

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2011-CP-10-4867

Permanent General Assurance Company Respondent,
v.
Karen D. Givens, Individually and as Personal
Representative of the Estate of E. Cierra
Givens, and Kayla Givens.....Appellants.

APPELLANTS' MOTION FOR REHEARING

Appellants move this court for a rehearing pursuant to Rule 221 SCACR in this case, as the Court of Appeals overlooked or misapprehended the following:

1. Appellants appealed from the grant of a summary judgment by the trial court. Appellants alleged that genuine issues of material fact existed, which made summary judgment improper. The Court of Appeals opinion in this case, filed on July 18, 2014, does not reveal anywhere that the court inquired into the existence of triable issues of fact in accordance with the law, or that the court made any findings about the existence of genuine issues of material facts, all of which were to be construed in the light most favorable Appellants.

Consequently, Appellants motion for rehearing should be granted so that the Court of Appeals may consider the existence of genuine issues of material facts and order that the case be remanded to the trial court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Donald J. Budman', written over a horizontal line.

Donald J. Budman
Solomon, Budman & Stricker, LLP
P.O. Box 30280
Charleston, South Carolina 29407
(843)-763-1118
ATTORNEYS FOR APPELLANTS

Charleston, SC
June 30, 2014

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APPELLANTS' MEMORANDUM IN SUPPORT OF MOTION FOR REHEARING

After Appellants made a claim for liability insurance benefits, Respondent filed a summons and complaint on July 11, 2011 against Appellants seeking a declaration that Appellant Karen Givens' liability insurance policy was not in effect at the time of Enriqueta Cierra Givens' death in an auto collision on March 19, 2011 (R. pp. 1-13). On August 4, 2011 Respondent filed and served an amended complaint upon Appellants (R. pp. 15-17). Appellants filed an answer and counterclaim on August 18, 2011 setting forth defenses in support of coverage (R. pp. 18-23). Respondent filed an answer to counterclaim on August 25, 2011 (R. pp. 24-27). Respondent filed a motion for summary judgment on February 6, 2012 (R. pp. 28-29). Appellants also filed a motion for summary judgment on February 22, 2012 (R. pp. 30-31), and filed an amended motion for summary judgment on March 9, 2012 (R. pp. 32-34). A summary judgment motion

hearing was held before the Honorable Michael G. Nettles on May 29, 2012. Permanent General named Kayla Givens as a Defendant in the declaratory judgment action, because she was the driver of the vehicle in which Enriqua Cierra Givens was killed. The actual contract of automobile liability insurance is between Karen Givens and Permanent General. For that reason, both Karen Givens-the insured, and Kayla Givens-the driver, are referred to as “Appellants” in this case.

On March 19, 2011, Enriqua Cierra (“C.C.”) Givens, the daughter of Karen Givens, was killed while she was a passenger in a single car accident in Charleston County. Compounding the tragedy surrounding the death of 17 year-old “C.C.” was the fact that the subject automobile, a 2003 Buick Century owned by Karen Givens, was driven by C.C.’s 19 year-old sister, Kayla Givens. Both C.C. and Kayla were Karen Givens daughters. Kayla survived the collision. The 2003 Buick Century is alleged to be insured by Respondent, Permanent General.

Permanent General filed this Declaratory Judgment action to determine whether it is obligated to provide liability insurance coverage to the Estate of Enriqua Cierra Givens in the amount of \$25,000.00, its policy limits on the subject vehicle involved in this accident, and the property damage insurance coverage that was also carried on the totaled vehicle. The court of appeals affirmed the trial court’s grant of summary judgment.

Appellants appealed the case on several bases, among them that genuine issues of material fact existed, making summary judgment improper. The questions of fact pointed out by Appellants as being in dispute were:

1. Permanent General gave Appellants at least 4 different expiration dates for the subject insurance policy in various documents. Which expiration date, if any, would apply to the subject property is a question of fact.

2. Permanent General gave notice of cancellation of the subject insurance policy before the March 10, 2011 endorsement was issued adding the 2003 Buick to the policy. The Buick was involved in the fatal collision on March 19, 2011. Therefore, the notice of cancellation could not have pertained to the 2003 Buick. The notice of cancellation made no mention of the cancellation of the binder covering the Buick. The March 10, 2011 endorsement made no mention of the previously issued notice of cancellation. In fact, the endorsement advised Appellant that she would be receiving a *separate* invoice for the 2003 Buick in the near future. Nothing on the March 10, 2011 endorsement indicates that coverage on the 2003 Buick would be expiring in 6 days. If the endorsement granting coverage to the Buick was mailed to Appellant, she would have received it around the same time that Permanent General was cancelling the coverage on the Buick. Did the Notice of Cancellation include the Buick when the Buick was added to the policy after the Notice of Cancellation was issued? Did Permanent General add the Buick to the policy after it issued the Notice of Cancellation?

3. Permanent General never sent Appellants an invoice for liability insurance on the Buick. Permanent General cancelled the policy covering the Buick when Appellants were never asked to pay a premium for coverage on that vehicle. Did Permanent General ever send appellants an invoice for liability insurance on the Buick? Can a policy of liability insurance be cancelled before it is ever invoiced?

4. Did the Buick meet the definition of a “newly acquired vehicle” so as to be entitled to 30 days of insurance coverage?

The Appellants are entitled to a rehearing because the Court of Appeals opinion in this case, filed on July 18, 2014, does not reveal anywhere that the court considered these allegations in accordance with the law, or that the court made any findings about the existence of, or lack of, genuine issues of material facts. In reviewing the grant of summary judgment, [an appellate court] should apply the same standard that governs the trial court under Rule 56, SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196, 202 (Ct. App. 2008).

In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751 (2007).

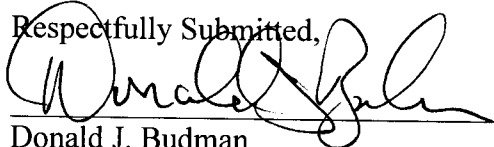
On appeal from an order granting summary judgment, this court is required to review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. RWE NUKEM Corp. v. ENSR Corp., 373 S.C. 190, 644 S.E.2d 730 (2007); Connor Holdings, L.L.C. v. Cousins, 373 S.C. 81, 644 S.E.2d 58 (2007); Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004); *see also Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party). The opinion in the present case does not indicate that this was done.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Montgomery v. CSX Transp., Inc., 376 S.C. 37, 656 S.E.2d 20 (2007); Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct.App.2004).

CONCLUSION

All of the standard adages regarding the appeal of a Summary Judgment are applicable here because none of them were followed in this appeal. The court's opinion does not even mention that this was an appeal from the grant of a summary judgment. These rules should have been invoked to insure that the Appellants were not improperly deprived of a trial on disputed factual issues. Appellants should be granted a rehearing and an opportunity to argue these issues again before the court.

Respectfully Submitted,



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June 30, 2014
Charleston, SC

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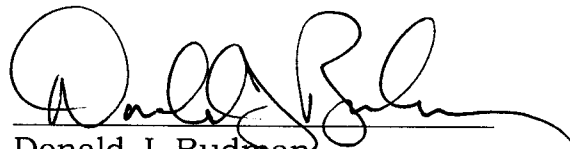
Karen D. Givens, Individually and as Personal
Representative of the Estate of E. Cierra
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PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Motion for Rehearing and Memorandum in Support of Motion for Rehearing on Permanent General Assurance Company by depositing a copy of it in the United States Mail, postage prepaid, on June 30th, 2014, addressed to its counsel of record, as follows:

Adam J. Neil, Esq.
Wesley Brian Sawyer, Esq.
P.O. Box 6648
Columbia, SC 29260

June 30, 2014,



Donald J. Budman
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Attorneys for Appellants

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SC Court of Appeals

SOLOMON, BUDMAN & STRICKER, L.L.P.

DONALD J. BUDMAN

MICHAEL A. STRICKER
(SC, GA, TN)

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July 7, 2014

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Permanent General Assurance Company v. Karen D. Givens, etc.
Case # 2011-CP-10-4867
Appellate Case No. 2013-000198

Dear Ms. Kitchings,

Enclosed for filing is an original and 6 copies of the Appellants' Motion for Rehearing and Memorandum in Support of Motion for Rehearing, Original Certificate of Service and my firm's check for \$25.00 filing fee.

I have also enclosed an extra copy of the documents and a return envelope. Please send me a copy of the filed documents for my file.

If you have any questions, please contact me. Thank you for your cooperation. With kindest regards, I am

Respectfully yours,



Donald J. Budman

Cc: Adam J. Neil, Esq. (w/enc.)
Wesley Brian Sawyer, Esq.
P.O. Box 6648
Columbia, SC 29260

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SC Court of Appeals

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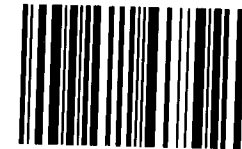
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