

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

DEC 30 2013

SC Court of Appeals

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2013-001321

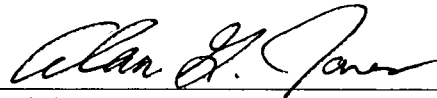
Auto-Owners Insurance Company,..... Appellant,

v.

Elouise Woody Benjamin, Melvin Benjamin, Joshua Lee Cail, Naida L. Singleton and Pee Dee Heating and Cooling Specialists, Inc., Defendants,

Of Whom Elouise Woody Benjamin and Melvin Benjamin are the Respondents.

Appellant's Return in Opposition to Respondents' Motion to Strike Initial Reply Brief



Dominic A. Starr, SC Bar No. 66231
Alan G. Jones, SC Bar No. 10141
McAngus, Goudelock & Courie LLC
Post Office Box 1349
Myrtle Beach, South Carolina 29578
(843) 848-6000

Attorneys for Appellant Auto-Owners Insurance
Company

This return is in reply to Respondents' Motion to Strike the Initial Reply Brief, dated December 20, 2013. In the motion, Respondents' contend that Appellants are bound by their Initial Brief's Statement of Facts and therefore the Appellant's Initial Reply must be stricken entirely. As will be explained, Appellants are not bound by their Statement of Facts. Only the Statement of the Case binds an Appellant from the Initial Brief, which is a different section of the brief entirely. However, a clarification of the correct facts would be the proper remedy to ensure proper determination of this matter.

As an initial matter, Respondents are correct that Appellant's Statement of Facts contained a typographical error, which transposed the issuing dates of the two policies. This error was undiscovered until the Motion from Respondents was served upon Appellant. The Appellant's Statement of the Case also contained a typographical error listing the issuance dates as being the same day, when in fact it was the negotiating dates that were the same.

Respondents incorrectly contend that Appellant is bound by their Statement of Facts by citing Rule 208(b)(1)(C), SCACR. This Rule and subsection, however, refers to the Appellant's Statement of the Case, not the Appellant's Statement of Facts. The quote utilized by Respondents, "[a]ny matters stated or alleged in appellant's statement shall be binding on appellant," applies only to matters set forth in the Statement of the Case.

By contrast, the applicable rule concerning Statement of the Facts is contained in Rule 208(b)(1)(D), SCACR, which provides as follows:

(D) Argument. The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contentions.

(Emphasis added.)

The typographical error in the Statement of Facts was available to be argued by Respondent.

The two policies in question were included as items in the Designation of Matter to be included in the record. The policies contain their issue dates.

Rule 208(b)(2), SCACR provides guidance for the requirements of the Brief of Respondent. This rule states in part that “[i]f a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case.”

Rule 208(b)(2), SCACR. Respondents did not include their own statement of the case, and therefore shall be bound by the statement of the case provided in the Initial Brief of Appellant.

At the end of the day, however, the interests of justice are best served by allowing this Honorable Court to determine the issues of law in this case with reference to the correct facts. It is important for this Court to consider that the correct dates were stipulated by both parties at the time the summary judgment motions were decided. Appellant presents the following courses of action to this Honorable Court for consideration:

Scenario A:

- (1) Allow Appellant to resubmit the Initial Brief of Appellant, with the only allowable changes being the two typographical errors mentioned in this brief.
- (2) Allow Respondents additional time to file a new or edited Initial Brief.
- (3) Allow Appellant to file a Reply Brief to Respondents' new or edited Initial Brief.

Scenario B:

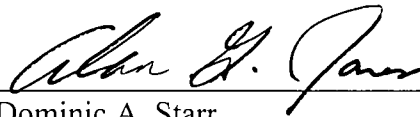
- (1) Allow Respondents additional time to draft a new or edited Initial Brief.
- (2) Allow Appellant to file a Reply Brief to Respondents' new or edited Initial Brief.

Scenario C:

In the alternative, if this Honorable Court decides against any remedial measures to address the typographical errors in the Initial Brief of Appellant, Rule 208(b)(1)(C), SCACR and 208(b)(1)(D), SCACR mandate that Appellant and Respondents be bound by the Statement of the Case in the Initial Brief of Appellant, not the Statement of Facts.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



Dominic A. Starr

Alan G. Jones

Post Office Box 1349

Myrtle Beach, South Carolina 29578

(843) 848-6000

December 27, 2013

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2013-001321

RECEIVED
DEC 30 2013
SC Court of Appeals

Auto-Owners Insurance Company,..... Appellant,

v.

Elouise Woody Benjamin, Melvin Benjamin, Joshua Lee Cail, Naida L. Singleton and Pee Dee Heating and Cooling Specialists, Inc., Defendants,

Of Whom Elouise Woody Benjamin and Melvin Benjamin are the Respondents.


PROOF OF SERVICE

I certify that I have served the Appellant's Response in Opposition to Respondents' Motion to Strike Initial Reply Brief, by depositing a copy of it in the United States Mail, postage prepaid, on the 27th day of December 2013, addressed to the attorneys of record:

William P. Hatfield, Esquire
The Hyman Law Firm, LLP
Post Office Box 1770
Florence, South Carolina 29503-1770

Robert N. Hill, Esquire
Law Offices of Robert Hill
Post Office Box 51
Newberry, South Carolina 29108

December 27, 2013



Mary K. Smith
Legal Assistant to Dominic A. Starr
McAngus, Goudelock & Courie LLC
Post Office Box 1349
Myrtle Beach, South Carolina 29578
(843) 848-6000

Attorneys for Appellant



ATTORNEYS AT LAW

Reply To
DOMINIC A. STARR
Direct Dial: (843) 848-6001
dominic.starr@mgclaw.com
MYRTLE BEACH

December 27, 2013

RECEIVED

DEC 30 2013

SC Court of Appeals

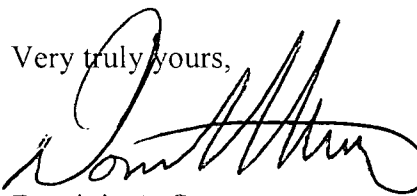
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Auto-Owners Insurance Company v. Elouise Woody Benjamin, Melvin Benjamin, Joshua Lee Cail, Naida L. Singleton and Pee Dee Heating and Cooling Specialists, Inc.
Civil Action No. 2011-CP-13-271
Claim No.: 72-842-08
Date of Loss: April 7, 2008
Our File No.: 20403.09016

Dear Ms. Kitchings:

Enclosed please find the original and 6 copies of Appellant's Response in Opposition to Respondents' Motion to Strike Initial Reply Brief to be filed in the above-referenced matter, along with the Proof of Service. Please file these documents and return clocked in copies to me in the envelope provided. We appreciate your assistance in this matter.

With kind regards, I remain

Very truly yours,

Dominic A. Starr

DAS/mks
Enclosures

cc: Robert N. Hill, Esquire, Law Offices of Robert Hill
William P. Hatfield, Esquire, The Hyman Law Firm, LLP