already mentioned, this statute provides that "[i]n case of total loss by fire *the insured is entitled to recover the full amount of insurance*." S.C. Code § 38-75-20 (emphasis added). Thus, the statute itself is authority which clearly provides that the insured amount is a proper measure of damages in cases involving fire loss. Tebele pointed to the Valued Policy Statute in its post-trial motions to demonstrate the gross inadequacy of the jury's verdict. Tebele could not have raised this argument before the verdict was rendered. As such, Tebele's reliance on this statute as a point of reference for determining the insufficiency of the jury's verdict is properly before this Court.

CONCLUSION

By reason of the arguments against the Defendant Insurers made in Tebele's opening brief, and this reply brief, Tebele respectfully requests this Court to hold that Tebele was entitled to coverage as a matter of law and therefore entitled to a directed verdict and motion for JNOV on its breach of contract claim against the Insurers. As such, Tebele requests this Court to remand for a new trial on Tebele's bad faith claim against the Insurers.

Alternatively, by reason of the arguments against Defendant Crescent Coast in Tebele's opening brief, and this reply brief, Tebele respectfully requests this Court to hold that the $15,000 damage award was grossly, or at a minimum merely, inadequate and order a new trial absolute or a new trial nisi additur.

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This 31st day of July 2025.