IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Fourth Judicial Circuit Court Judge
Case No.: 2013-CP-16-0317

Appellate Case No. 2014-00626

Jonathan Teal and Stacie Teal,..... Appellants,

v.

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

INITIAL BRIEF OF RESPONDENT

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II) **WHETHER APPELLANTS' CLAIM FOR FRAUD UPON THE COURT FAILS AS A MATTER OF LAW.**

III) **WHETHER APPELLANTS ARE BOUND BY THE ACTS OF THEIR CHOSEN AGENT.**

STATEMENT OF THE CASE

This appeal follows the dismissal of Appellants Jonathan and Tracie Teal's claims for negligence and fraud upon the court against Respondents Mary Elizabeth Hickman-Tedder, Allstate Property & Casualty Insurance Company, Government Employees Insurance Company and Nationwide Mutual Insurance Company. The suit does not allege any wrongdoing on the part of Respondents but is based upon the misconduct of William J. Rivers, III of Schurlknight & Rivers, P.A.[1], an attorney hired by Appellants in their previous personal injury suit against Hickman-Tedder. Rivers misappropriated one hundred thousand ($100,000.00) dollars in proceeds paid by the insurance carriers in settlement of Appellants' claim against Hickman-Tedder. The instant action seeks to have the consequences of Appellants' lawyer's misconduct in the prior personal injury claim fall on Respondents by having the Court determine that the settlement funds paid by Respondents are null and void.

Appellants hired Rivers to represent them in their claim for injuries arising out of an automobile accident in which Hickman-Tedder was also involved. (Complaint ¶ 13). As Appellants' former attorney, Rivers filed suit in the Darlington County Court of

[1] As a consequence of his misconduct in the Teal's case, as well as several other cases, Rivers was disbarred in July 2014. See In re William Jones Rivers, III, Op. No. 27414 (S.C. Sup. Ct. filed July 16, 2014) (Shearouse Adv. Sh. No. 28 at 35).

Common Pleas, captioned Jonathan Teal and Stacie Teal v. Mary Elizabeth Hickman-Tedder with civil action number 2011-CP-16-00416. (Complaint ¶¶ 17-18).

Rivers entered three separate settlements purportedly on Appellants' behalf. First, Rivers – representing the Appellants – agreed to settle their claim against Hickman-Tedder for receipt of twenty-five thousand ($25,000.00) dollars from Respondent Allstate Property and Casualty Insurance Company, Hickman-Tedder's liability insurer, in exchange for a Covenant Not to Execute. (Complaint ¶¶ 27-28). Second, Rivers – representing the Appellants – agreed to settle their claim for underinsured motorist coverage from Respondent Government Employees Insurance Company for receipt of twenty-five thousand ($25,000.00) dollars in exchange for a separate Covenant Not to Execute. (Complaint ¶¶ 32-34). Third, Rivers – representing the Appellants – agreed to settle their claim for underinsured motorist coverage from Nationwide for receipt of fifty thousand ($50,000.00) dollars in exchange for a Release. (Complaint ¶¶ 35-36).

Rivers signed and filed a Stipulation of Dismissal pursuant to Rule 41(a)(1)(A) on June 13, 2012, dismissing Appellants' suit against Hickman-Tedder with prejudice. (Complaint ¶ 39). Appellants allege that they never signed any of the covenants, the release, or any settlement drafts and that they never consented to the settlements or dismissal of their claim. The insurance payments made in the settlements reflect the full amount of insurance coverage applicable to the accident.

The instant action reasserts Appellants' negligence claim against Hickman-Tedder and asks the Court to grant equitable relief by setting aside the prior dismissal and settlements. The trial court dismissed Appellants' causes of action for fraud upon the court and negligence, holding the availability to Appellants of adequate remedies at law

precluded the granting of equitable relief. (Order, p. 2-3). Citing well-established rules of agency, the trial court also held Respondents are entitled to rely upon and enforce the settlement agreements because Appellants are bound by Rivers' conduct as he was cloaked with apparent agency and authorized to settle litigation on behalf of his client. (Order p. 3-4). In so holding, the trial court recognized an equitable action for fraud upon the court is limited to fraud committed by an opposing party. (Order p. 4). Finally, the trial court dismissed Appellants' claim against Hickman-Tedder for failure to serve her within the time required by Rule 3(a), SCRCP. (Order p. 5-6).

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). In deciding whether the trial court properly granted a motion to dismiss, the appellate court considers whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The Court may sustain the dismissal when "the facts alleged in the complaint do not support relief under any theory of law." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 176, 758 S.E.2d 501, 503 (2014) (citing Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003)).

ARGUMENT

I) DISMISSAL WAS PROPER BASED ON APPELLANTS' FAILURE TO SERVE HICKMAN-TEDDER WITHIN THE TIME REQUIRED BY RULE 3(A), SCRCP.

The trial court's order limits the holding as to the failure to serve Hickman

Tedder to Hickman-Tedder only. Therefore, Nationwide adopts and fully incorporates Hickman-Tedder's arguments in response to the statute of limitations issue posed by Appellants.

II) APPELLANTS' CLAIM FOR FRAUD UPON THE COURT FAILS AS A MATTER OF LAW.

A) Appellants have adequate remedies at law and therefore cannot seek the equitable remedy of setting aside a binding Release and Stipulation of Dismissal.

As noted by the trial court, Appellants have multiple adequate remedies at law and therefore are not entitled to equitable relief in this matter. "The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law." Nutt Corp. v. Howell Road, LLC, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) (citing Monteith v. Harby, 190 S.C. 453, 3 S.E.2d 250, 2551 (1939)). Therefore, "[w]here a party possesses an adequate remedy at law, equity will not intervene." Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co., 272 S.C. 127, 128-29, 249 S.E.2d 744, 745 (1978) (citations omitted). "An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." Id. at 328, 721 S.E.2d at 450 (quoting Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009)).

Appellants' available remedies at law are numerous. First, based on Appellants' allegation they never signed any checks and no one had authority to forge their names on any settlement checks, Appellants can pursue the banks that negotiated any checks naming them as joint payees without proper endorsements. See S.C. Code Ann. § 36-3-420(a); (Complaint ¶ 38). In fact, Appellants are participants in a class action against First Reliance Bank where Schurlknight & Rivers maintained accounts. See Jarrell

Gilbert, et. al. v. First Reliance Bank, 2013-CP- 21-01701 (filed June 27, 2013). According to recent reports, Appellants class action suit against the bank recently settled for $2,600,000.00. See Tonya Brown, Lawsuit against Florence Law Firm is Settled, WPDE (Sept. 19, 2014) (available at http://www.carolinalive.com/news/story.aspx?id=1099051). The fact that Appellants have realized a legal remedy against the bank precludes this equitable action.

Also, Appellants have a cause of action against Rivers and his law firm for breach of contract, breach of fiduciary duty, negligence, malpractice, fraud, conversion, violation of the Unfair and Deceptive Trade Practice Act, or any other legal cause of action established under South Carolina law. See generally RFT Management Co. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012) (setting forth the elements for a cause of action for legal malpractice and holding that the UTPA applies to the legal profession); Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011) (recognizing that attorneys owe fiduciary duties to their clients). Through these actions, Appellants can pursue the properly culpable party – Rivers and his law firm – for any amounts they should have received in the underlying lawsuit.

Lastly, Appellants can seek relief through the Lawyers' Fund for Client Protection. See Rule 411, SCRAP (Providing a Lawyers' Fund for Client Protection to help clients recover losses due to an attorney's dishonesty).

Equity does not exist as an alternative to adequate legal remedies. The Court can only resort to equity when the law fails to provide an adequate remedy. An equitable remedy should not be used to permit one party to submit another innocent party to additional liability when the law provides adequate remedies against the actual

wrongdoers. In this case, the law provides multiple causes of action against Rivers and his law firm, an action for conversion against the banks that negotiated any checks bearing forged endorsements, and recovery through the Lawyers' Fund for Client Protection. These legal remedies are as adequate and efficient means of attaining the ends of justice as Appellants' requested equitable relief. Therefore, dismissal of Appellants' claim for equitable relief should be affirmed.

B) An action for fraud upon the court is not available when the fraud was perpetrated by Appellants' own attorney.

South Carolina has formally recognized an equitable action for fraud upon the court, but only in the context of fraud committed by an opposing party. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003) (Attorneys allegedly suborned perjury and concealed documents.); Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007) (Wife concealed payment for non-compete agreement in dividing marital property). Appellants' suit against Respondents fails to include allegations that any opposing party or insurer participated in the alleged fraud. Rather, the Complaint alleges fraudulent acts perpetrated solely by Respondents' own attorney.

For example, in Purcell International Textile Group, Inc. v. Algemene AFW N.V., 647 S.E.2d 667 (N. C. App. 2007), the court denied the defendants' motion to set aside a judgment based on fraud committed by their own attorney in settling a claim without their authority. Like the instant case, the attorney in Purcell never informed defendants of the settlement and forged their signatures. The court held that "[r]elief 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.'" Purcell, 647 S.E.2d at 670 (quoting Henderson v. Wachovia Bank of N.C., 551 S.E.2d 464, 468 (N.C. App.

2001)). Relying on the same agency principles applicable to this case, the Purcell court held:

> An act is within the power of an agent if the agent has the legal ability to bind the principal to a third person thereby, even though the act constitutes a violation of the agent's duty to the principal.... When a[n] ... agent acts within the scope of his apparent authority, and the third party has no notice of the limitation on such authority, the [principal] will be bound by the acts of the agent, and ... where one of two persons must suffer loss by the fraud or misconduct of a third person, he who first reposes the confidence or by his negligent conduct made it possible for the loss to occur, must bear the loss.

Id. at 671 (citations omitted). The court also noted circumstances of attorney fraud like the instant case are "not extraordinary" but deal with basic agency law and therefore, do not fall in the purview of "situations so egregious that would entitle a party to be relieved of fraud on it by its own attorney" contemplated by the Henderson court. Id.; Henderson, 551 S.E.2d at 469.

Based on Purcell and considering no South Carolina court has held that a judgment can be set aside where the party seeking relief is on the same side that committed the fraud, Appellants' are not entitled to relief in this case. In fact, South Carolina's agency law clearly runs to the contrary. In Williams v. Commercial Casualty Ins. Co., 159 S.C. 301 (1931), an insurance agent sold a fake insurance policy by using a sample policy and signing the back of the policy under the President and Secretary's signature space, handed the insured the fake policy, collected the premiums, and absconded with the funds. At trial on the policy and for fraud, the insurance company stipulated that it owed the amount that was due under the fake policy even though the agent clearly acted without authority. The insurer objected to a charge on punitive damages, claiming that it should not be responsible for an agent's self-serving fraud that harmed both the insurer and insured. Nonetheless, the Supreme Court affirmed a

substantial punitive damages award, finding "[t]he principal is responsible in punitive damages for the fraudulent acts of his agent done in the course of his employment, even when they may have been performed contrary to the express directions of the principal." Id. at 872 (emphasis in original). The Supreme Court explained:

> [F]or 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." Nor does the fact that the appellant did not profit from its agent's fraud avail it. It is very clear that . . . the principal obtained no benefits from his agent's fraud, but on the contrary suffered detriment.

Id. (quotations omitted). Because South Carolina agency law places the cost of an agent's fraud upon the principal, the Chewning court's recognition of fraud upon the court is limited to cases where some party other than the party seeking relief commits the fraud. In applying the Chewning holding to fraud committed by a spouse in a divorce action, the Ray Court did not extend an action for fraud upon to the court to parties claiming the fraud was committed by their own attorney. Ray, 374 S.C. 79, 647 S.E.2d 237. The Chewning and Ray decisions follow that rule that fraud upon the court is only available to parties claiming the fraud has been committed by the opposing party.

Furthermore, Rule 41(a)(1)(A) permits a plaintiff to dismiss a cause of action, with or without prejudice, by filing and serving a notice of dismissal before service of any answer by an adverse party. Rule 41, SCRCP. Rule 41 does not require a plaintiff's personal signature. Moreover, the rule does not require any action on the part of the Court. Therefore, by permitting Rivers to file suit on their behalf, Appellants' dressed Rivers with the apparent authority to dismiss their claim with or without prejudice. Rivers exercised that authority and Appellants are bound by the dismissal. Moreover,

Rivers never made any misrepresentations to the court such that would justify setting aside a judgment for "fraud upon the court," thereby distinguishing this case from the Nevada case relied on by Appellants. See NC-DSH, Inc. v. Garner, 218 P.3d 853 (2009) (Nevada's rules require the court to sign the dismissal and, unlike South Carolina's rules, do not cloak attorneys with apparent authority to settle for their clients).

Although fraudulent conduct on the part of an opposing party or his attorney may justify a claim for fraud upon the court, Appellants cannot bring an equitable action to set aside the actions of their own agent when four other parties relied upon the representations of Appellants' agent. No South Carolina court has recognized an equitable action for fraud upon the court in this context and this Court should not open the door for Appellants to set aside their own settlements and Stipulations of Dismissal to the detriment of other settling parties. The courts have a strong public and judicial policy favoring settlement. See Chester v. South Carolina Dept. of Public Safety, 388 S.C. 343, 346, 698 S.E.2d 559, 561 (2010) (rejecting a rule that would erode South Carolina's "strong public policy favoring the settlement of disputes."). Permitting actions to set aside judgments and settlements in this context would undermine the finality of judgments and the confidence parties gain from early settlement of disputes.

C) Dismissal was properly granted based on the facts and claims presented in Appellants' Complaint.

The dismissal of Appellants' fraud upon the court claim was properly based on the allegations of the Complaint. Although a court considering a motion to dismiss must assume the truth of all factual allegations, the same rule does not apply to legal allegations asserted in a Complaint. See Builder Mart of America, Inc. v. First Union Corp., 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002), *overruled on other*

grounds, Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003) ("[W]e are not bound to accept as true a legal conclusion couched as a factual allegation.") (quoting Papasan v. Allain, 478 U.S. 265, 109 S. Ct. 2932 (1986)). In this case, Appellants – after setting forth their factual allegations – assert in the first cause of action that they do not have an adequate remedy at law. The phrase "no adequate remedy at law" speaks for itself and is a legal conclusion rather than a factual allegation. Because the question is legal rather than factual, the trial court properly dismissed Appellants' claims based on the availability of adequate remedies at law that preclude invoking equity. Moreover, the trial court's holding that "any claim for equitable relief including 'fraud upon the court' must fail" does not contain any doubt such that the standard of review would require reversal of the dismissal. (Order p. 3.)

III) APPELLANTS ARE BOUND BY THE ACTS OF THEIR CHOSEN AGENT.

Rivers, acting as the agent for Appellants and carrying apparent legal authority to settle their claims, entered into a settlement agreement with Nationwide, returned an executed Release, negotiated the settlement checks, and filed a Stipulation of Dismissal with prejudice. To the extent that Rivers acted fraudulently, Nationwide is an innocent victim of the fraud. Therefore, as between Nationwide and Appellants, Appellants – who selected Rivers as their agent – are bound by Rivers' conduct and must bear the loss of his actions.

A) Where one of two innocent persons suffer loss from an agent's fraudulent or unauthorized act, the principal of the dishonest agent must bear the loss.

Under well-established agency principles, "where one of two innocent persons must suffer, the loss 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); see also 3 Am. Jur. 2d Agency § 274 (Stating that a principal should bear the risk of an agent's infidelity rather than innocent third parties.). This rule is founded upon the agent's apparent authority and promotes settlement and business dealings by allowing parties who are forced to deal with another party's agent to have confidence in the finality of their transaction. The Supreme Court explained this principle in Spence:

> 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 some one 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."**

Spence, 368 S.C. at 126-27, 628 S.E.2d at 880 (emphasis added).

Appellants chose to hire Rivers as their attorney. Once hired, Nationwide could no longer communicate directly with Appellants and was required to deal with Rivers as Appellants' agent and attorney. Because Nationwide was required to deal with Appellants' attorney, it was entitled to rely upon his statements as both truthful and authorized. Appellants' Complaint does not allege any wrongdoing on the part of Nationwide or any of the other named defendants because Nationwide and the other named defendants are innocent. Despite Nationwide's innocence, Appellants are asking the Court treat Nationwide's prior payment of fifty thousand ($50,000.00) dollars as null and void. Because Appellants selected Rivers as their agent, they must bear the loss. Although this rule may seem harsh, greater harm would result if multiple parties who were forced to deal with Rivers by Appellants' selection of him as their agent lose the benefit of settlements for which they paid substantial funds. Not only is this the less

offensive rule, but it then requires Appellants – who selected Rivers – to pursue an action against him for his misconduct rather than strangers who had no choice but to deal with him. This is by far the better rule.

B) Once Rivers filed suit on behalf of the Appellants, he had authority to settle the case on their behalf.

Once an attorney files suit on behalf of a client, he gains the authority to settle or dismiss the case. "Acts of an attorney are directly attributable to and binding upon the client." Arnold v. Yarborough, 281 S.C. 570, 572, 316 S.E.2d 416, 417 (Ct. App. 1984) (citation omitted). "In South Carolina, an attorney may settle litigation on behalf of his client, absent fraud or mistake, 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) (citations omitted). Although Appellants allege that their written agreement with Rivers did not give him permission to settle their claims without their consent, they do not allege that this limitation was communicated to Nationwide.

In Arnold, the Court of Appeals held that a client was bound by his attorney's agreement to settle a case even when the client never authorized his attorney to settle on the terms reached and was not aware of the settlement. Id. The Court of Appeals recognized "a vast distinction between the acts of an attorney within his general authority in a matter not in court and his acts during the conduct and progress of a suit in court." Id. (citing Ex parte Jones, 47 S.C. 393, 25 S.E. 285 (1896)). "Upon this distinction in a large measure rest the certainty, verity, and finality of every judgment of a court." Id.

Once Rivers filed suit on behalf of Appellants and with their permission, Rivers had the authority to settle the case on their behalf pursuant to South Carolina law. Without communicating any unusual limitations on that authority to Nationwide, it was

entitled to deal with Rivers in reliance upon that apparent authority. If Rivers went beyond his authority, Appellants' cause of action is one against Rivers for breach of contract, but they are still bound by his conduct. See Spence, 368 S.C. at 126, 628 S.E.2d at 879 ("The doctrine of apparent authority provides that the principal is bound by the acts of his agent when he has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption.") Relying upon that authority, Nationwide entered into a settlement agreement, tendered a settlement draft for fifty thousand ($50,000.00) dollars, and received an executed Release waiving and releasing Nationwide from any subsequent claims for underinsured motorist coverage. Appellants are bound by the actions of their agent and the Release is binding upon them[2].

C) Agency principles apply to fraud upon the court.

Appellants argue that agency principles do not apply to the allegations of fraud upon the court. In support of this contention, Appellants include a lengthy string cite in their Brief of cases purportedly showing that agency principles do not apply in cases of fraud on the court and attorney fraud. However, the courts cited by Appellants uniformly relied upon agency principles in reaching their conclusions. See Capital Dredge & Dock Corp. v. City of Detroit, 800 F.2d 525 (6th Cir. 1986) (resolving unauthorized settlement claim on agency principles); accord Walker v. Stephens, 626 S.W.2d 200 (Ark. 1981);

[2] The cases cited by Appellants in support of their argument that an attorney's settlement actions are not binding on a client in cases of fraud are not applicable because they do not involve claims for fraud upon the court and/or base their holdings on agency principles which have not been adopted in South Carolina. See, e.g., NC-SDH, Inc. V. Garner, 218 P.3d 853 (Nev. 2009); Blakney v. Leathers, 867 N.Y.S.2d 145 (N.Y. App. Div. 2008); Nehleber v. Anzalone, 345 So.2d 822 (Fla. App. 1977); Henderson v. Great Atl. & Pac. Tea Co., 132 N.W.2d 75 (1965).

Ball v. Teisonniere, 2000 WL 1868243, at *2 (Conn. Super. 2000); Liquori v. Giordano, 603 A.2d 782, 783 (Conn. Super. 1991); Nehleber v. Anzalone, 345 So.2d 822 (Fla. App. 1977); Moitk v. Rudy, 605 P.2d 587 (Kan. 1980); Perkins v. Philbrick, 443 A.2d 73 (Me. 1982); Henderson v. Great Atlantic and Pacific Tea Co., 132 N.W.2d 75 (Mich. 1975); Coates v. Drake, 346 N.W.2d 858 (Mich. App. 1984); NC-SDH, Inc. V. Garner, 218 P.3d 853 (Nev. 2009); Blakney v. Leathers, 867 N.Y.S.2d 145 (App. Div. 2008); Humphreys v. Chrysler Motors Corp., 399 S.E.2d 60 (W. Va. 1990).

All of the jurisdictions in the cases cited by Appellants follow the majority rule with respect to the scope of an attorney's actual or apparent authority to resolve a case on behalf of his or her client. See, e.g., Liquori, 603 A.2d at 783 ("a decided majority of decisions in the United States hold that an attorney derives from a bare general retainer no power to compromise his client's cause of action.") However, South Carolina follows the minority rule. Once an attorney has filed suit on behalf of his clients, he has authority to settle the case on behalf of his clients. See Crowley, 327 S.C. at 70, 488 S.E.2d at 334 ("In South Carolina, an attorney may settle litigation on behalf of his client, absent fraud or mistake, such a settlement is binding on the client.") "Upon this distinction in a large measure rest the certainty, verity, and finality of every judgment of a court." Arnold, 281 S.C. at 572, 316 S.E.2d at 417. Therefore, the out-of-jurisdiction cases cited in Appellants' motion do not apply here.

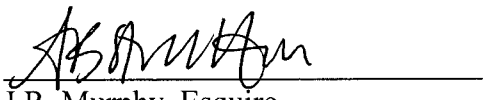
Moreover, a number of the out-of-jurisdiction cases rely upon an agency principle that the principal is not bound by an agent's actions when the agent acts in his own interests. See, e.g., Capital Dredge & Dock Corp., 800 F.2d at 533 ("if the attorney 'has no purpose of serving the [client's] interests,' the client is not responsible under apparent

authority principles for the attorney's acts.") (quoting Restatement (Second) of Agency ¶ 246 illustrations 2 & 4). As discussed in Section II above, South Carolina follows a different agency rule. In South Carolina, a principal is responsible for the acts of its agent performed with apparent authority even when those acts are fraudulent, wholly self-serving, and cause detriment to the principal. See Williams, 159 S.C. 301 (holding insurance carrier bound by fraudulent acts of its agent). This distinction in South Carolina law provides another basis for distinguishing the out-of-jurisdiction cases relied upon by Appellants.

CONCLUSION

Based on the above arguments, Nationwide respectfully requests that the dismissal of Appellants' claims be affirmed when their action for fraud upon the court fails as a matter of law and when long-standing agency rules bind Appellants to the acts of their chosen agent.

MURPHY & GRANTLAND, P.A.



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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Designation of Matter on Appellants, Jonathan Teal and Stacie Teal, by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2014, addressed to attorney of record, J. Ashley Twombley, Esquire, 311 Carteret Street, Beaufort, SC 29902.

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October 2, 2014

HAND DELIVERED
Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Jonathan Teal and Stacie Teal vs. Mary Elizabeth Hickman-Tedder, Allstate Property & Cas. Ins. Co., GEICO Ins . Co. and Nationwide Mut. Ins. Co.
Civil Action No.: 2013-CP-16-00317
Appellate Case No.: 2014-000626
Claim No.: 6139J 768619 06292010 01
Insured: Stacie Teal
Date of Loss: 06/29/10
Our File No.: 1150-0565

Dear Ms. Kitchings:

Enclosed please find herewith for filing with the Court the original and eight (8) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced matter. I would appreciate your filing the original and returning seven (7) clocked copies to me by individual delivering same. By copy of this letter I am serving same on opposing counsel.

If you have any questions, please feel free to contact me.

With best regards, I remain

Sincerely yours,

Ashley B. Stratton

ABS/kbd
Enclosure
cc: Caitlin Kelly
J. Ashley Twombley, Esquire
C. Heath Ruffner, Esquire
Molly Hood Craig, Esquire
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