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STATE OF SOUTH CAROLINA )  
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COUNTY OF BERKELEY )  
 )  
LAVERN McCRAY, )  
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 )  
Plaintiff, )  
 )  
-versus- )  
 )  
JOSE W. VALLE, )  
 )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS 2015  
NINTH JUDICIAL CIRCUIT  
C.A. NO.: 2012-CP-08-180 SC Court of Appeals

ORDER

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2015 JUN 10 PM 3:22

Presiding Judge: Deadra L. Jefferson  
Date of Hearing: May 12, 2015  
Plaintiff's Attorney: Pamela Mullis, Esq.  
Defendant's Attorney: Morgan Templeton  
Defendant Allstate Insurance: Johnston Cox  
Court Reporter: Denise Lauder

This matter came before the Court on May 12, 2015, on Liberty Mutual Fire Insurance Company's ("LMFIC"), Motion to Quash the Plaintiff's "Execution Against Property" ("writ") filed February 9, 2015. The Plaintiff's writ seeks to have the Sheriff execute against property owned by LMFIC arising out of a judgment entered against the Defendant on August 16, 2012, and a subsequent costs order entered on January 27, 2013, as well as an order of costs from the Court of Appeals dated December 22, 2014. The matter was fully briefed by the parties in advance of the hearing. After careful consideration of the materials before the Court and the arguments of counsel, the court grants LMFIC's motion and makes the following findings of fact and conclusions of law.

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## I. FINDINGS OF FACT & PROCEDURAL HISTORY

On May 21, 2010, the Plaintiff Levern McCray ("Plaintiff") filed a Summons and Complaint in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit, Berkeley County, identified as Civil Action Number 2010-CP-08-1801, and captioned as *Levern McCray vs. Jose W. Valle* (hereinafter the "Liability Lawsuit"). The Liability Lawsuit alleged that Jose W. Valle ("Valle") was responsible for causing an automobile collision between Plaintiff and Valle wherein Plaintiff suffered various alleged injuries. LMFIC was not a party Defendant in the Liability Lawsuit. Rather, LMFIC was Plaintiff's uninsured motorist coverage ("UM") carrier and participated in the defense of the Liability Lawsuit.

On August 16, 2012, following a four-day trial, a Berkeley County jury rendered a verdict in favor of the Plaintiff in the amount of \$500,000.00 in actual damages and \$147,000.00 in punitive damages. See Judgement. The undersigned served as trial judge and entered judgment against Valle in the amount of \$647,000.00, and was filed on August 16, 2012. Id. LMFIC was not identified as a party to the judgment in the Liability Lawsuit. Id. The Form 4 Order indicates that "this order ends . . . the case". Id.

On January 14, 2013, the undersigned issued an Order for Costs and Interests Pursuant to Plaintiff's Offer of Judgment in the Liability Lawsuit. The Order was filed on January 17, 2013. See Order. The Order for Costs and Interests provided that the Plaintiff was entitled to \$3,247.01 in costs and \$77,569.10 in interest. Id. LMFIC was not identified as a party to the Order for Costs and Interests in the Liability Lawsuit. Id.

On May 19, 2014, the Plaintiff filed a civil action against LMFIC in the Circuit Court of Richland County, South Carolina, as Case No. 2014-CP-40-3227 (hereinafter "Bad Faith Lawsuit"). LMFIC was thereafter served on May 28, 2014. On June 27, 2014, the case was

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removed to the United States District Court where it remains pending. In relevant part, as part of the Bad Faith Lawsuit, the Plaintiff specifically alleges that she is entitled to recover damages from LMFIC as a direct result of the State court's Order for Costs and Interest. Complaint at ¶ 15. LMFIC denies any liability for those costs beyond the limits of its insurance coverage and seeks declaratory relief on that issue.

On September 18, 2014, the Plaintiff filed a Motion to Enforce Order of Judgment and Rule to Show Cause in the Liability Lawsuit (hereinafter "the Rule"). The Rule was filed against LMFIC and Allstate Insurance Company ("Allstate"). See Motion. The Rule was denied by Order of Judge Kristi Harrington on December 1, 2014. See, Order. On January 27, 2015, the Plaintiff filed the writ seeking to execute against LMFIC and Allstate. LMFIC filed a motion to quash on February 9, 2015.

## **II. LAW & ANALYSIS**

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (Ct. App. 2004)(emphasis added). In the case at bar, the Plaintiff's judgment is against Valle, not LMFIC. To the extent the Plaintiff seeks to execute on the judgment, he must execute against Valle, not LMFIC. Further, it is noted that SC Code § 15-35-400 does not extend a judgment entered against a Defendant to a UM carrier that participates in the defense of that tort action pursuant to SC Code Ann. § 38-77-150. Plaintiff cites no South Carolina authority standing for such a proposition and the undersigned finds no such authority.

The Plaintiff's effort to enforce his judgment against LMFIC through a writ of execution is improper. Rule 69 of the South Carolina Rules of Civil Procedure provides that:

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[Signature]

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery. S.C.R.C.P. 69 (emphasis added).

The Plaintiff has filed a writ of execution to enforce the State Court's judgment against a non judgment creditor. Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 597 S.E.2d 810 (Ct. App. 2004). Plaintiff should proceed with Supplemental Proceedings against Valle to the extent he wants, but not against entities to which he possesses no judgment. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 209 (2005).

Finally, to the extent the Plaintiff's argument seeks to change the scope of the judgments previously entered in this case, this argument is without procedural support. "[W]hile a court may correct mistakes or clerical errors by its own process to make it conform to the record, it cannot change the scope of the judgment." Ex parte South Carolina Dept. of Revenue, 566 S.E.2d 196, 198 n.1 (S.C. Ct. App. 2002)(quoting Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994); see also Ex parte Strom, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000)("indicating a Rule 60 cannot be used to expand the scope of a judgment)). Rule 60 of the South Carolina Rules of Civil Procedure specifically provides for a party's relief from a judgment, not the enforcement of that judgment against non-parties. Id. Attempting to bind a non-party to a judgment extends beyond the relief contemplated by Rule 60. Id. Even if the relief sought were proper, which it is not, any motion to seek relief from a judgment or order "shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment." See Brinkley v. Gregory K. Martin, ASL, Inc., 2006


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WL 7287050 (Ct. App. 2006); S.C.R.C.P. 60(b). "The one year limit for motions pursuant to Rule 60(b)(1)-(3) is an absolute time limit." Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992)(emphasis added).

**Conclusion**

Based on the Court's thorough review of the record before it, the arguments of counsel, and applicable law, IMFIC's motion to quash must be Granted.

**AND IT IS SO ORDERED!**

  
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Hon. Deadra L. Jefferson  
Circuit Court Judge  
Ninth Judicial Circuit

June 4, 2015  
Charleston, South Carolina  
At Chambers

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