

COPY

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2013-CP-16-00317

Jonathan Teal and Stacie Teal,
Plaintiffs,

v.

Mary Elizabeth Hickman-Tedder, Allstate
Property & Casualty Insurance Company,
Government Employees Insurance Company
and Nationwide Mutual Insurance Company,

Defendants.

ORDER

SCOTT R. SHERRILL
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

2013 DEC 17 AM 11:10

FILED

This matter comes before me upon motions of all the Defendants to dismiss the Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing was held on this matter on November 21, 2013 at the Darlington County Courthouse. Appearing on behalf of the Plaintiffs was Ashley Twombly, Esquire. Appearing on behalf of the Defendant Hickman-Tedder was Heath Ruffner, Esquire, appearing on behalf of the Defendant Allstate Property & Casualty Insurance Company was Johnston Cox, Esquire, appearing on behalf of Government Employees Insurance Company was Robert T. King, Esquire, appearing on behalf of the Defendant Nationwide Mutual Insurance Company was J.R. Murphy, Esquire. After reviewing the pleadings, motions, supporting memoranda and applicable case law, I find that the Defendants' motions to dismiss are proper and therefore, hereby dismiss the Plaintiffs' Complaint with prejudice.

This action seeks to set aside the prior settlements entered into between the Defendants and the Plaintiffs for damages resulting from an automobile accident between the Plaintiffs and Defendant Mary Elizabeth Hickman-Tedder. The Complaint also asserts a cause of action against Hickman-Tedder for negligence in connection with the automobile accident.

TRUE CERTIFIED COPY,

Scott B. Sherrill
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CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

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MAR 24 2014

SC Court of Appeals

The basis of the lawsuit are the allegations that the Plaintiffs' prior attorneys, William Rivers and the firm of Schurknight & Rivers, settled the case without their knowledge, forged their names to the settlement documents and drafts and then absconded with all of the money. The Complaint does not allege any knowledge of or participation in the wrong doing of Attorney Rivers on the part of any of the Defendants.

It is alleged and undisputed that Attorney Rivers entered into three separate settlement agreements on behalf of the Plaintiffs. The claim against Hickman-Tedder was settled in exchange for the liability policy limits of \$25,000.00 under the automobile insurance policy issued by Allstate in exchange for a Covenant Not to Execute in favor of Hickman-Tedder. Attorney Rivers subsequently settled the Plaintiffs' claim for underinsured motorist coverage under the GIECO and Nationwide policies for \$25,000.00 and \$50,000.00, respectively. All of these settlements represent the full limit of coverage available to the Plaintiffs in connection with the accident whether liability or underinsured motorist. After signing appropriate Covenants Not to Execute and/or releases, Rivers signed his own name to a Stipulation of Dismissal pursuant to Rule 41(a)(1)(A) which was filed on June 13, 2012 dismissing Plaintiffs' suit against Hickman-Tedder with prejudice. Plaintiffs allege that they did not sign any of these documents and did not consent to the settlements or dismissal of the underlying action. Therefore, Plaintiffs ask this court to set aside the settlements based upon their contention that the conduct of Attorney Rivers constitutes a "fraud upon the court".

At the outset, the court notes that any claim based on "fraud upon the court" lies in equity. Therefore, equity must first consider whether the Plaintiffs have adequate remedies at law before providing equitable relief. Since the court concludes that Plaintiffs have multiple

adequate remedies at law, any claim for equitable relief including “fraud upon the court” must fail.

In addition, it is clear that under the principles of agency law in South Carolina, Plaintiffs bear the risk of their chosen attorney’s misconduct. By filing the lawsuit with the Plaintiffs’ permission, Rivers acquired apparent authority to enter into settlements with all of the Defendants and to consummate the settlements by execution of appropriate releases or covenants and the filing of a stipulation of dismissal. It is well established that “where one of two innocent persons must suffer, the law should fall upon him who put it in the power of a third person to cause such a loss.” Bolton v. Wharton, 163 S.C. 242, 161 S.E. 454 (1931). This rule is founded upon the agent’s apparent authority and promotes the public policy of encouraging settlements so that parties who are forced to deal with another party’s agent have confidence in the finality of the transaction. The Supreme Court explained this principle in Spence v. Spence, 368 S.C. 106, 126-27, 628 S.E.2d 869, 880 (2006):

The rule “is founded upon public policy and convenience, for in no other way could there be any safety to third persons in their dealings, either directly with the principal, or indirectly with him through the instrumentality of agents. In every such case the principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of the agency. . . . *Seeing that someone must be loser by the deceit, it is more reasonable that he who employs and confides in the deceiver should be the loser than a stranger.*”

(emphasis added). This rule has been applied by courts in North Carolina and Georgia to similar factual situations as the one alleged here. Purcell Int’l Textile Group, Inc. v. Algeme AFW N.V., 185 N.C. App. 135, 647 S.E.2d 667 (Ct. App. 2007) (holding that, because the attorney acted with apparent authority as defendant’s agent, defendants failed to meet the criteria for setting

aside the judgment); Wilson v. N.E. Isaacson of Georgia, Inc., 139 Ga. App. 582, 229 S.E.2d 29 (Ct. App. 1976) (holding that the plaintiff is bound by his attorney's dismissal of the case).

Although Plaintiffs cite to a case from Nevada that reached a different conclusion, Nevada does not recognize that an attorney who files suit on behalf of a client gains apparent authority to settle or dismiss the case. South Carolina law is clear that an attorney may settle litigation on behalf of his client, absent fraud or mistake, and that such a settlement is binding on the client. Crowley v. Harvey & Battey, P.A., 327 S.C. 68, 70, 488 S.E.2d 334, 334 (Ct. App. 1997). To the extent that Rivers acted fraudulently towards the Defendants by entering into a settlement agreement and dismissing the case, he acted within his apparent authority. Furthermore, Plaintiffs, as Rivers' principal, are not only bound by Rivers' conduct, but would be liable for frauds committed while acting under his apparent authority. See Williams v. Commercial Casualty Ins. Co., 159 S.C. 301 (1931) (holding that, in addition to being obligated to honor the fraudulently produced policy, an insurer could be liable for punitive damages where its agent issued fake policies with apparent authority, collected premiums, and absconded with the funds). Therefore, Plaintiffs bear the loss caused by Rivers' conduct and the Defendants are entitled to rely upon and enforce the settlement agreements. In this case, the terms of the settlement did not result from any fraud of the Defendants. The attorney hired by the Plaintiffs entered into an otherwise bonafide settlement before fraudulently diverting the funds for his own use. Because the Defendants innocently purchased their peace from Plaintiffs through Plaintiffs' selected agent, Plaintiffs are bound by Rivers' conduct.

Moreover, although South Carolina has recognized an equitable action for fraud upon the court, it is limited to fraud committed by an opposing party. Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003); See also Purcel Int'l Textile Group, Inc., 185 N.C. App. at 138,

647 S.E.2d at 670 (“Relief from attorney fraud on the court is to be granted only where the judgment was obtained by the improper conduct of the party in whose favor it was rendered.”) (quotation omitted). Also, Plaintiffs do not allege that their counsel made any representations to the court and the stipulation of dismissal counsel signed and filed with the court did not require judicial approval. Therefore, it is doubtful that the conduct of Plaintiff’s counsel would even constitute “fraud upon the court.”

AS TO DEFENDANT MARY ELIZABETH HICKMAN-TEDDER ONLY

In addition to joining in the other Defendants’ motions to dismiss pursuant to Rule 12(b)(6), Hickman-Tedder also moved to dismiss pursuant to Rule 12(b)(4) and/or (5) based upon the Plaintiffs’ failure to properly serve Hickman-Tedder.

Rule 3(a) provides:

A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) *if not served within the statute of limitations, actual service must be accomplished not later than 120 days after filing.*

(emphasis added). As set forth in the Plaintiffs’ Complaint, the automobile accident involving the Plaintiffs and Defendant Hickman-Tedder occurred on June 29, 2010, meaning that pursuant to S.C. Code § 15-3-535 the statute of limitations ran on June 29, 2013. The Plaintiffs filed their Complaint on April 15, 2013, well within the statute of limitations. Under Rule 3(a), the Plaintiffs could either (1) serve Hickman-Tedder within the statute of limitations (June 29, 2013); or (2) serve Hickman-Tedder not later than one hundred twenty days after filing (August 13, 2013).

On May 7, 2013, counsel for Hickman-Tedder wrote to Plaintiffs’ counsel via facsimile stating in part: “It is my understanding that Mrs. Hickman-Tedder has not been served. If that is

incorrect, please let me know that and forward a copy of your proof of service to me as soon as possible." Receiving no response from Plaintiffs' counsel, on May 10, 2013, Hickman-Tedder's Answer and Notice of Motion and Motion to Dismiss were served. The first ground listed on the motion to dismiss was "Pursuant to Rule 12(b)(4) and/or (5) of the South Carolina Rules of Civil Procedure inasmuch as the Plaintiffs have failed to properly serve said Defendant." The same ground for dismissal was listed as the Second Defense in Hickman-Tedder's Answer. Hickman-Tedder was personally served with the Summons and Complaint on November 20, 2013.

Plaintiffs have offered no explanation for not serving Hickman-Tedder, the alleged tortfeasor, within the time prescribed by Rule 3(a). The court notes that counsel for Hickman-Tedder, even before filing Hickman-Tedder's Answer, raised the issue of service by correspondence to Plaintiffs' counsel on May 7, 2013.

Clearly, the Plaintiffs failed to serve Hickman-Tedder within the time required by Rule 3(a) and, therefore, Hickman-Tedder is entitled to dismissal of the Plaintiffs' Complaint against her.


Based upon the above, it is

ORDERED, ADJUDGED and DECREED that the Defendants' motions to dismiss are GRANTED and the Plaintiffs' Complaint is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

Pageland, South Carolina

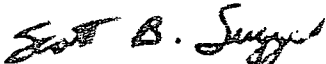
Dated: December 13, 2013


The Honorable Paul M. Burch
Chief Judge for Administrative Purposes for
the Fourth Circuit

2013 DEC 17 11:10
SOLED
CLERK OF COURT
DARLINGTON
COUNTY, S.C.

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CERTIFICATE OF SERVICE


I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Defendant, do hereby certify that on December 20, 2013, I have served a copy of the foregoing Order in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

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